



## Peru

### Country Reports on Human Rights Practices - [2000](#)

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Peru is a multiparty republic with a dominant executive branch that for most of the year used its control of the legislature and the judiciary to the detriment of the democratic process. In May President Alberto Fujimori won a third 5-year term in elections that international and domestic observers judged to be significantly flawed; however, in November the Fujimori administration collapsed, leading to a significant opening in the area of political rights. In June the Secretary General of the Organization of American States (OAS) and a high level delegation visited the country to discuss the strengthening of democratic institutions. The visit resulted in talks sponsored by the OAS, which began in August and included members of civil society, the Government, and the political opposition. In August President Fujimori's Peru 2000 alliance gained a majority in Congress after more than a dozen elected legislators changed their affiliation from opposition parties to Peru 2000. Charges of corruption against presidential advisor and de facto head of the intelligence service Vladimiro Montesinos led President Fujimori to announce on September 16 that he intended to hold new national elections in April 2001, in which he would not be a candidate. On November 22, President Fujimori sent his resignation to Congress from Japan, where he remained at year's end. Congress refused to accept his resignation and instead voted to remove him from office for "moral incapacity." The President of Congress Valentin Paniagua of the Popular Action Party succeeded to the presidency on November 22. He announced that he would uphold legislation allowing for new presidential and congressional elections in April 2001, and he accelerated the implementation of democratic reforms initiated in the OAS-sponsored talks. In November the Congress restored three judges to the Constitutional Tribunal, and it resumed its work. The Tribunal had ceased to function in 1997, when Congress removed three of its judges for opposing President Fujimori's intent to seek reelection. The Constitution provides for an independent judiciary; however, in practice the judiciary is inefficient, subject to corruption, and was for most of the year easily controlled by the executive branch. By year's end, the Government had taken steps to implement important judicial reform measures.

The police and military share responsibility for internal security. In October Congress passed legislation, based on agreements made in the OAS talks, to dismantle the National Intelligence Service (SIN), and the Government took action to do so in that same month. The capture or death of several remaining terrorist leaders marked continuing progress in eliminating the still lethal threat posed by the terrorist group Sendero Luminoso (Shining Path). In February the Government eliminated the last remaining emergency zones that covered over 5 percent of the country's territory and restored constitutional protections, including freedom of movement and of assembly, throughout the country where they previously had been suspended. Civilian authorities generally maintain effective control of the security forces; however, there were allegations that some members of the security forces who were loyal to Montesinos, were undermining civilian control of the military. In November President Paniagua appointed a new Defense Minister who retired dozens of officers, many of whom allegedly were tied to Montesinos. Members of the security forces committed serious human rights abuses.

The Government has implemented major economic reforms, transforming a heavily regulated economy into a market-oriented one. The Government continued to privatize state enterprises but did not meet its target of selling those remaining by the end of the year. Inflation remained in the single digits, and economic growth reached 3.6 percent. Per capita gross domestic product is estimated at \$2,060. Major exports include copper and other minerals, fishmeal, and textiles. The unemployment rate is estimated at 9.5 percent; underemployment remains around 45 percent. More than one-half of the economically active population work in the informal sector. The poor constituted approximately 54 percent of the population; about 15 percent of the population live in extreme poverty.

The Government's human rights record was poor in several areas, and serious problems remain; however, following the change of administration in November, the Paniagua administration took steps to implement

important democratic reforms, including some which improved the exercise of civil and political rights, and to address allegations of corruption surrounding the former intelligence services and other government officials. Members of the security forces committed extrajudicial killings and tortured, beat, and otherwise abused persons. Impunity remained a problem. Lack of accountability within the armed forces, particularly regarding counterterrorist operations, continued to be a problem. Overall prison conditions remained poor and were extremely harsh in maximum security facilities. Arbitrary arrest and detention, prolonged pretrial detention, lack of due process, and lengthy trial delays continued to be problems. Despite extensive changes to reduce the executive dominance over the judiciary, at year's end problems persisted, including the general inefficiency of the system. At year's end, the Government was preparing to return to the contentious jurisdiction of the Inter-American Court of Human Rights, from which it had withdrawn in 1999. The Government inhibited freedom of speech and of the press, and journalists faced harassment and intimidation and practiced self-censorship; however, nongovernmental organizations (NGO's) noted significant improvements after President Fujimori announced the disbanding of the intelligence forces. There were some limits on freedom of assembly, although political rallies occurred frequently and most were not impeded. The authorities at times sought to hinder the operations of human rights monitors. Violence and discrimination against women were widespread. Violence against children and discrimination against the disabled, indigenous people, and racial and ethnic minorities remained problems. Labor advocates argue that labor laws and practices restrict collective bargaining rights and the freedom of association. Child labor remained a problem.

The Human Rights Ombudsman expanded its operations to 15 offices throughout the country. The ad hoc Pardons Commission completed its work after having reviewed over 3,000 cases of alleged wrongful conviction by military courts, and recommended and obtained pardons in 481 cases. During the year, the Justice Ministry's Human Rights Commission approved an additional 32 pardons recommended previously by the ad hoc Commission. After taking office, the Paniagua administration reconstituted the ad hoc Commission, which at year's end had recommended 33 new pardons and was preparing to review additional cases left over from the previous administration. The Terrorism Division of the superior court traveled to remote areas outside Lima and dismissed 300 longstanding arrest warrants on terrorism charges.

Sendero Luminoso terrorists were responsible for killings, torture, and numerous other abuses.

## 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 reports of politically motivated killings; however, security forces committed several extrajudicial killings.

On March 1, police from the Northern Special Services Division reportedly detained Alejandro Damian Trujillo Llontop in Lima. Trujillo's father filed a complaint through the National Police inspector's office and then with the prosecutor. Police denied making any arrests on March 1. On May 8, officials informed the family that an unidentified body of a 25-year-old man had been found on March 2 on the beach in Callao, and delivered to a morgue in Ica. Medical tests showed that the man had been beaten before dying on or about March 1; he subsequently was identified as Damian Trujillo. In April the victim's family filed a case against the National Police, including charges of crimes against humanity and forced abduction. In August the prosecutors charged the 10 officers who arrested Llontop with his death, and in September the judge overseeing the case ordered their arrest. The trial was underway at year's end.

On May 12, police in Tacna arrested Nelson Diaz Marcos for public intoxication. Diaz's wife, who was with him at the time of the arrest, arrived later at the police station to pick up her husband; the police told her that he was resting. Around 11 p.m., the police informed the wife that Diaz had died, and that his corpse was in the local hospital. The prosecutor in Tacna opened a murder investigation, and in June the provincial attorney filed charges of torture against policemen Victor Pachas Mamani and Carlos Laqui (see Section 1.c.). The policemen filed a motion to transfer the case to the military courts, but the Supreme Court assigned jurisdiction to a civilian court in October. The case was pending at year's end. According to reports from Amnesty International (AI), the director of a Tacna human rights organization representing the interests of the victim and his family received death threats (see Section 4). Human rights groups continue to represent the Diaz family.

On November 27, police stopped taxi driver Carlos Lopez Flores in Ayacucho and accused him of involvement in narcotics trafficking. Eyewitnesses reported that they saw three ununiformed policemen beat and shoot Lopez. Lopez died 3 days later. The Public Minister's office was investigating the case in December, after a complaint was filed against the three police officers for torture and murder. NGO's reported that the officers had not been arrested by year's end.

Although military service is no longer mandatory, mistreatment of military recruits continued to be a problem and resulted in four reported deaths (see Section 1.c.).

In June 18-year-old Jose Luis Poma Payano voluntarily joined the Air Force and began service in Lima. He returned home in November and told his parents that members of the Air Force had abused him physically. On November 10, Poma's parents requested that military officials investigate. The military responded that they would investigate, and that Poma would not be harmed further. However, Poma was shot and killed upon his return to the base that day. The Air Force indicated that his death was a suicide. Poma's parents requested a full investigation, including an exhumation of his body for further examination. At year's end, prosecutors were investigating the case.

In July military officials accused recruit Ronald Enrique Pena Garcia of stealing radio equipment and placed him in solitary confinement. Pena told his parents that military personnel tortured him during his detention, including submerging his head in water and burning him with cigarettes. Pena died on August 11 from a bullet wound. His father filed a complaint with the Human Rights Ombudsman, and the investigation was pending at year's end.

