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U.S. Department of State

Peru Country Report on Human Rights Practices for 1997

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.

PERU

Peru is a multiparty republic with a dominant executive branch. Under provisions of a Constitution enacted in 1993, President Alberto Fujimori was reelected to a second 5-year term in 1995, at which time his party also won a controlling majority in Congress. The Constitution also created several new judicial institutions, including a Constitutional Tribunal, designed to enhance the independence of the judiciary. However, the independence of both the legislative and judicial branches was brought into question when the congressional majority, faced with the constitutional provision limiting presidents to no more than two consecutive terms in office, passed an interpretive law that would permit President Fujimori to run for a third consecutive term. The administration's attempt to maintain its hold on power created a constitutional crisis. Congress removed three members of the Constitutional Tribunal who had voted against the interpretation allowing a third term, the Tribunal stopped functioning to its fullest capacity, and Congress had not replaced the ousted judges by year's end.

The police and military share the responsibility for internal security. Since 1980 the security forces have directed most of their efforts against the Sendero Luminoso (Shining Path) and Tupac Amaru Revolutionary Movement (MRTA) terrorist groups. Although the threat posed by these groups continued to decline in overall terms, the MRTA's takeover of the Japanese Ambassador's residence from December 17, 1996, to April 22 demonstrated that it remained a real, albeit diminished, threat. Within the emergency zones, which cover 16 percent of the country, certain constitutional protections are suspended and the military is in charge. In the rest of the country, the civilian authorities generally maintain effective control of the security forces. Nevertheless, the military and the police were responsible for serious human rights abuses.

The Government has implemented major economic reforms, transforming the economy from one based on heavy regulation to a market-oriented one. The Government has eliminated controls on capital flows, prices, and trade. It has privatized most state enterprises and plans to sell those that remain by the end of 1999. The inflation rate has dropped into single digits, and growth and foreign investment have soared. Per capita gross domestic product is estimated at \$2,000. Major exports include copper as well as other minerals, fishmeal, and textiles. Illegal exports of processed coca are thought to have earned about \$600 to \$800 million annually in past years. The unemployment rate in Lima is estimated at 8 percent, but the national rate of underemployment is about 40 percent. More than half of the economically active population work in the informal sector of the economy, which largely functions beyond government supervision and taxation. The poor comprise 45 percent of the population, and slightly less than 20 percent of the population lives in extreme poverty.

Although egregious abuses of human rights continued to decline, serious problems emerged in several areas. Security forces were responsible for torture and beatings. The officers found responsible for torturing army intelligence officer Leonor La Rosa were sentenced to prison terms. Although overall prison conditions remained extremely harsh, significant progress was made with the adoption of a more liberal prison regime covering inmates jailed for terrorism and treason. Arbitrary detention, absence of accountability, lack of due process, persistent lengthy trial delays, and prolonged pretrial detention remained problems. The judicial system is inefficient and subject to executive influence. The Government infringed on citizens' privacy rights; the disclosure of a reported secret government intelligence program to monitor the telephones of a broad spectrum of government officials, opposition politicians, journalists, business executives, and entertainers led to severe public criticism. The Government infringed upon press freedom; journalists accused the security forces of harassment and intimidation; and the Government revoked the citizenship of the foreign-born owner of a major television station after the station broadcast negative stories about the regime. The authorities often hindered the operations of human rights monitors. Violence and discrimination against women, violence against children, and discrimination against the disabled, indigenous people, and racial minorities remained problems. Child labor, including forced child labor, is also a problem.

The office of Defender of the People, or Human Rights Ombudsman, increasingly gained the public's respect and confidence. The ad hoc Pardons Commission, whose work was interrupted by the MRTA hostage crisis, continued to recommend presidential pardons for individuals unjustly jailed for terrorism and treason. During the year, it won the release of an additional 250 detainees, bringing the total of those pardoned and released to 360. In response to the decreased terrorist threat, the Government abolished on October 15 both the civilian and military "faceless" tribunals, which had been responsible for many judicial abuses. Treason trials in the military courts continued as before, but with clearly identifiable judges; terrorism trials in the civilian jurisdiction were suspended, pending establishment of a new system of specialized terrorism courts.

Sendero Luminoso and MRTA terrorists continued to commit the great majority of killings and other egregious human rights abuses. Sendero Luminoso practiced torture and other forms of brutality, disrupted the home and family life of many citizens, and violated the rights of indigenous people.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no confirmed reports of politically motivated killings carried out by the security forces.

However, according to press reports, some of the hostages freed from the Japanese Ambassador's residence, who did not wish to be identified, alleged that at least 1 of the 14 hostage takers was killed by the security forces after surrendering.

Fortunato Chipana Ccahuana, one of the 38 suspected MRTA terrorists arbitrarily detained and tortured in March by the military in Oxapampa province (see Section 1.c.), was at home when the security forces broke in, shot him in the leg as he attempted to escape, and left him to bleed to death. The soldier responsible for Chipana Ccahuana's death was charged with unintentional murder.

In early April, concurrent with media revelations that Army Intelligence Service (SIE) officer Leonor La Rosa had been tortured by fellow officers (see Section 1.c.), the press reported that 28-year-old Mariela Barreto, another SIE agent and former girlfriend of Colina death squad leader Santiago Martin Rivas, had been murdered and that police had found her dismembered and decapitated body on March 23. Then-Defense Minister Tomas Castillo Meza announced that the military courts would assert jurisdiction over the Barreto case, if a link could be found between it and the La Rosa case. Although President Fujimori promised an exhaustive investigation, neither the Public Ministry nor the police had succeeded, by year's end, in determining a motive for the killing or a likely suspect.

On July 30, seven soldiers rounded up Tony Gustavo Aduvire Condori and eight other university students, and drove them toward a military base in Tacna as part of the system of military conscription. The next day, police informed Aduvire's family that he had been found dead, with a fractured skull and other signs of brutal treatment on his body, a short distance from the base. Human rights groups assert that this incident is not unique, and that even though university students are exempt, the military authorities target students for forced conscription. The authorities charged seven soldiers in this case with unlawfully abandoning a person in distress.

In December the authorities relieved 16 soldiers from duty in Iquitos, arrested them, and charged them with robbing and killing 2 Japanese students who were exploring the Amazon River on a raft in October. President Fujimori said that those responsible would be tried in civilian rather than military courts.

The December 1992 killing of labor leader Pedro Huillca Tecse had initially been presumed to have been carried out by Sendero Luminoso terrorists. However, in September 1995, jailed former SIE agent Mesmer Carles Talledo charged that Huillca Tecse's murder, as well as a number of other high-profile bombings and massacres, had been carried out by the Colina death squad whose activities are generally believed to have been authorized and controlled by the National Intelligence Service. In November President Fujimori pardoned Carles Talledo for having been wrongly convicted of terrorism offenses, but his release did not bring about resolution of the case. The Public Ministry, which had begun investigating Carles Talledo's allegations while he was still in jail, compelled him to submit to a psychiatric examination.

During the year, Sendero Luminoso and MRTA terrorists killed 44 members of the security forces and 70 civilians (see Section 1.g.).

b. Disappearance

There were no reports of disappearances as a result of actions by the security forces.

In January the Inter-American Court of Human Rights rejected the Government's request for clarification of a judgment awarding compensation in the Neira Alegria case. In June 1986, Victor Neira Alegria, Edgar Zenteno Escobar, and William Zenteno Escobar, three inmates at El Fronton, a high-

security prison located on an island off the Lima coast, disappeared following a military assault on the prison where a mutiny was taking place. In a January 1995 decision, the Inter-American Court ruled that the Government had violated the right to life of the three inmates and ordered it to enter into negotiations with the Inter-American Commission on Human Rights (IACHR) as to the amount of compensation to be paid to the victims' families. After repeated unsuccessful attempts to secure the Government's cooperation in this matter, the Court, in September 1996, set the total amount of compensation for the three families at \$154,000. Court authorities report having so far received no word that the Government has complied with the compensation order.

In November the Inter-American Court of Human Rights ruled on the case of Catholic University student Ernesto Rafael Castillo Paez. On October 21, 1990, eyewitnesses saw Castillo Paez being forcibly detained and driven away by police. Despite repeated attempts through the courts to have Castillo Paez released, the police denied all knowledge of his whereabouts. During the investigation and legal proceedings, the lawyer representing the family was the target of a letter bomb attack that cost him an arm, while the family itself was subjected to repeated telephone death threats; both the lawyer and the family left the country. The Court found that the Government had violated Castillo Paez's right to life, liberty, and personal integrity, and ordered it to punish those responsible, to return the victim's remains to his family, and to compensate the family for its loss. By year's end, the Government had taken no action in response to the ruling.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits torture and inhuman or humiliating treatment. However, in practice, torture and brutal treatment of detainees by security force personnel occur frequently. The victims are both suspected criminals and suspected terrorists. Torture most often takes place during the period immediately following arrest. Human rights groups report that the incidence of torture is high during police detention, in part because families are prohibited from visiting suspects while they are held incommunicado, and attorneys have only limited access to them (see Section 1.d.).