On September 9, army recruit Lenin Castro Mendoza returned to the army base in Cerro de Pasco. To punish him for being intoxicated, an officer beat him and kicked him in the throat while he was laying in his bunk. Castro was taken to a nearby emergency room, where officials pronounced him dead on arrival. Police investigated the incident and concluded that the officer inflicted the injuries that led to Castro's death. In September police sent the case to the military court in Huancayo.

In December Mario Fernandez Sanchez died at a hospital in Lima due to injuries which were allegedly the result of torture by military officials. Prior to this incident of alleged torture, military officials reportedly tortured Fernandez both physically and emotionally, which drove him to desert his military base. He was brought before a military court in Concepcion to stand trial for desertion, where officers reportedly beat and tortured him again. His family filed a complaint with the Public Ministry and accused the military of torture. A prosecutor in Huancavelica had begun an investigation at year's end.

There were no developments in the 1999 case of Carlos Yauri, who died under suspicious circumstances 5 months into his military service. With the support of a local NGO, the Huaraz province prosecutor investigated and requested the military prosecutor expedite an investigation into the case.

No new information was available on several cases of recruits who died during their military service in recent years, including the cases of Juan Salazar Cayetano and Juan Espinoza Rodriguez.

At least two prisoners died during unrest in prisons during the year. Celso Ponce Torres died in a riot at Yanamayo prison in February. A fellow inmate reportedly struck him in the head during the violence. One prisoner died in violent riots at Lima's San Juan de Lurigancho prison in the same month (see Section 1.c.).

In February five peasants died after armed confrontations with landowners on land they occupied in Villa El Salvador.

In July six bank security guards died in a fire that erupted during confrontations between police and protesters in Lima (see Section 2.b.).

In June the press reported that peasants had discovered a mass grave no older than 10 years containing the remains of 8 to 12 bodies in the area of Colcabamba, Huacavelica. According to NGO's, the grave site is located along a trail used frequently by army patrols and terrorist columns in the 1980s and early 1990s. An investigation headed by the provincial prosecutor was underway at year's end. Representatives from the Human Rights Ombudsman's office observed that a series of irregularities in handling of evidence had compromised the forensic integrity of the investigation.

The case of Pablo Pascual Espinoza Lome, a jailed inmate killed in January 1999 by prison guards, remained pending. The courts had not reached a verdict because the Supreme Court had not ruled on a motion by prison guard Marcial Pirez, who originally had been acquitted of violating the 1998 antitorture law, which requested that the Court nullify a lower court's decision to sentence him to 4 years in prison.

Charges against four prison officials for aggravated abuse of authority and crimes against humanity in the November 1999 death of Esteban Minan Castro remained pending at year's end. Minan Castro died after Tambo de Mora penitentiary guards reportedly used tear gas to subdue him and put him into solitary confinement after he had allegedly violated prison rules.

There were no developments in the cases of Tito Mariluz Dolores, Ronny Machaca Flores, and Jose Antonio Palacios Garcia, all of whom died in police detention in 1999.

The Chincha criminal court brought charges of torture against policemen Edwin Alfredo Saravia Torres, Marco Antonio Carrasco, and Julian de la Cruz Huyarote for the June 1999 death of Mario Clemente Guillen Mendez, who allegedly hanged himself after being detained by police. The case was pending at year's end.

In the case of Carlos Arrellano Mallqui, who died in police custody in 1998 in Ancash, the Supreme Court assigned jurisdiction to a military court. The military court did not render a decision by year's end.

There was no progress made in the investigation of the four soldiers suspected of robbing and killing Genaro Julca Bula and Alberto Aponte in 1998.

There was no progress in the case of Mariel Barreto, a military intelligence (SIE) agent whose dismembered and decapitated body was found in 1997. The Government had promised an exhaustive investigation into her death in 1998.

Sendero Luminoso terrorists killed 17 persons during the year in the course of over 100 acts of violence.

#### b. Disappearance

There were no reports of politically motivated disappearances.

In the case of Walter Munarriz Escoba, who disappeared in March 1999 after being taken into police custody in Huancavelica, the provisional prosecutor brought formal charges against and ordered the detention of National Police captain Roberto Gastiaburu Nakada, Ensin Claudio Gutierrez Valasquez, and Adolfo Angeles Ramos. The prosecutor subsequently charged policemen Gunter Cuaresma Ramos and Percy Salvatierra Laura with torture and requested a 15-year sentence. The case still was pending at year's end.

No information was available regarding the status of Ernesto Rafael Castillo Paez, who disappeared in 1990. In 1997 the Inter-American Court of Human Rights ordered the Government to compensate his family and to punish the police officers responsible for his death.

In November the office of the Human Rights Ombudsman released an official report on approximately 4,000 persons who have disappeared since 1980 in the war against terrorism. The Ombudsman's report noted that the Sendero Luminoso or Tupac Amaru (MRTA) rebels abducted a majority of victims, who were mainly indigenous peasants. In 1995 Congress passed a law granting amnesty to members of the security forces responsible for abuses committed in the war against terrorism. To date few members of the security forces have been held accountable for their role in disappearances. A report released in June by the Inter-American Commission on Human Rights (IACHR) repeated the IACHR's previous calls for the amnesty law to be repealed. By year's end, the Government had not acted on this recommendation. In December President Paniagua directed the Justice Ministry to create a working group that would include members of NGO's, religious leaders, and government officials to make recommendations on the establishment of a truth commission that would hear evidence on disappearances.

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

The Constitution and the law prohibit torture and inhuman or humiliating treatment; however, in practice torture and brutal treatment by the security forces continued to occur, and the Human Rights Ombudsman and NGO's contend that it continued to be widespread. Torture most often takes place during the period immediately following arrest. 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.).

Such abuse is particularly common in police cells operated by the National Counterterrorism Directorate (DINCOTE) and in detention facilities on military bases, where terrorism and treason suspects normally are held. Psychological torture and abuse, which result from the harsh conditions in which detainees are held, are more characteristic of the prisons.

The Human Rights Ombudsman and NGO's reported 35 cases of aggravated torture by security forces. The majority of cases involved incidents of police brutality and beatings during detention.

On May 12, police in Tacna arrested Nelson Diaz Marcos for public intoxication and allegedly tortured him before killing him (see Section 1.a.). A prosecutor filed charges against the arresting officers and the case was pending at year's end.

In August three police officers in Chinga, Ica, detained Luis Enrique Rojas Vasques on suspicion of his involvement in a robbery. They handcuffed, beat, and threatened him with torture if he did not confess to the robbery. They also threatened him with death if he filed a complaint against them. The police also allegedly discovered drugs on the victim, but NGO lawyers claim that the drugs were planted. Rojas filed a complaint against the three officers for torture and abuse of authority. In October the local prosecutor dropped the charges of torture. The charges of abuse of authority still were pending at year's end.

In December AI released a report reviewing the facts and status of 21 cases of alleged torture in the past 2 years. Supported by a large number of NGO's, AI called on the Government to stop impunity in cases of torture; to try all such cases in civilian, rather than military, courts; and to apply the 1998 legislation against torture to all security force members implicated in cases of torture. AI called for more aggressive prosecution of torture cases, noting that since the 1998 legislation passed, only two perpetrators have been sentenced using the instruments provided in that law. Twenty persons have been charged under this law, including several cases of police brutality. However, after initial investigations in four cases, prosecutors either decided not to charge the alleged perpetrators with torture or dropped all pending charges. In several other cases, prosecutors filed charges on lesser offenses and sought milder sentences than required under the antitorture law. In a number of cases in the AI study, appeals or other legal action still were pending. A few of the cases were under review by the Supreme Court, which would rule on military or civilian jurisdiction. In three cases the accused perpetrators had been arrested and were awaiting trial.

In April military officials allegedly arrested Amador Carmen Canchaparan on charges of working with the armed opposition and took him to a military base in Huanuco department. There members of the army reportedly tortured him by submerging his head in water, beating him, and applying electrical shocks in order to force him to confess. The officials then threatened Canchaparan with death if he brought charges against them. On May 2, authorities charged officials at Yanag military base with torture and abuse of authority. The prosecutor opened a preliminary investigation into the alleged abuses. The victim remained in custody at year's end, and was being investigated for committing or conspiring to commit terrorist acts.