A survey by the Legal Defense Institute of 1,250 detainees in high-security prisons, conducted in 1995-96, found that 77 percent of respondents stated that they had been tortured or otherwise abused during police interrogation, while 87 percent of respondents said that no defense lawyer had been present during their questioning and submission of sworn statements. In addition, human rights monitors and other credible eyewitnesses continued to report that security forces still routinely torture suspects at military bases and detention centers in some of the emergency zones. In these zones, which cover 16 percent of the country's territory and 23 percent of its population, certain constitutional protections are suspended due to high levels of terrorist activity, even though, according to human rights groups, at least some areas designated as emergency zones have not reported serious terrorist incidents for some time.

In addition to beatings, common methods of torture and other inhuman or degrading treatment included electric shock, water torture, asphyxiation, the hanging of victims by a rope attached to hands tied behind the back, and, in the case of female detainees, rape. Common forms of psychological torture included sleep deprivation and death threats against both the detainees and their families. Interrogators frequently blindfolded their victims during torture to prevent them from later identifying their abusers. The authorities rarely brought the perpetrators of torture to justice.

In March the army announced that, on the basis of information received from a repentant terrorist, it had successfully captured 38 alleged MRTA terrorists in Oxapampa province, a jungle region in east central Peru. The army asserted that the detention of the suspected terrorists had been carried out in full compliance with human rights norms and standards. However, many of the detainees had been beaten, subjected to water torture, and suspended out of a helicopter while their abusers demanded confessions

from them as well as the identities of other MRTA suspects. In an April 6 interview, President Fujimori acknowledged that torture and other abuses by the army had taken place in Oxapampa during the anti-MRTA operation, characterized the army's actions as "unacceptable," and said that the perpetrators must be punished. The repentant terrorist who had supplied the false information on which the army's operation was based faced a charge of disloyalty. By year's end, the authorities had released all of the 38 Oxapampa detainees. One detainee bled to death from a gunshot wound (see Section 1.a.). Based on reports from human rights monitors and those released from custody, the detainees were apparently innocent.

The National Coordinating Committee on Human Rights ("Coordinadora") reported that members of the National Police's Bureau of Counterterrorist Intelligence arrested 23-year-old Nancy Patruska del Campo Caceres on May 27, and that several of her captors raped her. During her detention, the police kept her incommunicado and never allowed her relatives to visit her. The authorities brought charges against only one noncommissioned police officer in the case.

There was some progress in the case of Juana Ibarra Aguirre, who on August 29, 1996, had gone with her 5-year-old daughter to the Monzon military base in Huanuco department after receiving word that a base official, who had reportedly left a firearm in her shop, was looking for her. Ibarra was held incommunicado, tortured, and raped. The authorities brought cases against those implicated in the attack in both civilian and military jurisdictions. The military court issued a ruling on February 17 that lessened the culpability of the officers accused in the case. That decision was appealed to the Supreme Council of Military Justice, which had not ruled on it at year's end.

While most surviving victims of torture and brutality do not usually speak out for fear of reprisal, Army Intelligence Service officer Leonor La Rosa publicly accused her torturers. In an April 6 Channel 2 television interview, La Rosa revealed that her superiors and fellow officers had tortured her. Speaking from a military hospital ward, she had difficulty walking and displayed burn marks from electric shocks on her hands. Public interest in the broadcast was heightened because the press had previously reported the discovery of the decapitated body of Mariela Barreto, another SIE officer and former girlfriend of Santiago Martin Rivas, leader of the notorious Colina death squad (see Section 1.a.).

Earlier disclosures to the media had mentioned operations that the SIE planned to carry out against opponents of the Government. According to La Rosa's account, she was first tortured in January, following an SIE investigation of the press leaks. In February she was tortured again after refusing to participate in an undercover operation linked to Air Chief General Waldo Richter.

On April 8, the authorities relieved four SIE officers, including SIE head Carlos Sanchez Noriega, of their duties, arrested them, and charged them with abuse of authority under the Military Code. On May 9, a military court convicted them of abuse of authority and of negligence, sentenced them to 8 years in prison and fined them approximately \$3,700, half of which was to be paid to La Rosa in the form of damages. The officers appealed their sentences. On June 5, La Rosa was released from the military hospital and transferred to a private clinic. At the same time that the four officers were charged, however, General Guido Guevara Guerra, head of the military justice system, announced that the military was looking into possible charges of disloyalty against La Rosa for her revelations to the media. Once the charges of disloyalty are resolved, La Rosa plans to pursue a course of treatment and rehabilitation abroad. The Government offered to pay for her transportation and 5 months of treatment. By year's end, no rulings had been issued, either on the convicted officers' appeal or regarding the disloyalty charges.

The trial and sentencing of the four officers constituted a rare admission by the authorities that torture does take place. However, even though a few guilty officers were brought to justice, a culture of torture

and brutality still exists within the security forces.

Sendero Luminoso also tortured persons. There were credible reports that its members tortured persons to death by slitting throats, strangulation, stoning, and burning.

Prison conditions continued to be extremely harsh due to inadequate budgets, the inconsistent quality of prison administration, and a slow and cumbersome judicial process that results in severe overcrowding. Prisoners in many facilities endured unsanitary conditions, suffered from poor nutrition and health care, and were often victimized by both prison guards and fellow inmates. Corruption continued to be a serious problem among the poorly paid prison guards, many of whom were implicated in such offenses as sexual blackmail, extortion, the sale of narcotics and weapons, and the acceptance of bribes in exchange for favors, which ranged from providing a mattress to arranging an escape. Since prison authorities do not supply adequate food and bedding, the families of prisoners must provide for these basic needs. In high-security prisons, female inmates are allowed to see their children only once every 3 months. However, in others, such as Chorrillos women's prison in Lima, children 3 years and younger live with their jailed mothers.

There were credible reports that at Chorrillos, which is generally acknowledged to be one of the better-run prisons, inmates have only intermittent access to running water, bathing facilities are inadequate, and kitchen conditions are unhygienic. Unlike many other prisons, Chorrillos makes available to its inmates the services of a social worker and provides them with training workshops in manual arts and housekeeping skills. In Lima's Lurigancho prison, the country's largest, over 6,000 prisoners, or 24 percent of the male prison population, are housed in a facility originally designed to accommodate 1,500. The problem of overcrowding at Lurigancho is made worse by the prison's shortage of staff. For the first 9 months of the year, a complement of no more than 200 guards supervised 6,000 inmates. However, following a series of disturbances in September, the National Penitentiary Institute augmented the prison's security forces with additional, better trained guards. Illegal drugs are available in abundance, and tuberculosis and AIDS are reportedly at near-epidemic levels. Although some prisoners reportedly suffer from severe depression, advanced neurosis, and schizophrenia, adequate mental health care is not provided. Detainees held temporarily in windowless cells at Lima's Palace of Justice are not allowed outside for exercise and fresh air and are taken to the bathroom only once a day. According to the Catholic Bishops' Social Action Commission (CEAS), only 10 percent of the country's 89 jails provide adequate facilities.

Although the unrest and bloodshed that were long characteristic of the Lurigancho facility have markedly diminished since the riots of 1986, the prison has not been free of conflict. On June 20, a number of inmates started a riot, which resulted in one death and six persons wounded. On September 4, an armed battle between inmates took place at Lurigancho, reportedly related to gang rivalry in the prison; 7 inmates were killed and 10 were seriously wounded. On September 9, the dismembered body of another prisoner was discovered, according to the prison director. By the end of September, the death toll at Lurigancho had reached a total of 15.

On April 7, the Government sought to reduce prison overcrowding somewhat by transferring between 110 and 150 prisoners to Juliaca in preparation for their eventual incarceration at the newly built Challapalca facility in Tacna. In September the authorities transferred an additional group of prisoners to Challapalca from Lurigancho prison, following disturbances at the latter facility. Located at an altitude of 14,700 feet, Challapalca's cold temperatures and oxygen-thin air are expected to have a negative effect on the health of prisoners. The prisoners to be transferred to Challapalca are reputed to be those considered the most violent and resistant to any attempts at rehabilitation.

According to the CEAS, the solution to prison overcrowding lies not in the construction of new

correctional facilities but in reform of sentencing procedures. At year's end, of a total prison population of 24,847, only 7,965 inmates, or 32 percent, had been sentenced, while 16,882 detainees were still either awaiting trial or had not been finally sentenced. Accordingly, the CEAS has called for implementation of a system that allows detainees to post bail, so that first-time offenders would not have to wait in jail for their trials.

In the past, human rights groups have criticized the Government for the extraordinarily harsh prison conditions reserved for prisoners jailed for terrorism offenses. In late 1996, the Government was about to unveil a new prison regime for terrorist detainees when the MRTA attack on the Japanese Ambassador's residence took place. As a result, not only was implementation of the new prison regime put on hold, but family visits to terrorism and treason prisoners were suspended. On June 16, President Fujimori announced the resumption of more frequent family visits to MRTA prisoners and the impending implementation of new regulations for terrorism and treason detainees.

Under the new regime, the prisons increased patio time and the length of family visits for all detainees and relaxed the regulations governing physical proximity between prisoners and visiting families. Each detainee's security-risk classification and behavioral history determine the amount of patio time and visiting time granted, as well as the degree of physical proximity allowed between prisoners and their families. Relatives of all detainees are able to visit at least once a week for at least 1 hour, up from once a month for 30 minutes for adult relatives and once every 3 months for 30 minutes for children. Low-risk detainees are also permitted visits on their birthday, on Mother's Day, Father's Day, and on Christmas.

In response to the MRTA hostage crisis, the Government in December 1996 also suspended all visits by human rights monitors to prisoners incarcerated on terrorism and treason charges (see Section 4). In the case of the International Committee of the Red Cross (ICRC), the suspension violated the Government's 1992 agreement authorizing ICRC delegates to carry out such visits. ICRC visits to holding facilities were allowed. In mid-April the ICRC acceded to a government request that it withdraw its deputy chief delegate who, the Government suspected, had cultivated excessively close ties with the hostage takers. Soon after the April 22 conclusion of the hostage crisis, church and other human rights monitors were permitted to resume their scheduled prison visits. However, the Government continued its ban on the ICRC's prison visits, arguing that security conditions still did not permit resumption of ICRC activities, even though by October the ICRC had totally replaced its hostage crisis team with new personnel. On December 2, President Fujimori announced that as of December 8, the ICRC would be permitted to resume monthly prison visits to individuals convicted of terrorism and treason offenses.

d. Arbitrary Arrest, Detention, or Exile

Arbitrary detention remains a problem. The Constitution, Criminal Code, and antiterrorist statutes delineate the arrest and detention process. However, a number of constitutional protections are suspended in the emergency zones where, for example, security forces do not need an arrest warrant in order to detain a suspect. The law permits the police to detain terrorism and treason suspects for a maximum of 15 days, and to hold them incommunicado for the first 10 days. The authorities prohibit families from visiting suspects being held incommunicado, and attorneys only have access to them during the preparation and giving of sworn statements to the prosecutor.

Outside the emergency zones, the Constitution requires a written judicial warrant for an arrest to be made unless the perpetrator of a crime is caught in the act. With respect to detention without arrest, the Organic Law of the National Police contradicts the constitutional provision, permitting the police to detain a person for any investigative purpose. Although the authorities must arraign arrested persons within 24 hours, they often violate this requirement in practice. In cases of terrorism, drug trafficking, or

espionage, however, arraignment must take place within 30 days. The military authorities must turn over persons they detain to the civilian police within 24 hours; in remote areas of the country this must be accomplished as soon as practicable. However, the military sometimes disregard this requirement.

In 1993 the antiterrorism laws were amended, authorizing lower court and superior court judges to order the unconditional release of suspected terrorists if there is insufficient evidence to bring a case against them. However, judges rarely exercise this provision. As a result, accused terrorists must sometimes wait until their cases have been reviewed and dismissed by the Supreme Court before they are freed, a process that often lasts more than a year. Detainees have the right to a prompt judicial determination of the legality of their detention and adjudication of their habeas corpus petitions. However, according to human rights attorneys, judges have denied most requests for such hearings. According to the National Penitentiary Institute, the elapsed time between arrest and trial in civil, criminal, and terrorism cases averages between 26 and 36 months. However, those tried by military courts on treason charges do not generally have to wait more than 40 days for their trial, following their arrest.

The Constitution does not permit exile, and the Government respects this prohibition.

e. Denial of Fair Public Trial

Under the 1993 Constitution, several new systems and institutions were created to enhance the independence and professionalism of the judiciary. However, in practice, the judicial system is inefficient, not fully independent of the executive branch, and therefore often compromised. Of the country's 1,473 judges, only 403 have permanent appointments, having been independently selected. The remaining 1,070, including 16 of the 32 judges on the Supreme Court, have provisional or temporary status only. Critics charge that these judges, lacking tenure in office, are much more susceptible to outside pressures.

The new systems and institutions include an improved method for the selection of judges; a Constitutional Tribunal, to rule on the constitutionality of congressional legislation and government actions; a National Judiciary Council to test, nominate, confirm, evaluate and discipline judges and prosecutors; a Judicial Academy for training judges and prosecutors; and an autonomous Human Rights Ombudsman. To increase the overall efficiency of the judicial branch, in 1995 the President created the Judicial Coordination Council to serve as an umbrella over a number of these new and other already existing judicial bodies. At the same time, he appointed an Executive Commission of the Judicial Branch whose mission is to implement wide-ranging reforms in the judicial system. Some of a technical nature have been instituted, including a measure of decentralization in the administration of justice and more efficient recordkeeping.

However, critics questioned the independence of the Constitutional Tribunal from its inception in 1995: while a majority of six of the Tribunal's seven members is required to declare any law or government action unconstitutional, three of the Tribunal's original judges were politically or ideologically allied with the President and his party; observers expected that they would block any attempts to declare unconstitutional laws or actions favored by the administration. In addition, critics point to the fact that the constitutionality of a law may be challenged only during a 6-month period immediately following its enactment. Government opponents also claim that another indication of the President's wish to solidify executive control over the justice system was his appointment of a retired navy commander as Executive Secretary of the Executive Commission of the Judicial Branch. The constitutional controversy over the new law Congress passed to enable President Fujimori to run for a third term led Congress to remove three Tribunal judges from office (see Section 3).

There is a three-tier court structure: lower courts, superior courts, and the Supreme Court. The justice system is generally based on the Napoleonic Code. In the civilian courts, criminal cases may move through a total of three distinct prosecutorial and judicial phases. The first phase takes place in a lower court where a Public Ministry prosecutor investigates cases and submits an opinion to an examining judge who initially determines whether there is sufficient evidence to issue an indictment. If there is, the judge studies the case, assembles all necessary case documents and files, and transfers the case for trial and sentencing to the superior court. In the second phase, a superior court prosecutor reviews the lower court decision and renders an advisory opinion to a superior court judge who may hold a trial. Virtually all convictions in the civilian courts continue to the final phase where appeals are heard by the Supreme Court.

A 1993 amendment to the antiterrorism statutes eliminated convictions in absentia of suspected terrorists. As a result, all defendants now have the right to be present at their trial. Defendants also have the right to counsel. However, the Government often fails to provide indigent defendants with qualified attorneys.

Under the military justice system, judges in the lower military courts have the power to sentence and are required to pass judgment within 10 days of a trial's opening. Defendants may then appeal their sentences to the Superior Military Council which, in turn, has 10 days to make its decision. A final appeal may be made to the Supreme Council of Military Justice which must issue its ruling within 5 days. While terrorism cases are tried in civilian courts, cases of treason or aggravated terrorism may be tried only before military courts.

In general, human rights groups have been most critical of the power of the military courts to try civilians and of the powerlessness of the civilian judicial system to review military court decisions. For example, in February Gustavo Adolfo Cesti Hurtado, an insurance broker who had retired from military service 13 years earlier, was arrested, prosecuted, convicted, and sentenced to prison by the military justice system, in a complicated case involving, in part, alleged insurance fraud in a military purchase of helicopters. When a civilian court approved a habeas corpus petition and ordered the military court to release Cesti, the military jurisdiction not only refused to do so but also charged the civilian judges with usurpation of power and sought to have them reassigned. In March Cesti's lawyer presented the case to the Inter-American Commission on Human Rights, which submitted it to the Inter-American Court of Human Rights. In addition, human rights groups charge that the vaguely worded definitions of certain crimes in the antiterrorism statutes often lead military judges to issue sentences disproportionate to the crimes committed.

Proceedings in terrorism cases in the civilian courts, and particularly those treason cases under the military justice system, do not meet internationally accepted standards of openness, fairness, and due process. Military courts hold treason trials in secret and, until mid-October, all terrorism and treason trials were carried out by so-called faceless judges, whose identities were hidden from view by a one-way glass partition. Many judges in the military justice system are believed to be active-duty line officers with little or no professional legal training. Defense attorneys in treason trials are not permitted adequate access to the files containing the State's evidence against their clients; nor are they allowed to interview police or military witnesses, either before or during the trial. Human rights groups charge that some military judges have sentenced defendants without having first notified their lawyers that their clients' trials had even begun.

Defendants in treason cases who are found not guilty by a military court may be remanded to a civilian court for a second trial based on the same facts, a practice criticized by human rights monitors as double jeopardy. This was the main issue that led the Inter-American Court of Human Rights, on September 17, to order the Government to release Maria Elena Loayza Tamayo from jail and pay her compensation.

After the military justice system had absolved her of treason charges, Loayza, a university professor, was retried for terrorism by a civilian court, which sentenced her to 20 years in prison. The Government complied with the Inter-American Court's ruling and released Loayza on October 16; however, the Government had not complied with the compensation order by year's end.