On May 25, journalist Fabian Salazar alleged that SIN officers broke into his office the previous evening, bound him, confiscated video tapes of government officials that implicated them in corruption, and sawed his arm to the bone. The Government appointed an ad hoc prosecutor to investigate Salazar's claims. Salazar fled the country in June before he was able to provide his testimony, and the investigation was suspended. Salazar subsequently petitioned the IACHR to investigate. The Government offered to investigate the case again, but Salazar refused, claiming that the Government was biased. While there were a number of inconsistencies in Salazar's account, and even critics of the Government and journalists suspect that he may have exaggerated his claims, a full investigation never was conducted.

There continued to be a public perception that the armed forces operate with impunity in the war against terrorism; however, President Paniagua made changes in the military command that human rights activists noted as a sign of increased civilian control over the military. Prior to these changes, the Fujimori administration had asserted greater control over the military leadership in order to reduce the military's loyalty to former de facto SIN director Vladimiro Montesinos. The new attorney general began conducting investigations into corruption by former military officers.

Human Rights groups criticized the manner in which police controlled protests on July 28, noting that they purposely fired tear gas into crowds at close range, seriously injuring some protesters who were hit by the cartridges. There were also reports that police used undue force in arresting protesters and that they beat protesters while in detention (see Section 2.b.).

In the case of Huber Mendez Barzola, whom police detained in March 1999 on suspicion of terrorism and allegedly stripped naked, beat, and sodomized with a metal chain weapon in police custody, the Supreme Court upheld the sentence of policemen Oscar Italo Flores Montanez, Carlos Palacios Soto, and William Saenz. In November 1999, a court had found Palacios Soto and Flores Montanez guilty of torture, sentenced them each to 6 years in prison, and fined them about \$650 (2,000 soles). The court reduced Saenz's sentence to 3 years in jail and a fine of about \$150 (500 soles).

In the 1998 case of Pedro Tinta Vera, whom police arrested in Lima on charges of aggravated terrorism, allegedly tortured, and to whom they neglected to provide medical treatment, prosecutors filed charges in October 1998 against police officers Domingo Arnaldo Gil, Guillermo Osorio, and Ricardo Loli for the crime of torture, and a judge ordered their arrest. In June a superior court judge suspended the arrest warrant against

the officers but issued an order to appear at the Court. By year's end, the trial had not begun.

In the case of Antero Espinoza Alzamora, whom police detained and allegedly beat in April 1999, the prosecutor in Piura had opened an investigation but did not file charges. In the 1999 case of Catalino Daga Ruiz and Bernardo Daga Ruiz, whom police arrested on suspicion of robbery, then allegedly beat, took to a cemetery, and buried up to their necks, the victims filed torture and illegal entry charges, and the prosecutor began an investigation.

There were no updated reports on investigations and judicial proceedings on charges of torture or abuse of authority against members of the National Police in several cases brought to the public's attention in 1999: Jesus Natividad Roman Portocarrero, arrested in Piura in March; Mario Jimenez Roque, arrested in Pasco in April; Julio Armando Uribe, arrested in Moquegua in July; Moises Paco Mayhua, arrested in Puno in August; and Victor Valle Cabello, detained in Pasco in September.

In 1999 a special prosecutor charged several naval officers under the antitorture law for allegedly torturing Raul Teobaldo in 1998. Personnel from the Aguaytia Naval Base detained and allegedly tortured Andahua by beating him, applying electric shocks, and sodomizing him, in order to force him to sign a confession indicating that he was a terrorist. However, the court issued an arrest warrant in 1999 against Julio Spencer Guido Davalos, on a much lesser charge of committing bodily harm. In January the Supreme Court ruled that the civilian courts had jurisdiction over the case. In September the prosecutor concluded that Andahua was the victim of torture and filed charges of torture against the implicated military officers. The trial had not begun as of year's end.

No progress was made in the case of the 1998 beating and torture of Pablo Waldir by policeman Elmer Perez Arna.

In October 1999, an Ayacucho court acquitted a policeman in the 1998 case of torture that led to the death of Lucas Huaman Cruz. In November 1999, the Supreme Court prosecutor filed a motion to nullify the Ayacucho court's decision. The Supreme Court had decided to hear arguments on the case, but still had not taken action on the case by year's end.

In the 1997 case of Leonor La Rosa, a military intelligence (SIE) officer who was beaten and tortured by four of her colleagues (and who now resides in Sweden), the Supreme Council of Military Justice awarded La Rosa approximately \$1,500 (5,250 soles) as an indemnity in 1999. La Rosa's attorney considered the amount seriously inadequate, since she is a paraplegic as a result of the torture. The IACHR continued to facilitate a settlement between La Rosa and the Government.

In addition to beatings, common methods of torture and other inhuman or degrading treatment included electric shock, water torture, asphyxiation, and 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 detainees and their families. Interrogators frequently blindfolded their victims during torture to prevent them from identifying their abusers. In some cases, the Government took action to investigate and prosecute security force personnel charged with torture, but impunity persisted. Crowded dockets and disputes over civilian or military jurisdiction contributed to long delays in legal proceedings in cases where officers were charged under the 1998 antitorture law. At year's end, the cases of several officers whom the authorities had charged under the legislation were still pending a verdict.

As in previous years, NGO's and the Human Rights Ombudsman received complaints that the military beat or otherwise mistreated some members of the military service. Mistreatment of military recruits continued to be a problem and resulted in several deaths (see Section 1.a.). The authorities failed to resolve a number of cases of torture and mistreatment from previous years, including the cases of Jaime Palacios Sanche and Elvis Lopez Tuya.

On February 12, the army dropped tear gas from helicopters and used the force of gusts from helicopters to disperse squatters who had settled in Villa El Salvador.

There continued to be credible reports that Sendero Luminoso was also responsible for acts of torture, including cases that resulted in death (see Section 1.a.).

Prison conditions are poor and extremely harsh in maximum-security facilities, especially those operating at high altitudes. Low budgets, severe overcrowding, lack of sanitation, and poor nutrition and health care are serious problems within the prison system. Prison guards and fellow inmates routinely victimized prisoners. Corruption is a serious problem among poorly paid prison guards, many of whom participate in sexual abuse,

blackmail, extortion, narcotics and weapons sales, and the acceptance of bribes in exchange for favors that ranged from providing a mattress to arranging an escape. Since prison authorities do not supply adequate bedding and budget only about \$0.75 (2.5 soles) per prisoner per day for food, the families of prisoners typically must provide for these basic needs. In high-security prisons, female inmates are allowed to see their children once a week. In prisons that house only common criminals, such as Lima's Chorrillos women's prison, children 3 years of age and younger live with their jailed mothers.

Overcrowding and inadequate infrastructure hamper efforts to improve the living conditions of prison inmates. There are 28 prisons in the country that held approximately 27,305 prisoners during the year. At Lima's San Juan de Lurigancho men's prison, the country's largest, more than 6,000 prisoners live in a facility built to accommodate 1,500 persons. Inmates have only intermittent access to running water; bathing facilities are inadequate; kitchen facilities are unhygienic; and prisoners sleep in hallways and common areas due to lack of cell space. Illegal drugs are abundant in many prisons, and tuberculosis and HIV/AIDS are reportedly at near-epidemic levels. Detainees held temporarily while awaiting arraignment in Lima are not allowed outside for fresh air and have restricted access to bathrooms. At year's end, the Government was preparing to implement new regulations regarding prisoners' access to visitors and prisoners time outside of cell.

In 1999 the Human Rights Ombudsman published a report on prison conditions and administration, which highlighted many serious shortcomings, including a shortage of trained medical personnel, unreliable legal representation for prisoners, and insufficient numbers of social workers. The Ombudsman and the IACHR have reported that the Government fails to supply enough lawyers, medical staff, or psychologists to service the prison system, resulting in serious problems for treatment and adequate legal counsel. The Ombudsman noted that the operating philosophy in the prison system is one of punishment rather than rehabilitation. Roughly half of all prisoners performed some form of voluntary work, and only 28 percent participate in some kind of educational activity.