The faceless courts were originally instituted as a means of protecting the judges, prosecutors, and witnesses involved in trying terrorists from possible reprisals by Sendero Luminoso and the MRTA. However, the human rights community argued that, in view of the declining terrorist threat, the continuing use of faceless courts was no longer justified. In July 1996, the United Nations Human Rights Committee called on the Government to end the faceless tribunal system because of its lack of due process. This call was supported in September 1996 by visiting United Nations Special Rapporteur Dato'param Cumaraswamy, as well as by the IACHR, which proposed in its 1996 annual report a series of reforms that would bring the antiterrorism statutes into line with internationally accepted human rights norms and standards. The January 1996 sentencing of U.S. citizen Lori Berenson to life imprisonment on treason charges stemming from her involvement with the MRTA, and the April 1997 confirmation of her sentence by the Supreme Council of Military Justice, focused additional international attention on the secrecy, unfairness, and due process shortcomings of the faceless military courts. On September 29, the Government announced its decision not to seek an extension of the civilian faceless tribunals beyond their scheduled expiration on October 15 and its intention to replace them with a new system of specialized terrorism courts. The military authorities decreed an end to military faceless courts as well, also effective October 15.

On November 19, the Executive Commission of the Judicial Branch announced the broad outlines of a system of specialized civilian terrorism courts to replace the abolished faceless tribunals. The military court structure, which handles all treason cases, is to remain in place, except that judges' identities are not to be concealed. The new civilian structure, to be based entirely in Lima, is to consist of first-instance tribunals that are to assemble case files and prepare them for transmittal to specialized terrorism courts at the superior court level and a specialized division of the Supreme Court, which is to hear appeals. First-instance tribunals and specialized terrorism courts are to travel to the provinces as needed.

The ad hoc Pardons Commission, established by Congress in 1996 for an initial term of 6 months, continued its mission to recommend presidential pardons for prisoners believed to have been unjustly convicted of terrorism or treason. The Commission comprises the Human Rights Ombudsman as Chairman, the Minister of Justice, and, representing the President, long-time prison reformer Father Hubert Lanssiers. The Government, which had suspended granting pardons immediately after the MRTA takeover of the Japanese Ambassador's residence, reinstated the process after the April 22 conclusion of the hostage crisis. On December 3, Congress, which had earlier extended the life of the Pardons Commission for a second and third 6-month term, authorized yet another 6-month extension, to August 31, 1998.

By year's end, the Pardons Commission had received 2,541 applications, of which 1,085 had been fully processed, 452 were under active investigation by the Commission's staff, and 1,004 were still awaiting attention. During the year, 250 detainees were pardoned, bringing the total to 360. Of this total, 18 had been convicted of treason by military courts and the remaining 342 had been convicted of terrorism in civilian courts. Working along a second track and beginning in 1994, lawyers representing four major human rights organizations represented prisoners wrongly charged with terrorism or treason, presented their cases to the courts, and won the release of many. From January 1995 through December 1997, the courts declared innocent and freed 929 such prisoners, bringing the total of all prisoners unjustly incarcerated and either pardoned or exonerated to 1,289.

Although human rights groups have welcomed the work of the Pardons Commission, they claim that

granting a pardon to those unjustly charged still leaves a cloud of suspicion over their heads. Accordingly, they argue that those pardoned should be declared innocent, should have any past criminal record expunged, and should be fully compensated for the years they spent in jail. The Pardons Commission agreed with this argument and at year's end was studying the best way to help them clear their names and reintegrate themselves into the community.

President Fujimori for the second time rejected a bill to reform the Code of Criminal Procedures, returning it to Congress for extensive revision. The latest reform proposal would have instituted new accusatorial, investigative, and trial procedures and granted greater investigative authority to civilian prosecutors.

There were no reports of political prisoners. Sendero Luminoso and MRTA members charged with terrorism are not considered to be political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution requires security forces to have a written judicial warrant to enter a private dwelling. However, this requirement is suspended in the emergency zones, where security forces routinely conduct searches without such warrants. The Constitution also provides citizens with the right to private communication, but the media reported that the Government violated this right. On July 13, Channel 2 television reported that government intelligence services had been secretly and systematically monitoring the telephone conversations of no fewer than 197 individuals, including former U.N. Secretary General and presidential candidate Javier Perez de Cuellar, as well as government officials, opposition politicians, journalists, business executives, and entertainers. Channel 2 aired recordings of some of the intercepted conversations and later provided transcripts to the press. Experts interviewed by the media stated that, although many of the recordings were of cellular phone conversations that could have been made by a commercially available scanner, a significant number of the conversations had clearly been made from regular telephones in homes or offices and could have been monitored only by the intelligence services.

The Channel 2 revelations triggered swift and intense public criticism. Opposition Congresswoman Anel Townsend and 13 journalists who had been targeted by the wiretaps filed suit, charging that the Government had violated their constitutional right to privacy. Prominent nonpolitical figures, such as the President of the National Council of Industrialists and Businessmen, himself a wiretap target, criticized the telephone monitoring.

In response to the criticism, on July 15 President Fujimori absolved the intelligence services of the accusations against them, asserted that private individuals with scanners had carried out the wiretapping, and charged the opposition with trying to further its own ends by portraying the Government as a dictatorship. Despite the appointment of a special prosecutor and the cooperation of Channel 2 reporters, no criminal charges in the case had been filed by year's end. A judge dismissed the civil damages suit filed by Congresswoman Townsend. A congressional committee began an investigation of the charges; at year's end, it was still at work.

Prompted by the terrorism and banditry that characterized the internal conflict, a number of rural communities organized their own self-defense units, or "rondas," which are often trained, armed, and encouraged by the regular security forces. However, some military commanders have gone beyond encouragement and, at times, coerced peasants into joining the rondas, thereby disrupting their home and family life.

To a far greater degree, Sendero Luminoso and the MRTA are known to have forced peasants to join their ranks and to participate in terrorist attacks and executions, similarly disrupting the private lives of many families. Several relatives of the younger MRTA members involved in the hostage taking at the Japanese Ambassador's residence claimed that their family members had been forced to join the MRTA.

g. Use of Excessive Force and Violations of Humanitarian Law In Internal Conflicts

According to statistics gathered by the Center for the Study and Promotion of Development from press reports and unofficial police records, the number of violent attacks carried out by the Sendero Luminoso and MRTA terrorist groups increased slightly from 1996 levels. There were 662 such attacks in 1997, compared with 600 in 1996. However, the total number of deaths attributable to the internal conflict decreased sharply, from 283 in 1996 to 162 in 1997. The reduction in the number of fatalities was most noticeable among the civilian population. Whereas security force deaths, including both military and police, decreased from 61 in 1996 to 44 in 1997, and terrorist deaths declined from 83 to 48, the civilian toll dropped significantly by comparison, from 139 deaths in 1996 to 70 in 1997.

The Government's largely successful campaign against terrorism suffered a setback in December 1996 when a group of MRTA terrorists took over the Japanese Ambassador's residence in Lima. The 14 heavily armed terrorists captured more than 500 hostages, including many prominent individuals, and then proceeded to boobytrap and mine the premises. Most of the hostages were freed within several days. In an April 22 rescue operation, a military team freed the remaining 72 hostages. Two of the soldiers who stormed the property and all 14 MRTA terrorists were killed during the operation; 1 hostage subsequently died of complications resulting from a wound incurred during the mission. Although President Fujimori declared the mission a complete success, the press reported that some of the freed hostages, who did not wish to be identified, suggested that at least one of the MRTA terrorists was killed after surrendering (see Section 1.a.).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press. However, while the Government generally respects these provisions, security forces officials harassed and intimidated journalists.

The media, which represent a spectrum ranging from left-leaning opposition to pro-government views, vigorously defend press freedom. In the greater Lima area alone, there are 16 daily newspapers, 7 television stations, 150 radio stations, and 2 commercial cable systems. The Government owns one daily newspaper, one television network and two radio stations, none of which is particularly influential.

Tensions increased during the year between the Government and the segment of the media that was very critical of certain government policies and actions, and whose investigative reporting about alleged official wrongdoing generated wide public criticism. The most controversial development in the area of press freedom concerned Baruch Ivcher, the Israeli-born, naturalized Peruvian majority owner of Channel 2 television station, which was outspokenly critical of the Government. Channel 2 reporters revealed torture by Army Intelligence Service officers; the systematic wiretapping of journalists, government officials, and opposition politicians; and the income tax return of Vladimiro Montesinos, President Fujimori's senior intelligence adviser (see Sections 1.c. and 1.f.). On July 13, the immigration authorities revoked Ivcher's citizenship, claiming irregularities in his original application 13 years earlier. Ivcher lost control of Channel 2 under an interpretation of a law that provides that a foreigner may not own a media organization. He cannot regain managerial control of the station until all his

appeals are exhausted, and the issue of his nationality is resolved (see Section 2.d.). With Ivcher's departure, his minority partners took over the station, at which point many of Channel 2's broadcast and administrative staff resigned in protest. The Government's action in this case was widely interpreted as an attempt to prevent the station from broadcasting any more negative stories about the regime. If this was the case, it appears to have succeeded, as very few stories critical of the Government appeared on Channel 2 since the change of management.

Incidents of harassment of media representatives increased to such an extent as to create the perception of an organized campaign of intimidation on the part of the Government, specifically, on the part of the armed forces and intelligence services. This perception created unease not only among critics of the Government but also among its traditional supporters. In addition to the telephone wiretaps of working journalists and senior media officials (see Section 1.f.), there were other disturbing incidents.

During the hostage crisis at the Japanese Ambassador's residence, a Mexican reporter working for a British television network left the country, claiming that he had received threats from the intelligence services after it was learned that he had talked a number of times by shortwave radio with the leader of the MRTA hostage takers. In July armed forces personnel reportedly beat the chief political reporter of Lima's most popular tabloid, after his newspaper changed its editorial line from support of the Government to criticism of it. A number of reporters, columnists, and editorial writers complained that they were under constant surveillance and received anonymous telephone calls made by members of the intelligence services to both their homes and offices. Several media organizations also reported attempts at government intimidation by means of National Tax Administration audits. In addition, media representatives report that the Government favors some media outlets over others with respect to the placement of advertising. The combination of wiretaps, strong-arm tactics, reports of surveillance, and other incidents of harassment and discrimination contributed to the widely held public perception of a government campaign against opposition media.

There were frequent instances in which media sources reported misleading information, some of which was allegedly supplied by elements of the armed forces and intelligence services to further their own ends. Favorite topics of such misleading information campaigns were coup plots and rising tensions on the Peru-Ecuador border.

In July Congress passed a "rectification law," requiring media organizations to correct "factual errors" within a reasonable time after publication. The law amended earlier controversial legislation that would have automatically held media owners legally liable for errors published. In September the major print media established a self-regulatory press council, in an effort to preempt further government attempts to regulate the press.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the authorities generally respect this right in practice, except in the designated emergency zones where the right of assembly is suspended. Public meetings in plazas or streets require advance permission, which may be denied only for reasons of public safety or health. Municipal authorities usually granted permits for demonstrations in all nonemergency zones.

On June 5, over 3,000 protesters representing labor unions, student organizations, and opposition political parties demonstrated against the ouster by Congress of three Constitutional Tribunal judges who had opposed a law that would have allowed President Fujimori to run for a third consecutive term in 2000 (see Section 3). Over 100 mounted police used a powerful water cannon and tear gas to disperse

the marchers. A number of them were briefly detained.

The Constitution provides for freedom of association, and the authorities generally respect this right in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respects this provision in practice. The Constitution recognizes the Catholic Church "as an important element in the historical, cultural, and moral development" of the nation, but also establishes the separation of church and State. Conversion to other religions is respected, and missionaries are allowed to enter the country and proselytize.

Although teaching about Roman Catholicism has not been required in the public school system since the education reforms of the 1970's, most schools devote 1 hour a week to such study. Parents who do not wish their children to participate in these classes are expected to submit a written request for an exemption to the school principal. Non-Catholics who wish their children to receive a religious education in their own particular faith are free to organize such classes during the weekly hour allotted by the school for religious education, but must supply their own teacher.

Sendero Luminoso rejects religion and occasionally still threatens and intimidates religious workers. Prior to 1996, members of the Mormon Church, in particular, were targeted by Sendero Luminoso bombings and extortion threats. However, Mormon Church officials report no incidents during the past years, attributing this development to the overall decrease in Sendero activity and to the Church's decision not to send its missionaries into areas where terrorists are known to operate.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for the right to free movement. However, freedom of movement is suspended in the emergency zones, which cover 16 percent of the country's territory and where the security forces may detain travelers at any time. Nevertheless, travel in these zones is generally permitted under the army's supervision. Passengers on public transportation and drivers in private vehicles may be checked at control points throughout the country.

Sendero Luminoso occasionally still interrupts the free movement of people, and reports of its roadblocks in sections of the upper Huallaga Valley and in the department of Ayacucho were common.

Although there are no political or legal constraints on foreign travel or emigration, the authorities can restrict persons with pending criminal and, in some cases, civil charges against them from leaving the country. Repatriates, both voluntary and involuntary, are not treated differently from other citizens.

The Constitution prohibits the revocation of citizenship. However, one of the stories that received extensive media and public attention involved a series of apparently interconnected events that began with the May 28 announcement of regulations implementing the new Nationality Law of January 1996. According to the new law, naturalized Peruvians can lose their citizenship for, among other reasons, committing crimes against the State, national defense, and public security, as well as for reasons that "affect the public interest and the national interest." On July 10, the National Police chief announced that irregularities had been found in the file of Baruch Ivcher, the Israeli-born, naturalized Peruvian majority owner of television station Channel 2 which had carried stories of government abuse (see Section 2.a.). Although the authorities did not accuse Ivcher of committing any of the crimes specified in the

Nationality Law, the police chief's announcement was followed by a July 13 government decree invalidating Ivcher's naturalization 13 years earlier. On July 14, Foreign Minister Francisco Tudela submitted his resignation, an action that he said in late September had been prompted by the Government's behavior toward Ivcher. On August 14, a lower court judge denied Ivcher's appeal of the decree, as did the Corporate Court of Public Law, on September 16. On December 23, Ivcher, who was out of the country throughout the legal process, was notified that he had lost yet another appeal in the courts. Although he still could resort to the Constitutional Tribunal, at year's end, he was trying to pursue his case through the inter-American human rights system.

The Government cooperates with the United Nations High Commissioner for Refugees in granting asylum and refugee status and recognizes the Catholic Migration Commission as the official provider of technical assistance to refugees and applicants for asylum. The Commission also advises Peruvian citizens fearing persecution at home and seeking asylum abroad. There are 738 persons in the country with refugee status, of whom 451 are Cubans. These refugees are allowed to live and work normally, while awaiting receipt of their permanent residency. Of the 738, only 30 are still awaiting a permit. Even though permanent residents are free to apply for citizenship after 2 years in the country, few do. The issue of the provision of first asylum did not arise in 1997. There were no reports of the forced return of persons to countries where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides for the right of citizens to change their government, although the law bars groups that advocate the violent overthrow of the Government from participating in the political process. Voting is by secret ballot and is mandatory for all citizens between the ages of 18 and 70. However, members of the armed forces and the police, as well as prisoners, are ineligible to vote.

In accordance with provisions in the 1993 Constitution, President Fujimori ran for a second 5-year term in 1995 and was reelected over 12 other candidates, with 65 percent of the vote. Voters also elected the 120 members of the unicameral Congress. Sixty-nine seats are held by members of Fujimori's Cambio 90/Nueva Mayoria movement. The remaining 51 members represent 11 opposition parties. On June 25, Congress passed a new Electoral Law, which codifies the existing system whereby each of the participating political parties prepares its national list of ranked candidates, and the 120 members of the unicameral legislature are elected from these party lists in proportion to the number of votes received by each party.

The debate over President Fujimori's eligibility to seek reelection continued throughout the year. In August 1996, despite vocal opposition both in and out of Congress, President Fujimori's controlling congressional majority interpreted the constitutional provision limiting presidents to no more than two consecutive terms in office to permit him to run for a third consecutive term in 2000, claiming that it would be only his second term under the 1993 Constitution. Although opponents of the interpretive law proceeded to challenge its constitutionality before the seven-member Constitutional Tribunal, the Tribunal was unable to muster the six votes necessary to rule the law unconstitutional. This deadlock effectively transferred the legal question surrounding a third Fujimori candidacy to the National Board of Elections, which is charged with ruling on the eligibility of presidential contenders. However, the Board is not required to rule on the legality of such a candidacy until 1999, when all presidential candidates file their papers.

The three Tribunal judges opposed to the law called a press conference and announced their nonbinding opinion that the law, although not necessarily unconstitutional, was "inapplicable" to the Fujimori case. In response, a congressional committee on May 5 accused the three judges of exceeding their authority, and charged Tribunal president Ricardo Nugent with failing to prevent the action of his three colleagues.

On May 23, a special committee of the Congress ratified the charges against the three associate judges and the Tribunal president, and referred the matter of sanctions, including possible removal from office, for consideration by the full Congress.

Legal scholars were divided as to whether the removal of Constitutional Tribunal judges required a simple majority vote or a two-thirds vote, an issue on which the Constitution is silent. Nevertheless, on May 29, amid press and public criticism at what was widely characterized as a "coup," Congress voted, by a simple majority of those present, to remove the three associate judges from office, for having exceeded their authority by issuing a minority opinion as if it were a legally binding ruling of the Tribunal. At the same time, Congress voted to return for further committee action the charges against Tribunal president Nugent. On May 30, Nugent announced his resignation from the Tribunal presidency, declaring his solidarity with the dismissed judges, and saying that his resignation was a moral and the only way he could protest the treatment to which his colleagues had been subjected. However, by law, Nugent must remain in his position until Congress elects a successor. Although the congressional leadership quickly appointed a selection committee to nominate candidates for the four vacant seats, by year's end it had not reached a consensus on the candidates, and the constitutional stalemate continued.

The controversy over President Fujimori's eligibility to run for a third term in 2000 resurfaced on December 10, when the congressional majority introduced a bill granting temporary and provisional judges and prosecutors the same rights and status as their permanent counterparts. Critics of the regime claimed that this law was intended to set the stage for these newly empowered officials to exercise their right to name the president and several members of the National Board of Elections in June 1998. The board, which is the ultimate court of appeal for all election-related disputes, is expected to rule eventually on the legality of a third Fujimori candidacy. Fujimori opponents believe that these untenured officials would succumb to outside pressure and favor naming the President's supporters to the board. Angered by the bill's introduction, the congressional opposition walked out of the chamber before the vote. After President Fujimori signed the bill into law, the president of the Congress suspended the plenary session and called a closed session, which granted the Permanent Commission of Congress extraordinary powers to legislate for 180 days. At year's end, the majority and the opposition were still negotiating terms and conditions to reinstate the plenary session and resume full congressional activity.