According to human rights monitors, the Challapalca prison in Tarata, Tacna, seriously violates international norms and standards, particularly with respect to its isolation and high altitude. Located at an altitude of about 14,000 feet, Challapalca's freezing temperatures and oxygen-thin air have unavoidably detrimental effects on prisoner health. The prison can be reached only after an all-night bus ride from the nearest population center, limiting inmates' contact with family. Hospital care is 8 hours away by overland transportation. Face-to-face consultations by inmates with their attorneys are rare. To relieve some of the isolation, the International Committee of the Red Cross (ICRC), and to a lesser extent the Government, fund a monthly visit by families to inmates. In 1998 the International Federation of Human Rights, as well as visiting members of the IACHR and the Ombudsman, called on the Government to shut the prison down.

There were a number of protests and hunger strikes in various prisons, including the high security prisons at the Callao Naval Station and Yanamayo. In February prison inmates rioted and took over Yanamayo prison for roughly a week before authorities reestablished control. Conflicts between prisoners resulted in one death and several injuries. A wave of prison protests followed all over the country, including in Lima's Lurigancho prison, where security forces intervened to reestablish control. One prisoner died in the violence at Lurigancho, and over 40 prisoners were injured either by fellow inmates or by the security forces who acted to restore order. The Human Rights Ombudsman asked prison authorities to allow his staff to visit the prison following the riots, but was denied such access until after the riots ended. Some prison protests in Lima continued in September, October, and November, resulting in minor injuries but no reported deaths. Imprisoned Sendero Luminoso leaders began a hunger strike in December.

The Government permits prison visits by independent human rights monitors, including the ICRC. For most of the year, prison authorities did not grant representatives of the Human Rights Ombudsman access to the military prisons; however, that practice began to change under the Paniagua administration. Members of the Ombudsman's office were allowed to visit the naval facility in Callao in December (see Section 4). During the year, the ICRC performed 115 visits to prisons, detention facilities, and juvenile detention facilities, visiting a total of 3,061 prisoners. The ICRC also visited seven prisoners in custody at the maximum security naval base facility in Callao every 2 months.

#### d. Arbitrary Arrest, Detention, or Exile

Arbitrary arrest and detention remain problems. The Constitution, Criminal Code, and antiterrorist statutes delineate the arrest and detention process. The Constitution requires a written judicial warrant for an arrest unless the perpetrator of a crime is caught in the act. However, the Organic Law of the National Police permits 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 cases of terrorism, drug trafficking, or espionage, arraignment must take place within 30 days. Military authorities must turn over persons they detain to the police within 24 hours; in remote areas of the country this must be accomplished as soon as practicable. However, the authorities often disregard this requirement. In December Congress passed legislation allowing

the authorities to detain suspects in investigations of corruption for up to 15 days without arraignment. The law also permits authorities to prohibit suspects under investigation of corruption from traveling.

In February the President suspended all remaining emergency zones and restored the constitutional protections in those areas. Previously, the Government suspended constitutional protections against arbitrary arrest and detention in emergency zones, and security forces did not need an arrest warrant in order to detain a suspect.

Police may detain terrorism and treason suspects for a maximum of 15 days, and hold them incommunicado for the first 10 days. Treason suspects, who are handed over automatically to military jurisdiction, may be held incommunicado for an additional 30 days. When suspects are held incommunicado, the authorities prohibit families from visiting suspects, and attorneys have access to them only during the preparation and giving of sworn statements to the prosecutor.

By year's end, the special terrorism division of the superior court dismissed 300 arrest warrants of the estimated 5,228 persons still subject to detention orders. These cases involved many who were forced against their will to participate in terrorist activities during the internal conflict, or who were accused falsely of links with terrorist groups. In 1998 the Human Rights Ombudsman called on the Government to rescind all outstanding detention orders that were more than 5 years old, and to cancel all orders that did not comply with legal specifications.

By year's end, the Government had approved 65 pardons recommended by the ad hoc Pardons Commission and the Justice Ministry's Council on Human Rights, which evaluated and recommended pardons for persons convicted of terrorism, bringing the grand total to 546 pardons (see Section 1.e.).

Detainees have the right to a prompt judicial determination of the legality of their detention and adjudication of habeas corpus petitions; however, according to human rights attorneys, judges continued to deny most requests for such hearings. In Lima and Callao, detainee petitions for habeas corpus are restricted severely, because under a 1998 executive branch decree issued as part of the war on crime, only 2 judges are able to hear such petitioners, instead of the 40 to 50 judges in previous years, thereby significantly delaying justice. In December the Paniagua administration restored the number of judges able to hear habeas corpus petitions to its original level as part of the restructuring of the court system. Judges rarely allow the unconditional release of suspected terrorists, even if there is insufficient evidence to bring a case against them, despite 1993 amendments to antiterrorism laws that gave lower court and superior court judges the power to do so. As a result, persons charged with terrorism sometimes must wait until their cases have been reviewed and dismissed by the Supreme Court before they are freed. This process can last more than a year.

In December figures from the National Penitentiary Institute (INPE) showed that approximately 46 percent of a total prison population of 27,305 had been sentenced. Over 50 percent of the prison population remained in Lima; of these prisoners, 74 percent remained unsentenced. The June IACHR report and the U.N. Commission on Human Rights report in July both expressed concern about the large number of unsentenced prisoners. The problem of prisoners who have served their terms and still have not been released continued. In December President Paniagua committed the Ministry of Justice to assess procedures for reviewing cases with pending sentences. By year's end, the Justice Ministry had recommended better ways to track the status of prisoners in the penal system.

In 1998 the Catholic Bishops' Social Action Commission called for implementation of a system that would allow first-time detainees to post bail. According to the INPE, the elapsed time between arrest and trial in civil, criminal, and terrorism cases averages between 26 and 36 months. Those tried by military courts on treason charges generally do not have to wait more than 40 days for their trial; however, since trial procedures in military courts are largely devoid of due process protections, the speed with which trials are concluded offers little benefit to the defendants involved. Once trials have concluded, prisoners have to wait long periods before receiving their sentences.

According to two 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 (see Section 5).

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

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, in practice the judiciary is inefficient, subject

to corruption, and easily controlled by the executive branch. As a result, public confidence in the judiciary remains low. In November the Government abolished an executive commission of the judicial branch and an executive commission of the Public Ministry. The duty of these commissions was to reform the judiciary; however, its members regularly ruled in favor of the executive branch under the Fujimori administration, compromising the independence of the judicial system and furthering the executive's control of it.

Previous attempts to reform the judiciary did little to restore its independence from the executive, and the lack of a fully functioning Constitutional Tribunal overshadowed procedural improvements. In November Congress restored to the Constitutional Tribunal three judges whom Congress removed in 1997 after they had opposed the application of a law allowing President Fujimori to seek a third term. This had paralyzed the court's ability to rule on any constitutional issues for lack of a quorum. Other serious problems affecting the judiciary included the curtailment of the authority of the National Council of Magistrates (CNM) to investigate, discipline, and remove judges, the continuing large number of provisional judges in the court system, and the transfer of jurisdiction of sensitive cases to courts more inclined to rule in the Government's favor.

Throughout most of the year, roughly 80 percent of the country's approximately 1,700 civilian judges were provisional appointments, meaning that they had received temporary appointments that did not correspond to their rank, including 21 of the 33 judges on the Supreme Court. In some cases, the judges were assigned independently and without having gone through the proper channels for training. Critics charged that since these judges lacked tenure, they were more susceptible to outside pressures.

Working with opposition and civil society representatives in the OAS democratization dialog (see Section 3), the Government began taking steps designed to restore the judiciary's independence from the executive. In October Congress passed legislation that eliminated eligibility of provisional judges to hold administrative positions, such as posts on the National Elections Board (JNE) or the CNM. In November the Paniagua Administration began a comprehensive review of the court system, including the assignment of judges and prosecutors. By year's end, the Government had reassigned hundreds of provisional judges and prosecutors to positions more appropriate to their actual rank. Several provisional judges and prosecutors resigned or were removed from their positions permanently and were not reassigned.