A signature drive to petition for a national referendum on whether President Fujimori should be allowed to run again continued throughout the year. The drive, which began in 1996, had gathered some 400,000 of the 1.25 million signatures necessary by the time the MRTA hostage crisis pushed it out of public attention. However, the drive regained momentum toward year's end and had reportedly gathered 900,000 of the needed signatures.

Opposition suspicions of possible fraud in the 2000 election were highlighted by charges in November by Congresswoman Townsend that the National Intelligence Service had planted undercover agents inside the National Voter Registration Bureau. Congress appointed a subcommittee to investigate these charges, but it had not published its report by year's end.

The right of citizens to elect local officials received a boost in small towns when, on November 23, 62 localities successfully carried out the country's first recall elections. Approximately 120,000 citizens participated in the elections, voting to remove from office 43 mayors and 85 council members, and to retain in office 18 mayors and 44 council members. So many officials were removed that special elections need to be called in 17 of these municipalities to constitute new councils that would serve until the October 1998 municipal elections.

Women and some minorities are represented in government and actively participate in politics. There

are 13 female members of Congress. In addition, 1 of 15 cabinet ministers and several vice ministers are women, as are 3 of the 32 Supreme Court justices. A nationwide drive was conducted to replace the citizenship papers and voter registration cards lost by women who were displaced by the internal conflict and who returned to their original communities, in time for the 1998 municipal elections and for the 2000 general elections. In addition, Congress passed two new laws governing general elections and municipal elections, which mandate that at least 25 percent of all party candidate lists for congressional and municipal elections be composed of women.

Peruvians of Asian descent hold leadership positions in government; President Fujimori is of Japanese descent. There are several indigenous members of Congress and a recent vice president was a Quechua speaker. However, it is rare for indigenous people, who make up 45 percent of the population, to reach the highest leadership ranks in the public sector. The black minority, unofficially estimated at 8 to 10 percent of the total population, is not at all represented in the leadership of any branch of the Government, and there are no blacks in the Congress.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

In general, the Government permitted numerous nongovernmental organizations (NGO's) dedicated to monitoring and advancing human rights to operate freely. However, in response to the MRTA hostage crisis, the Government suspended ICRC and other human rights monitors' visits to all prisoners held for terrorism and treason offenses (see Section 1.c.). The visits were reinstated by year's end.

Apart from the MRTA hostage situation, government, military, judicial, and police officials continued to criticize human rights groups for their alleged bias against the authorities and toward the "leftist guerrillas." With the exception of the police, government officials usually ignored requests by human rights groups for information and prohibited many monitors from visiting certain prisons. Military authorities often limited the freedom of local and international human rights workers to investigate abuses in the emergency zones.

Most nongovernmental human rights groups are independent, thorough, and generally objective. A number of them joined forces in 1985 to form an umbrella organization, the National Coordinating Committee for Human Rights. The Coordinadora, which comprises 50 member organizations, strictly adheres to a policy of not mixing politics with human rights, although its constituent members may do so in their own names. The Coordinadora has embarked on a gradual process of integrating its Lima-based and province-based member organizations into a more cohesive body that would be more able to act quickly and forcefully and speak with a unified voice.

The Coordinadora has intensified its collaborative efforts with the Human Rights Ombudsman. Some of its member organizations conduct intensive human rights education and citizen empowerment workshops to train local community leaders throughout the country in human rights problem-solving and citizen use of the Ombudsman's services. A number of the Coordinadora's members have continued to work closely with the Pardons Commission, submitting for its consideration the documented cases of innocent prisoners unjustly charged and convicted of terrorism and treason offenses (see Section 1.e.).

Since Jorge Santistevan de Noriega was appointed as the first Human Rights Ombudsman in April 1996, his office has steadily grown in stature and is considered to be the most effective force in the country for bringing justice to the people. At its Lima headquarters and various field offices, the Ombudsman receives citizen complaints, identifies patterns of human rights abuse by officials and of inefficient or unresponsive administration of services, and intercedes with the offending government agencies to bring

about appropriate remedies. In addition, as he did in the case of tortured SIE officer Leonor La Rosa (see Section 1.c.), the Ombudsman independently initiates investigations of alleged official wrongdoing and negotiates or calls for the implementation of corrective policies and procedures.

Legitimate fears of physical attack by Sendero Luminoso seriously hampered the ability of human rights monitors to carry out their work in some parts of the country. While documenting human rights abuses by the security forces, these groups have, at the same time, repeatedly labeled Sendero Luminoso as the principal violator of the people's rights. In both its annual reports and periodic press communiques, the Coordinadora has regularly criticized the violence perpetrated by Sendero Luminoso as well as by the MRTA.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution provides for equal rights for all citizens, and specifically prohibits discrimination based on ethnic origin, race, sex, language, religion, opinion, or economic condition. Nevertheless, discrimination against women, the disabled, indigenous people, and racial and ethnic minorities continued.

Women

Violence against women, including rape, spousal abuse, and the physical and sexual abuse of women and girls, is a chronic problem, according to local human rights groups and law enforcement offices. Such abuses have been aggravated by insensitivity on the part of law enforcement and judicial authorities toward female victims of abuse and by a media image of the traditional relationship between the sexes that encourages a controlling attitude by the husband toward his wife. Nationwide statistics on the extent of the problem of domestic violence are not available. However, in Lima, 6,294 cases of domestic violence were reported in 1996. Between 1990 and 1996, 32,030 cases were reported. Human rights organizations believe that, whether for fear of retaliation from the accused spouse, because of the cost involved in pursuing a complaint, or for some other reason, a large number of domestic violence cases remain unreported.

Although a basic statute criminalizing spousal abuse has existed since December 1993, significant improvements in the law were enacted in March, which simplified the procedures for reporting cases of domestic violence, made the process less expensive, and broadened the judicial remedies available. The new law gives not only judges but also prosecutors the power to protect a victim of domestic violence from further abuse by enjoining the convicted spouse or parent from returning to the family's home. In the past, when abusive spouses argued that their home was jointly owned by both husband and wife and that they should therefore be allowed to return to it, judges tended to let that argument outweigh the interest of the abused victim. Whereas victims of domestic violence previously had to pay for a medical report certifying the existence of their injuries, the new law eliminates the required fee. Many women have complained that their charges of domestic violence were brushed aside with indifference by police officers who either did not understand the issue or wrongly assumed that complaints of spousal abuse could be filed only at one of the handful of "women's police stations" exclusively dedicated to processing charges of domestic violence. The new law clearly mandates all police stations to receive such complaints. The Ministry of Women's Affairs and Human Development, in conjunction with a nongovernmental women's rights organization, is preparing a national program to sensitize police to the problem of domestic violence and to train officers in all police stations in the processing of domestic violence cases.

The Human Rights Ombudsman was investigating numerous complaints by rape victims that court-

appointed medical examiners inappropriately delved into their past sexual histories. They also accused judges of looking more favorably on rape victims who had been virgins prior to the rape and of believing that a woman who was raped must have somehow enticed her attacker to commit the crime. In March Congress repealed a statute whereby convicted rapists could be absolved of their crime by marrying their victims. In October allegations appeared that a number of physicians in hospitals and family planning clinics had enticed female patients to opt for sterilization, either by promising them quantities of food or by not providing them with complete information about the alternatives available. At year's end, the Ministry of Health and the Human Rights Ombudsman were investigating the validity of these charges. The Health Minister declared that anyone found to have committed any such acts would be punished.

The Constitution provides for equality between men and women, and the 1995 amendments to the Employment Promotion Law as well as other laws relative to marriage, divorce, and property rights prohibit discrimination against women. In the area of professional employment, Congress passed legislation in March that repealed the old disqualification of unmarried individuals for judgeships in the family courts. Since these positions have, in the past, been predominantly filled by female candidates, the legislation was regarded as broadening employment opportunities for single women.

The first 28 women permitted to enroll as cadets in the national police academy graduated as officers in 1995; the second class of women graduated in 1997. The army academy enrolled its first 50 female cadets in 1997; they are destined to serve in combat-support assignments only. The naval and air force academies are scheduled to enroll their first female cadets in 1998.

Nevertheless, traditional assumptions and misconceptions often impede access by women to leadership roles in both the public and private sectors. Because of societal prejudice and discrimination, women historically have suffered disproportionately more than men from the country's pervasive poverty and unemployment. The government-supported "Mibanco" program represents an effort to improve women's ability to generate income by providing credit to small businesses started by enterprising women.

Children

The government provides free, compulsory education through secondary school. Of those children enrolled in primary school, 12 to 15 percent abandon their education, while 17 percent of secondary school students do so. In educational achievement, both primary and secondary school children are, on the average, 2 years behind their chronological age, while children who work as well as study are 4 years behind.