The Government's reliance on untenured, provisional and temporary judges was demonstrated when the executive commission of the judicial branch created two specialized chambers of the Supreme Court in 1998. These chambers, staffed by provisional and temporary judges, assumed control over tax, customs, and narcotics crimes previously under the jurisdiction of the tenured judges of the Lima superior court. This practice enabled the executive branch to supervise closely such cases as that of Baruch Ivcher, his family, and associates (see Sections 2.a. and 2.d.). In December the Supreme Court eliminated these two specialized courts. In the same month, evidence emerged that showed how former intelligence advisor Montesinos improperly influenced cases through provisional judges on the Supreme Court and through the Attorney General, who was also a provisional appointee. The majority of implicated officials have either resigned or been suspended, and several investigations into corrupt judicial practices were underway at year's end.

There is a three-tier court structure that consists of lower and superior courts and a Supreme Court of 33 judges. In November the Constitutional Tribunal resumed its mandate to rule on the constitutionality of congressional legislation and government actions; the National Judiciary Council tests, nominates, confirms, evaluates, and disciplines judges and prosecutors; and the Judicial Academy trains judges and prosecutors.

The justice system generally is based on the Napoleonic Code. In civilian courts criminal cases move through three distinct phases. First, in a lower court a prosecutor investigates cases and submits an opinion to the examining judge, who determines whether there is sufficient evidence to issue an indictment. If there is, the judge conducts all necessary investigations and prepares and delivers a case report to the superior court prosecutor. Second, the superior court prosecutor reviews the lower court decision to determine if formal charges should be brought and renders an advisory opinion to another superior court, where a three-judge panel holds an oral trial. All criminal case convictions in civilian courts must proceed to a third phase, where the Supreme Court hears appeals and confirms or rejects the previous sentences. All defendants have the right to be present at their trial. Defendants also have the right to counsel; however, the public defender system often fails to provide indigent defendants with qualified attorneys.

Under the military justice system, judges in the lower 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 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. At the Superior Military Council and Supreme Council levels, a significant number of judges are active-duty line officers with little or no professional legal training.

In December 1999, Congress abolished the classification of acts of extreme violence such as criminal gang activity, homicide, kidnaping, and the use of explosives as aggravated terrorism. Under new law, such cases are designated as "special terrorism" and jurisdiction over such crimes falls under the civilian courts. In October Congress disbanded the SIN, including the National Intelligence Directorate for Social Peace and Safety, which had investigated such crimes.

While simple terrorism cases for civilians are tried in civilian courts, cases of treason, which is defined as being a terrorist leader or participating in a terrorist group's attack or activities, for civilians are tried only before military courts. Human rights groups and legal experts 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. Moreover, defendants in treason cases who are found not guilty by a military court may be remanded to a civilian court for a second trial on terrorism charges based on the same facts.

Human rights groups and legal experts strongly criticize the power of the military courts to try civilians in cases of treason or aggravated terrorism and the powerlessness of the civilian judicial system to review military court decisions. In 1997 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 court not only refused to do so, but also charged the civilian judges with usurpation of power and sought to have them reassigned. The case was brought before the Inter-American Court of Human Rights, which rejected a government motion to dismiss it. The Court ruled in September 1999 that the Government had violated the American Convention on Human Rights, and ordered that the habeas corpus petition be honored and that the reparations stage be initiated in order to compensate the victim. In November 1999, the authorities released Cesti from military prison; however, Cesti's legal status remained unresolved at year's end, pending a request from the Government to the Inter-American Court for further clarification of its ruling.

In August the case of Lori Berenson, who was tried for terrorism by a military tribunal without sufficient guarantees of due process, was transferred to the civilian courts pursuant to a Military Supreme Court review based on new evidence. At year's end, a civilian prosecutor was investigating to determine if charges should be brought.

Proceedings in these military courts--and those for terrorism in civilian courts--do not meet internationally accepted standards of openness, fairness, and due process. Military courts hold treason trials in secret. Such secrecy is not required legally, but in some cases the courts deem that circumstances require it. 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 question police or military witnesses either before or during the trial. Some military judges have sentenced defendants without even having notified their lawyers that the trials had begun. Since the creation of the special military courts in 1992, 747 civilians have been sentenced for treason or aggravated terrorism, and by year's end 180 civilians still had cases pending. In December the Minister of Justice created a commission charged with reviewing the laws governing the military justice system.

The Council of Magistrates (CNM), established by the 1993 Constitution, regained many of its original functions in December. A March 1998 law had transferred the CNM's power to investigate and dismiss Supreme Court judges and prosecutors to the executive commissions of the judicial branch and the Public Ministry, respectively, both of which were controlled by strong allies of President Fujimori. Critics pointed to this action as a further example of executive branch control of the judiciary. A September 1998 law partially restored the CNM's powers, while leaving the Public Ministry in charge of determining whom the CNM could investigate.

Responding to OAS dialog recommendations, in November the Government and opposition agreed to establish a transitory judicial council, with all the legal powers of the CNM, in order to restore full power to the CNM, including sanctioning and ratification of judges and magistrates. The council is expected to work for 90 days reviewing laws and regulations put in place by the executive commission since 1998. Three judges and three jurists, appointed by consensus within the OAS dialog, compose the council. Since it began operating on December 6, the council has dismissed judges, reinstated others judged to have been unfairly discharged, and returned to lower courts judges who were serving provisionally in higher courts.

The first class of judges that the CNM selected was scheduled to graduate in the fall; however, their nominations to judgeships were delayed by the restructuring that resulted from the OAS talks. The Academy continued its in-service training program for judges and magistrates, which consists of a few hours of classes each week during the first year, and practical training during the second. The Academy's training program, originally scheduled to last 6 months but later extended to 2 years, was strongly criticized as further prolonging reliance on provisional and temporary officials, who are more susceptible to manipulation by the executive.

In June 1999, the Inter-American Court of Human Rights ruled against the Government in the case of four Chileans convicted of treason by a military tribunal and sentenced to life in prison. The Court found that the military had denied the defendants' due process rights provided by the American Convention on Human Rights and ruled that a civilian court should have had jurisdiction. It also ruled that military authorities held the suspects too long in pretrial detention; and that defense attorneys lacked access to witnesses and evidence and did not have sufficient time to review the case. The Court directed the Government to provide the four with new, civilian trials.

Subsequently, the Supreme Court delegated to the Supreme Military Council the final decision regarding enforcement of the Court's decision. The Council ruled that it could not grant the Chileans new civilian trials because laws passed after signing the Convention required military trials in cases of treason and aggravated terrorism.

However, the Government refused to accept the Inter-American Court's jurisdiction in cases involving terrorism, including the case of the Chileans, because laws passed after signing the Convention establishing the Court required military trials in cases of treason and aggravated terrorism. The Government's decision to withdraw from the Court's jurisdiction in these cases effectively restricted citizens' constitutional rights to seek redress in the hemisphere's preeminent international tribunal. The Court continued to process pending cases and stated that the Government could not withdraw immediately from the Court's contentious jurisdiction. In August the Government agreed to discuss the full integration of the country into the Inter-American human rights system, and the issue was discussed as a priority in the OAS-sponsored dialog. At year's end, the Government was preparing to return to the contentious jurisdiction of the Court.

In the civilian jurisdiction, a specialized terrorism division of the superior court tries cases. The division is based in Lima, but its judges travel to the provinces as needed. During the year, judges from this court traveled around the country to hear several hundred cases of persons with old warrants outstanding for terrorism charges. Of these, judges found 300 persons innocent and ordered the suspension of their warrants. Human rights NGO's and the Human Rights Ombudsman noted that this addresses the concerns of those who considered themselves innocent, but who feared coming forward for an abbreviated and unfair trial. However, approximately 5,000 warrants remain in effect (see Section 1.d.).