Following the World Summit on Children, in May the Government approved a national plan for the protection and development of children, covering the years 1997-2000. The plan, which includes broad strategies for such sectors as health and education, places particular emphasis on the care and advancement of girls, and assigns to local community organizations special responsibility for finding ways to alleviate poverty.

The Ministry of Women's Affairs and Human Development has a Children's Bureau that coordinates child- and adolescent-related policies and programs throughout the Government. At the grassroots level, 400 children's rights and welfare protection offices receive and resolve complaints ranging from physical and sexual abuse to malnutrition, abandonment, and undetermined guardianship. Seventy-five percent of these offices are operated by provincial or district governments, and the remaining 25 percent by NGO's. Most of the units are staffed by law students; only the offices in the wealthiest districts of the country have professionally trained lawyers, psychologists, and social workers. Cases that cannot be

resolved by these offices are typically referred to family courts. Nationwide, these offices receive and resolve an average of 30,000 cases annually; an additional 1,000 to 1,500 cases are referred to the courts for resolution.

The National Initiative on the Rights of the Child is the largest NGO of its kind and coordinates the work of 24 Lima-based and province-based groups concerned with the problems of children. It is estimated that only 10 to 20 percent of incidents of mistreatment and sexual abuse are reported, since many people believe that such problems belong within the family and must be resolved privately. Violence against children is a serious problem. According to some estimates, approximately half of all rapes are perpetrated against minors.

In 1996 the infant mortality rate was 43 per 1,000, down from 70 per 1,000 in 1992. However, this figure masks wide regional disparities: 23 per 1,000 in Lima and its environs, compared with 109 per 1,000 in Huancavelica. Twenty-seven percent of children under age 5, and 48 percent of children ages 6 to 9, suffered from chronic malnutrition.

As many as 1.2 million children work to help support their families. Of this total, some 500,000 are under the age of 14, while 700,000 are between the ages of 15 and 17 (see Section 6.d.). In 1996 there were 219,000 orphans in the country, of whom 25,000 were orphaned for reasons related to political violence.

People With Disabilities

The Constitution provides that severely disabled persons have "the right to have their dignity respected and to be provided by law with protection, care, rehabilitation, and security." However, the Government devotes few resources to assisting the disabled, and they and the private agencies serving them must generally rely on the public's charity. The Government also makes little effort to ensure full and equal participation by the disabled in the political, economic, and social life of the country. The recent decision not to give the 1996 Paralympics swimming gold medalist recognition equal to that accorded all the country's nondisabled sports heroes reflected a widespread view of the disabled as separate and inferior.

The 1993 census counted 288,526 disabled persons, or 1.3 percent of the population. However, the Ministry of Health and the Pan American Health Organization believe that most disabled persons either do not wish to acknowledge their disability to census takers or do not know what constitutes a disability, and that the actual percentage of disabled people within the population is 13 percent. Accordingly, the Government, in conjunction with the country's hospitals, plans to implement a national register of disabled persons. However, there is only one rehabilitation hospital, and 10 of the 24 departments have no hospitals with a rehabilitation unit. Since the privatization of the social security and national health insurance systems, it has been difficult for many disabled persons to insure against the inevitable loss of income or compensate for the extra costs of disability.

There is no law mandating ramps and elevators to ease access to sidewalks and public buildings for people with physical disabilities. Nor do accommodations exist, such as barrier-free polling stations, interpreters for the deaf at government service offices, and Braille or recorded versions of the Constitution, which would permit the disabled to participate in the basic processes of democracy and citizenship.

Many people with disabilities are channelled into a restricted number of traditional occupations, such as the blind into telephone switchboard operation and massage therapy. However, some progressive

programs do exist: Two leading supermarket chains have initiated the employment of mentally retarded adolescents and young adults, while Lima's Center for Rehabilitation of the Blind has pioneered the training of the blind for computer-related occupations. Nevertheless, in general, even well-qualified disabled persons face serious discrimination by employers. Sedapal, the government-owned water utility, dismissed all its blind telephone switchboard operators, ostensibly as part of a nondiscriminatory, across-the-board budget-cutting measure. However, the chief advocate for the disabled in Congress reports that all the blind operators were immediately replaced by younger sighted recruits. People with disabilities have only recently begun to organize and demand equal rights and opportunities as a minority.

Indigenous People

The 1993 Constitution prohibits discrimination based on race and provides for the right of all citizens to speak their native language. Nevertheless, the large indigenous population faces pervasive discrimination and social prejudice. According to indigenous rights groups, the provisions in the Constitution and in subsequent implementing legislation regarding the treatment of native lands are less explicit about their inalienability and unmarketability than were earlier constitutional and statutory protections. In addition, many other factors have contributed to the marginalization of indigenous people in society. Poor transportation and communications infrastructure in the highlands and in the Amazon jungle region makes political mobilization and organization difficult. The geographic isolation of much of the indigenous population and the centralization of government action in Lima further marginalize indigenous people. All these factors impede the ability of indigenous people to participate in, and facilitate their deliberate exclusion from, decisionmaking directly affecting their lands, culture, traditions, and the allocation of natural resources. Pervasive discrimination and social prejudice intensify feelings of inferiority and second-class citizenship. Many indigenous people lack such basic documents as a birth certificate or a voter's registration card that would normally identify them as full citizens and enable them to play their part in society.

Amerindians who live in the Andean highlands speak Aymara and Quechua, which are recognized as official languages, and are ethnically distinct from the diverse indigenous groups who live on the eastern side of the Andes and in the tropical lowlands adjacent to the Amazon basin. Recent regulations requiring all school teachers to have professional teaching certification caused many indigenous teachers to be replaced by teachers who do not speak any of the indigenous languages. As a result, the continued use of Aymara and Quechua as languages of instruction, as well as the very survival of indigenous cultures, have been put in jeopardy.

In many jungle areas, colonists and coca growers in search of livelihood and profit, guerrillas in search of new bases of operation, and business interests in search of exploitable natural resources continue to encroach upon native lands. The 45,000 Aguaruna-Huambisa people, who inhabit the frontier area where the 1995 Peru/Ecuador border conflict took place, are just one of many indigenous groups that complain about intolerable living conditions and inaccessible public services. In the same region, along the Pastaza river, the 50,000 Achuar people live in 36 communities, only 12 of which have title to their land. In addition, the Achuar are fighting what they fear may be a losing battle against an incursion by oil exploration and drilling interests, as well as against a government-sponsored influx of colonists. Typically, the commercial exploitation of the land causes environmental damage and negatively affects the health of indigenous people.

The two main organizations representing the interests of the 200,000 indigenous people of the Peruvian Amazon are the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSESP) and the Confederation of Amazonian Nationalities of Peru (CONAP). In accordance with local culture and tradition, most indigenous people have a spiritual relationship with their land, and the concept of land as

a marketable commodity is alien to them. Both the AIDSEP and the CONAP are critical of the 1995 land law, which permits Amazonian land to be bought and sold if no one is living on it or otherwise making use of it. However, the CONAP believes that mining and other development operations are inevitable and therefore wants indigenous communities to share appropriately the benefits of that development. The AIDSEP, on the other hand, remains opposed to territorial encroachments by government, commercial, and other interests.

All indigenous rights advocates protest the low priority assigned by the Government to the economic and social condition of indigenous people and the lack of consultation regarding matters affecting their welfare. According to one indigenous rights group, this official neglect is reflected in a government decision to wind down the operation of the National Indigenous Institute and transfer its functions to a small bureau within the Ministry of Women's Affairs and Human Development.

Sendero Luminoso continued to be a leading violator of indigenous rights. As a result of terrorist harassment and abuse, thousands of Ashaninkas in the central jungle area remain displaced. In addition, there were continued reports of enforced recruitment of Ashaninkas by Sendero Luminoso.

National/Racial/Ethnic Minorities

Peru's population includes several racial minorities, the largest of which are persons of Asian and African descent. Blacks, who tend to be concentrated along the coast, face particularly pervasive discrimination and social prejudice and are among the poorest groups in the country.

Blacks do not hold leadership positions in government, business, or the military. Both the navy and the air force are widely believed to follow unstated policies that exclude blacks from the officer corps. Employment advertisements in newspapers, which are not prohibited from specifying the color of the candidates sought and often find discreet ways to do so, typically segment the labor market into managerial and professional positions, which are reserved for white job seekers, and low-paying service jobs, which are set aside for black applicants. According to two black human rights organizations, police routinely detain persons of African descent on suspicion of having committed crimes, for no other reason than the color of their skin, and rarely act on complaints of crimes against blacks. Blacks are unflatteringly portrayed in television comedies as individuals of questionable character.

Although Peruvians of Asian descent have historically suffered discrimination, their social standing has improved markedly during the past decade, as Peru has sought to emulate Asia's economic growth, and as the Asian community has achieved financial success. Besides President Fujimori, who is of Japanese descent, many other Peruvians of Asian descent hold leadership positions in business and government.

Section 6 Worker Rights

a. The Right of Association

It is estimated that only 5 percent of the total work force of 8.5 million belong to organized labor unions. More than half of all workers are in the informal sector of the economy. Workers are not required to seek authorization prior to forming a trade union, nor can employers legally condition employment on union membership or nonmembership. However, labor rights advocates claim that many workers are reluctant to organize for fear of dismissal.

Unions represent a cross section of political opinion. Although some unions have traditionally been associated with political groups, the law prohibits unions from engaging in explicitly political, religious,

or profitmaking activities. The several union leaders who ran unsuccessfully for Congress in 1995 all so in their own names, without official union sponsorship. Nevertheless, it is believed that some union activists who run for public office receive unofficial backing from their unions.

In 1995 and 1996 Congress passed legislation amending the 1992 Employment Promotion Law, which all the main union confederations publicly criticized for restricting the rights of workers, including the freedom to bargain collectively and the right to work. Unions also complained that the new legislation eliminated the right of dismissed workers to compulsory reinstatement, if it was proven that they had been unjustly dismissed. As in the case of legally dismissed employees, such workers have the right to normal compensation of 1 year's pay for each year of service. In addition they have the right to be compensated for up to 8 years of service, at a rate of 1-1/2 years' pay for each year worked, or a maximum supplementary award equivalent to 12 years' pay. In practice, the legislation has had a negative impact on the right of association by making it easier for companies to fire workers involved in union activities.

In June 1996, the International Labor Organization (ILO) called on the Government to adopt new legislation to enhance freedom of association, including a requirement that reductions of personnel allegedly for economic reasons not be used as a device for neutralizing unionization campaigns, and the provision of the right to join a union to new workers on probation.

There are no restrictions on the affiliation of labor unions with international bodies. Several major unions and labor confederations belong to international labor organizations such as the International Confederation of Free Trade Unions, its affiliated trade secretariats and regional body.

b. The Right to Organize and Bargain Collectively

The 1993 Constitution recognizes the right of public and private sector workers to organize and bargain collectively. However, it states that this right must be exercised in harmony with broader social objectives. Labor regulations promulgated prior to the Constitution provide that workers may form unions on the basis of their occupation, employer affiliation, or geographic territory. However, the regulations prohibit temporary, probationary, apprentice, and management employees from union membership. In addition, the regulations require a minimum of 100 members for the formation of professionally or occupationally based unions, and a minimum of 20 workers for the formation of a company-based union. In April the management in PetroPeru's Piura plant claimed that a group of workers seeking to form a union at the plant did not have the requisite number of prospective members to be recognized. However, when the workers petitioned the Ministry of Labor to verify the numbers, the Ministry found in favor of the workers and a union was certified.

According to the regulations, union officials must be active members of their union, although they set limits on the number of individuals each union may designate as "official" and on the amount of time officials may devote to union business on company time. No legal provisions exist requiring employers to reinstate workers who are found to have been unjustly fired for union activities.

To become an official collective bargaining representative, a union must represent at least 20 workers. Labor regulations stipulate that representatives may participate in collective bargaining negotiations and establish negotiating timetables. Management negotiating teams cannot exceed the size of union teams, and both sides are permitted to have attorneys and technical experts present as advisers.

For a strike to take place, a majority of all workers in a company, whether union members or not, must approve it by a secret ballot. A second vote must be taken, if petitioned by at least 20 percent of the

workers. However, labor rights advocates complain that many temporary workers are understandably reluctant to participate even in secret ballots, for fear of retaliation by their employers. The labor movement has criticized provisions in the new amendments to the Employment Promotion Law that make it easier for employers to dismiss employees and thereby to impede the right of workers to bargain collectively. However, there are no legal restrictions preventing unions from negotiating for workers higher levels of protection than the baseline standards provided for by law.

In response to a complaint regarding the right to organize and bargain collectively, an ILO committee has noted that the new legislation fails to protect workers and their organizations against acts of antiunion discrimination and interference by employers. In addition, the committee found that the goal of voluntary collective bargaining negotiation is impeded by the requirement that, for an agreement to be concluded covering a particular occupation or profession, it must be approved not only by an overall majority of the workers but also by the workers in a majority of the enterprises affected.

Labor regulations also permit companies unilaterally to propose temporary changes in work schedules, conditions and wages, and to suspend collective bargaining agreements for up to 90 days, if obliged to do so by worsening economic circumstances or other unexpected negative developments, provided they give their employees at least 15 days' notice of such changes. However, labor rights advocates allege that, in practice, few employers respected this provision. If workers reject an employer's proposed changes, the Ministry of Labor is required to resolve the dispute based on criteria of "reasonableness" and "economic necessity." Whether the changes proposed by employers in such instances are upheld in full or in part, employers are required to adopt all possible measures, such as the authorization of extra vacation time, in order to minimize the negative economic impact on their employees.

Although a conciliation and arbitration system exists to resolve management disputes with unions, union officials complain that their proportionate share of the costs of arbitration often exceeds their resources. In addition, union officials claim that, since the law prohibits temporary workers from participating in union organizing elections, more and more companies have resorted to hiring workers on temporary, personal-services contracts, as a means of preventing a possible increase in union strength. Although the new legislation restricts the number of temporary workers hired to 20 percent of a company's work force, labor rights advocates alleged that this quota was rarely respected. In response to the labor movement's persistent lobbying on this issue in international forums, employers denied the charge that they are biased against unions, arguing that the labor-stability provisions of the legislation have made long-term commitments to workers too expensive.

Special regulations aimed at giving employers in export-processing and duty-free zones a freer hand in the application of the new legislation provide for the use of temporary labor as needed, for greater flexibility in labor contracts, and for setting wage rates based on supply and demand. Although, as a result, workers in such zones have difficulty in unionizing, labor rights advocates admit that these zones are few in number and do not contribute substantively to labor's unionizing difficulties.

c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor. However, there are periodic reports of this practice in remote Andean mountain and Amazonian jungle regions. In response to a complaint filed with the ILO, the Government acknowledged in 1994 that forced labor exists but stated that it had adopted measures to end the abuses. The Constitution does not specifically prohibit forced or bonded labor by children, and there were reports of forced labor by children in the gold mines of the remote Madre de Dios department (see Section 6.d.). There is no forced labor in urban areas.

d. Status of Child Labor Practices and Minimum Age for Employment

Education through secondary school is compulsory and free. Nevertheless, because of widespread poverty, a high percentage of school-age children work during daytime hours rather than attend classes, and only a few of these children attend classes at night. Although the minimum legal age for employment is 16, children are pressed to help support their families from a very early age by working in the informal economy, which escapes government supervision of wages and working conditions. A recent government study found that 8 percent of the work force is between the ages of 6 and 14 (see also Section 5). The Government's National Institute of Family Welfare cooperates with the United Nations Children's Fund and the Inter-American Development Bank in assisting street children and other child laborers.

The legislation amending the Employment Promotion Law raised the upper age limit from 21 to 25 for participants in the special youth labor program, which allows employers to pay less than the statutory minimum wage as a means of encouraging the provision of specialized training for new young workers. It also increased the period of apprenticeship from 18 to 36 months. In addition, the legislation raised the portion of an employer's work force that may legally be composed of workers under these programs from 15 to 30 percent.

Although the Constitution includes a general prohibition of forced labor, it does not specifically outlaw forced or bonded child labor (see Section 6.c.). Child labor is heavily used in the agricultural sector and in informal gold mining but not in other major export industries, such as petroleum and fisheries. Recent studies by NGO's have found that approximately 4,500 youths under 18 years of age are employed in harsh conditions in the informal gold mines of Madre de Dios. Many of these workers are under age 15, and some are as young as 11. These child laborers were pressed into service through a recruitment system known as "enganche," which is practiced in Puno, Juliaca, Sicuani, and Cuzco. Under this system, they are provided free transportation to the mines and allegedly agree to work for at least 90 days before being paid. In addition, these child workers lack proper medical care, are forced to work long hours, are often subjected to beatings and rape, and at times are deprived of their pay. The Government has not exercised due supervision over this child labor system, while the mine owners have failed to comply with the legal provisions that do exist with respect to juvenile workers.

e. Acceptable Conditions of Work

The Constitution provides that the State promote social and economic progress and occupational education. It states that workers should receive a "just and sufficient" wage to be determined by the Government in consultation with labor and business representatives, as well as "adequate protection against arbitrary dismissal." However, labor rights advocates complain that, while labor leaders have engaged in discussions with members of the Congress Labor Committee, they have been refused access to senior executive branch officials for the past 4 years.

On July 28, the Government raised the statutory minimum wage to \$130 (345 soles) a month. It is generally considered to be inadequate to support a worker and family. According to some estimates, as much as half the country's work force earns the minimum wage or below.

The Constitution also provides for a 48-hour workweek, a weekly day of rest, and an annual vacation. In addition, it prohibits discrimination in the workplace. While occupational health and safety standards exist, the Government lacks the resources to monitor firms or enforce compliance. In cases of industrial accidents, the level of compensation awarded to the injured employee is usually determined by agreement between the employer and the individual worker involved. In 1993 the Government

introduced reforms that eliminated the need to prove an employer's culpability in order to obtain compensation for work-related injuries. No provisions exist in law for workers to remove themselves from potentially dangerous work situations without jeopardizing their continued employment.

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