The ad hoc Pardons Commission, which consisted of the Human Rights Ombudsman as chairman, the Minister of Justice, and President Fujimori's representative Father Hubert Lanssiers, ended its work on December 31, 1999. The Commission's mandate was to consider applications of those who believed themselves to be accused unjustly of terrorism. By the end of 1999, 3,056 of a total of 3,878 persons accused of these crimes had applied for clemency, and 481 had received the Commission's recommendation for pardon. A December 1999 law assigned the Commission's functions to the Justice Ministry's National Human Rights Council. Between January and November, the Council recommended (and President Fujimori granted) 32 pardons. After the Paniagua Government took office in November, the Government established a new ad hoc Pardons Commission that had by year's end recommended 33 additional pardons that were granted, bringing the total to 546. At year's end, the new Commission continued to review petitions not previously recommended. NGO's advocated that the new commission expand its review to include all convictions and sentences rendered by military courts, but by year's end, the Government had not made a decision on the matter.

There was no congressional action on the Human Rights Ombudsman's 1999 recommendation for legislation for monetary compensation of innocent persons released through the Pardon Commission's program. The matter was added to the agenda of the OAS talks in October, but Congress had not taken any action by year's end.

The Extrajudicial Conciliation Law, which Congress passed in 1998, was to have made conciliation a mandatory first step in most civil cases by January; however, due to administrative and other delays, partial implementation of the law was not scheduled to begin until January 2001 in Trujillo, and is scheduled to begin in Lima and Calloa in March 2001, expanding progressively to other cities during the year.

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, NGO's indicate that this requirement is not always observed in practice. In February the Government eliminated emergency zones that covered approximately 5 percent of the country. Prior to that constitutional protections, including freedom of movement and other due process guarantees, had been suspended in those

areas.

In the past, the Human Rights Ombudsman and human rights NGO's received complaints regarding the forced conscription of young men, including minors, by security forces as part of the constitutionally mandated system of compulsory 2-year military service. A law went into effect in January that makes military service voluntary and prohibits the practice of forced conscription. Registration for military service remains obligatory for men aged 18 and older. The President retains the authority to decree the reestablishment of mandatory service. The Human Rights Ombudsman monitors implementation of the law to ensure that the military abides by it, since past efforts to prohibit forced conscription did not prevent it.

The Constitution provides citizens with the right to private communication, but the media, politicians, some government officials, and private individuals continued to report that the Government violated this right. The case of former SIE agent Luisa Margarita Zanatta Muedas, who fled the country in 1998, after allegedly providing information regarding SIE wiretapping operations, remained pending at year's end. In 1999 the Human Rights Ombudsman recommended that the Government pardon Zanatta, that the Public Ministry investigate the wiretapping, and that Congress broaden the investigation conducted by its committee on defense. By year's end the Government had not taken action on those recommendations.

In May the IACHR recommended that the Inter-American Court hear the wiretapping case filed by opposition Congresswoman Anel Townsend and 13 journalists. They charged that the Government had violated their constitutional right to privacy and sought civil damages. The Supreme Court had dismissed the charges in 1998. The congressional Committee on Defense, Intelligence, and Internal Order conducted a summary investigation of the charges in 1999. The investigation not only exonerated the intelligence services and security forces, but concluded that the aggrieved journalists had wiretapped themselves and recommended that they be charged with having fabricated and disseminated false information that tainted the honor of the military. Having exhausted their domestic resources, the journalists took their case to the IACHR in November 1999.

Opposition politicians continued to report credible incidents of wiretapping and surveillance. Although high-level government officials denied government involvement in any of these incidents, there was little effort to investigate the allegations. In 1999 presidential candidate Luis Castaneda Lossio accused David Pinedo Torres of being a SIN agent and charged that Pinedo was surveilling him. The case against Pinedo was dropped during the year, as was the case against Castaneda for detaining Pinedo.

Reports of forced conscription by the MRTA (most of whose surviving members are jailed) and the greatly weakened Sendero Luminoso terrorist groups diminished significantly. However, Sendero Luminoso continued to coerce indigenous people to join its ranks (see Section 5).

During the year, the Ombudsman's office received isolated complaints of abuses committed by family planning personnel. Allegations first arose in 1997 that a number of health workers in public hospitals and family planning clinics administered by the Ministry of Health had induced female patients to opt for sterilization by promising them food or another type of good or service, or by not providing them with complete information about available alternatives. In a 1999 report, the Ombudsman recommended that family planning practitioners provide all clients with complete information about alternatives available to them, that they pressure no client into using any particular contraceptive method, and that if a patient chose sterilization, that the patient be afforded a 72-hour waiting period during which to consider that option. The Ombudsman also recommended that the Ministry integrate men fully into its family planning program, thereby disseminating reproductive and contraceptive information more equitably across gender boundaries. The Ministry of Health accepted the Ombudsman's report and implemented many of his recommendations.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and press; however, in practice the Government inhibited the full exercise of these freedoms for most of the year. Manipulation of opposition journalists through the judicial system and the use of government advertising revenues to influence reporting in print and broadcast media were serious problems. Human rights groups contend that government harassment of and alleged attacks against journalists also were problems. As a result, much of the media, especially the financially vulnerable broadcast television networks, practiced self-censorship. Many in the press regard the Fujimori administration's harassment of the media as a key reason for his victories in presidential elections. Following the establishment of the OAS dialog in August and the deactivation of the SIN in October, the climate of press freedom improved. Television stations began to show more balanced political coverage and allowed opposition views to be presented. Tabloids that were suspected of being financed by the SIN discontinued publication, and the

remaining tabloids changed their coverage to nonpolitical reporting.

The press represents a wide spectrum of opinion, ranging from left-leaning opposition views to those favoring the Government. In the greater Lima area alone, there are 20 daily newspapers, 7 television stations, 65 radio stations, and 3 news channels on 2 commercial cable systems. There are numerous provincial newspapers and radio stations. The Government owns one daily newspaper, one television network, and two radio stations, none of which has a particularly large audience.

Several international press groups, including the Committee to Protect Journalists (CPJ), the Inter-American Press Association (IAPA), and Freedom House, as well as the OAS, reported various cases and types of press harassment and accused the Government of being responsible for some of it. The CPJ named former President Fujimori as one of the world's "Top Ten Enemies of the Press" for the second year in a row. In October the media advocacy group Prensa Libre issued a report in which it cited numerous instances of surveillance and harassment of journalists, which it attributed to the Government and intelligence services. The group also noted limitations on access to airtime for opposition candidates, as well as a defamation campaign against the political opposition and independent journalists in tabloid newspapers allegedly funded by the Government.

Media outlets can, and do, criticize the Government; however, under the Fujimori administration, they risked reprisal through the loss of government advertising (often a major source of revenue), libel suits, or other judicial action on apparently unrelated issues. The Fujimori administration filed lawsuits against owners or managers of many antigovernment media outlets whose content appeared to depend as much on political as much as legal criteria. Incidents such as the high-profile 1997 loss by television owner Baruch Ivcher of his station and his citizenship (see Section 2.d.), TV Channel 13's co-owner Genaro Delgado-Parker's loss of his station in 1999, and the February seizure of Radio 1160's transmitters and sound equipment restricted press freedom and encouraged journalists and media owners to practice self-censorship.

The limitations on press freedom were particularly evident during the election campaign season that dominated the first half of the year, when broadcast television tilted heavily in favor of the Government and against the opposition in its news coverage and public affairs programming. On March 8, a month before the first round of voting, the OAS Special Rapporteur for Freedom of Expression, Santiago Canton, noted his concern and that of the IACHR over freedom of expression in the electoral process. On June 4, shortly after the final round of elections, the IACHR issued a statement describing the violations of freedom of expression. It specifically noted government pressure on the media to suppress coverage of and sale of airtime to opposition candidates, and government financing of progovernment tabloid papers that harassed opposition candidates and supporters.

The Government agreed to address freedom of the press issues as part of the OAS democracy talks, and in August the OAS dialog, established a working group to resolve former television owner Baruch Ivcher's Peruvian nationality, revoked by executive order in 1997, and to examine ways to resolve disputed ownership claims over Channel 2 and Channel 13. In October the Government agreed to restore Ivcher's citizenship and did so in December (see Section 2.d.). In early December, Ivcher returned to the country and regained control of Channel 2. Several days later, Delgado-Parker regained control of Channel 13. By year's end both stations were providing independent political reporting and analysis.

Journalists and media outlets also have been intimidated physically. According to the National Journalists Association (ANP), there were many cases of media harassment by the National Police and the military, and by local political and commercial organizations. The ANP reported 104 cases of journalist harassment through August, of which 61 percent were in the provinces and two-thirds involved violence.

The CPJ reported that in April an unidentified person fired shots at journalist Hernan Carrion, who directs a daily news program in Chimbote. Carrion requested protection from the provincial authorities, but continued to receive threatening phone calls following his continued criticism of the Government on his program. At the same time, the Government told the owner of the radio station that broadcasts Carrion's program to resubmit tax papers or be charged a substantial fee. The station suspended Carrion's program, asserting that it was for his own protection.

The Fujimori administration and its supporters used libel laws to suppress criticism of political leaders or offices. In August the progovernment newspaper *Expreso* and the director of the National Reserve Bank (who is the executive chairman of *Expreso*) filed a libel suit against Carlos Hildebrandt, the director of opposition newspaper *Liberacion* and an outspoken critic of the Government, and a journalist who wrote an article criticizing the management of *Expreso*. The plaintiffs sought monetary damages amounting to \$1 million, a sum that appeared designed to bankrupt *Liberacion*. The case was pending at year's end. In another August incident, the Government's intellectual property rights administration filed a libel complaint against the majority

owner of a web site specializing in publishing investigative reports critical of the Government on an unrelated matter.

In August the progovernment weekly news magazine Gente filed a libel suit against cable television news channel Canal N; Hugo Guerra, a senior editor of El Comercio (Canal N's parent newspaper); and opposition journalist Gustavo Gorriti for describing Gente as having ties to the intelligence service and the Government. Gente withdrew the lawsuit on September 20, 4 days after President Fujimori's September 16 announcement calling for new elections and the deactivation of the SIN.

The political opposition, press organizations, and rights groups charged that the Government used improper influence over the judiciary to intimidate and harass the press. Government manipulation of the legal system in these cases is difficult to prove, and in some cases, genuine legal disputes may have occasioned the lawsuits against media outlets. Opposition or independent media seem to encounter a disproportionate number of legal difficulties, including prosecution on tax issues, compared to media outlets that are uncritical of or favorable to the government in their coverage. Prominent cases included a March lawsuit filed by minority shareholders against leading daily newspaper El Comercio shortly after the paper exposed a massive signature forgery scheme used to register one of President Fujimori's electoral parties. In the El Comercio case, an investigation was opened despite the fact that the statute of limitations on the alleged crime of fraud had expired. The case was closed in July after stockholders reached an agreement on the matter.

In April a judge ordered the seizure of the printing press used to print opposition newspapers Liberacion and Punto Final as part of a bankruptcy proceeding. In a similar action, a judge ordered the seizure of bank accounts and real estate belonging to Editora Correo, a company that publishes a chain of independent papers in the provinces and whose shareholders also have a financial interest in a leading Lima tabloid newspaper Ojo. For several months thereafter, Ojo cut back substantially on its previously independent political coverage and later stopped publishing editorials.

Journalists continued to be intimidated by potential criminal prosecution when the Government leaves charges against them pending. By year's end, prosecutors had not closed their case for falsification of official documents against Guillermo Gonzalez, director of the NGO Prensa Libre, who broke a 1999 story on government wiretapping of opposition political candidates. In May the IACHR issued a recommendation that charges against him be dismissed for lack of evidence.

Throughout the electoral process, a number of tabloid newspapers made character assaults on opposition candidates in what appeared to be a coordinated campaign to tarnish President Fujimori's political opponents and critical members of the press. Intelligence agents allegedly orchestrated this campaign. The six tabloids that carried such attacks had almost identical headlines and text, and similar text also appeared on the Internet.

Suspicious infrastructure problems also seemed to plague opposition or independent media outlets during the election campaign and immediately thereafter, and some suggested that it was a form of harassment against the press. In one incident in February, an electrical failure prevented Radio Miraflores, a Lima opposition radio station, from reporting on a provincial tour by opposition candidate Luis Castaneda Lossio. In May a similar electrical outage prevented Canal N from broadcasting a rally for opposition presidential candidate Alejandro Toledo. At the height of the campaign period, from March to May, the Institute for Press and Society, an organization advocating press freedom, suffered systematic attacks on its e-mail system.

In July the Government limited a cable news channel's helicopter's access to the downtown Lima area by banning all civilian aircraft from flying below 9000 feet over the city. This occurred only days before a large-scale protest against President Fujimori's inauguration ceremony was to take place. Critics assert that this prohibited the media from monitoring the protests. CPJ noted that in September the Government prohibited flights over downtown Lima, which according to the Committee to Protect Journalists was a measure promulgated to prevent news agencies from providing aerial news coverage of protests after a scandal involving former de facto SIN head Vladimiro Montesinos became public. The Government stated that the flight restrictions were necessary for public security during the inauguration and protests.

In May Fabian Salazar, a former Channel 2 employee and associate of Baruch Ivcher, and a collaborator for opposition newspaper La Republica, alleged that agents from the SIN broke into his office and tortured him by sawing his wrist to bone (see Section 1.c.). This occurred after he had received a videotape that he claimed compromised high government officials. A full investigation into the matter never was conducted.

The Government does not censor books or publications, films, plays, or limit access to the Internet.

The Government respects academic freedom.

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; however, police used force to disrupt protests during the year, injuring several protesters. The law does not require a permit for a public demonstration; however, organizers must inform the political authority (Prefecto) about the kind of demonstration and its location. Permission may be denied only for reasons of public safety or health. Municipal authorities usually granted permission for demonstrations.

Major demonstrations and political rallies were common throughout the year. Most were peaceful; however, in some cases, police and demonstrators clashed. In those instances, police usually use water cannons and tear gas to disperse the demonstrators. In February over 3,000 labor union, student, and opposition political party representatives protested unfair election conditions. When several protesters carrying sticks and throwing rocks confronted police, police used a powerful water cannon and tear gas to disperse the marchers. The police briefly detained a number of protesters who were throwing rocks and attempting to destroy private property.

On April 9, election day, nearly 100,000 persons gathered in Lima to celebrate the fact that President Fujimori had not won an absolute majority in elections. The event continued into the early morning of April 10, when protesters, led by Peru Posible leader and presidential candidate Alejandro Toledo, marched on the presidential palace. Police dispersed them with tear gas. Clashes between protesters and police were reported throughout the major cities. Some protesters sustained minor injuries.

During the period between April 9 and May 28, when second round presidential elections were held, Toledo led rallies and protests around the country. In mid-April a large protest in central Lima resulted in significant damage to the National Board of Elections (JNE) office building from rocks thrown by protesters, who were believed to be members of the Civil Construction Union. Several injuries were reported.

On July 26-28, approximately 100,000 persons gathered in Lima from all parts of the country to protest the inauguration of President Fujimori. On July 26 and July 27, these demonstrations were peaceful, with no confrontations. However, on July 28, the protests became violent. Small groups of protesters clashed with police at different points of a security perimeter formed to protect politicians and visiting dignitaries attending the inauguration. Unidentified individuals set fire to the National Bank building and the Justice Ministry and caused hundreds of thousands of dollars in damage during a day of confrontations that left six bank security guards dead from a fire. Police used tear gas and water cannons, and charged several persons with arson. The authorities also charged protest organizers for damage. Protest organizers alleged that government agents infiltrated the protests and set the fires. Police officials alleged that extremist groups used the protest as a pretense to provoke violence. Human rights groups allege that police prohibited human rights observers from entering the area of the violent protests to document the events, and that police used excessive force to control demonstrators (see Section 1.c.). The police maintained that they acted in order to ensure the safety of those attending the inauguration.

The Human Rights Ombudsman continued to promote dialog between protest groups and police on basic rules of conduct. Monitors from the Ombudsman's office served as official observers to ensure adherence to these rules by police and protesters alike. The Ombudsman's office reported that these measures reduce significantly tensions and the level of arbitrary arrests, while diminishing the risk of damage to public and private property. According to the Ombudsman, with some exceptions, groups were able to express their opinions publicly, while the National Police generally maintained order in a lawful manner.

The Human Rights Ombudsman worked with groups of protesters to inform authorities of their activities and work out rules of conduct prior to the protests against President Fujimori's inauguration in July. However, during large-scale demonstrations on July 28, the authorities and demonstration organizers failed to agree on ways to reduce the likelihood of confrontations and violence.

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 right in practice; however, the Catholic Church receives preferential treatment from the State. Although the Constitution establishes the separation of church and state, it also acknowledges the Catholic Church as "an important element in the historical, cultural, and moral development" of the nation. The preferential status accorded to

Roman Catholicism in public life is apparent in the special treatment and tangible benefits the Church receives from the State, including remuneration to certain clergy and church personnel, and tax exemptions on clergy salaries and real estate holdings. Teaching about Roman Catholicism in primary and secondary schools is mandatory. Conversion to other religions is permitted, and missionaries are allowed to enter the country and proselytize. By law, the military may hire only Catholic clergy as chaplains and Catholicism is the only recognized religion of military personnel.

In April 1998, the President issued an executive order that established basic Catholic religion courses for all public and private primary school students. Religion teachers must be approved by the bishop presiding over the local diocese. Most schools devoted 1 hour a week to such study. Parents who do not wish their children to participate in the prescribed religion classes must 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 usually free to organize such classes during the weekly hour allotted by the school for religious education, but must supply their own teacher. The Freedom of Conscience Institute (PROLIBCO), an NGO that favors the strict separation of church and state and opposes the preferential treatment accorded to the Catholic religion, opposes the requirement for Catholic teaching in the school curriculum and claims that the alternatives made available to non-Catholic parents violate the constitutional protection of the privacy and confidentiality of persons' convictions and beliefs.

PROLIBCO and other religious groups legal had challenged the mandatory teaching of Roman Catholicism, but in October the Supreme Court dismissed their claim. PROLIBCO maintains that the ruling was issued in an irregular manner and without prior notice to its lawyers. PROLIBCO claims that the financial subsidies and tax benefits that the Government provides to the Catholic Church and its clergy are far more widespread and lucrative than publicly acknowledged. PROLIBCO also has alleged discrimination against non-Catholic groups who must pay import duties and a sales tax on Bibles brought into the country. At year's end, PROBLICO was preparing to take its case to the IACHR.

Sendero Luminoso rejects religion and in the past has threatened and intimidated religious workers.

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

The Constitution provides for the right of free movement; however, passengers on public transportation and drivers in private vehicles may be checked at control points throughout the country. Until February the Government suspended the right of free movement in emergency zones, which had covered approximately 5 percent of the country in 1999, and travelers, including human rights monitors, could be prohibited from traveling to those areas. The Government eliminated all emergency zones in February.

There are no political or legal constraints on foreign travel or emigration; however, the authorities legally 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, according to the Nationality 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." Critics believe it was the Nationality Law that provided the Government with the legal basis for its 1997 invalidation of the citizenship through naturalization of Israeli-born television owner Baruch Ivcher. However, the Government claimed that its decision was based upon irregularities in Ivcher's original naturalization petition 13 years earlier. In October the Government agreed to restore Ivcher's citizenship and subsequently did so (see Section 2.a.).

Sendero Luminoso occasionally interrupts the free movement of persons by setting up roadblocks in sections of the Upper Huallaga Valley.

Political violence in the 1980's and early 1990's resulted in the internal displacement of hundreds of thousands of persons from their original homes, and massive migration. Most families migrated to Lima or to one of several other department capitals. This movement created problems which, for the most part, remain unresolved despite continued efforts by the Government and NGO's to address them.

According to the Ministry for the Promotion of Women and Human Development (PROMUDEH), since 1995 the Program for the Repopulation and Development of Emergency Zones (PAR) has supported the return of between 450,000 and 600,000 displaced persons. The PAR has assisted thousands of these persons to returned to their homes; however, the PAR and NGO's agree that the majority of displaced persons have not returned permanently to their original communities due to various factors, including economic changes and

social ties.

Despite governments and NGO efforts, many displaced persons lack basic documentation, such as birth certificates and voter registration cards. The Government established a PAR office to provide documentation that can be used both to request PAR assistance to return to one's community of origin and to apply for a national identity card. In 1999 the Government conducted a national registration drive to provide displaced persons with identity documents, which are required for a variety of social and other government services, and to register them to vote in the April national elections. According to NGO's and election monitors, this program was successful in reaching millions of voters across the country.

Another unresolved problem related to the displaced persons are pending arrests warrants against approximately 5,000 such persons, who fall into the category of "requisitorados"--persons who were forced to join terrorist groups and who were accused falsely of voluntarily joining such groups and continue to have outstanding detention orders against them. Judges from the special Terrorism Court traveled from Lima and dismissed 300 such warrants during the year (see Section 1.d.). The pending legal status of such persons, along with the fact that the majority of these individuals speak only Quechua, increases their vulnerability and reduces even further their capacity for economic and social integration into urban areas.

Sendero Luminoso continued to coerce indigenous people to join its ranks during the year, which resulted in further internal displacement. There is also a large population of indigenous Ashaninkas who have faced not only a terrorist threat, but also the encroachment of oil exploration companies on their tribal lands (see Section 5).

The law includes provision for granting refugee and asylee status in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates with the U.N. 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 citizens who fear persecution at home and seek asylum abroad. The Government recognized 24 persons as new refugees during the year. There were approximately 756 refugees in the country. Refugees are allowed to live and work without restrictions and can apply for naturalization. The status of refugees is reviewed annually. The question of first asylum did not arise.

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; however, serious problems in the process of elections held in April and May, including questions about President Fujimori's constitutional eligibility to be a candidate, the registration of candidates, allocation of Government resources to influence voters, and intimidation of the opposition, led domestic and international observers to call attention to the flawed nature of the process and to question the validity of election results and the state of democracy in the country. In September President Fujimori announced that he would exercise his constitutional power to convoke new national elections, to be held in April 2001, and in which he would not be a candidate. In November Congress removed President Fujimori for "moral incapacity," and President of Congress Valentin Paniagua succeeded to the presidency. Voting is by secret ballot and mandatory for all citizens between the ages of 18 and 70. Members of the armed forces and the police, as well as felons, are ineligible to vote. The law bars groups that advocate the violent overthrow of the Government from participating in the political process.

The Constitution establishes three bodies to administer elections: the National Board of Elections (JNE); the National Office of Electoral Processes (ONPE); and the National Registry of Identification and Civil Affairs (RENIEC). The JNE sets the legal parameters and rules on election-related disputes and challenges. ONPE administers elections and the RENIEC issues election identity documents. Many complaints about the elections centered around the executive branch's dominance of the JNE and ONPE, and their inability to administer elections in an unbiased manner. In October and November, Congress passed legislation that allowed the Government to appoint new leadership for these institutions. By year's end, ONPE had a new director who had replaced over 100 of the organization's 180 permanent employees; 4 of 5 magistrates of the JNE also were replaced. In December Congress approved the creation of multiple district representation for electing members to Congress, which was designed to provide more specific geographic representation.

The Constitution stipulates that the President can be elected to a term of 5 years and may be reelected for one additional successive term. On December 27, 1999, President Fujimori announced his candidacy for a third term, on the grounds that he had completed only one full term under the 1993 Constitution. On December 31, 1999, the JNE dismissed 18 objections filed by opposition groups, political parties, and other civic groups who

argued that a third term would be unconstitutional; the JNE claimed that it rendered its decision on technical grounds. The Human Rights Ombudsman subsequently stated that the JNE's decision did not correspond to constitutional law, but that because the Constitution vested the JNE with the final decision on electoral matters, citizens had to respect the JNE's decision.

The undermining of the Constitutional Tribunal by congressional action in 1997 (see Section 1.e.) set the stage for Fujimori's ability to seek a third term. Constitutional challenges to Fujimori's candidacy for a third successive term rested largely on a series of controversial actions taken by the executive-dominated Congress. In 1996 Congress passed the Law of Authentic Interpretation, which declared President Fujimori's 1995 victory as his first under the 1993 Constitution. In 1997 opponents of the law challenged its constitutionality, but the Constitutional Tribunal was unable to obtain the six of seven votes needed to overturn the law. Congress subsequently voted to remove three members of the Tribunal who had announced their nonbinding opinion that the law could not apply to Fujimori, leaving the Tribunal effectively unable to rule on any constitutional issues for lack of quorum.

In the April 9 elections, in accordance with the 1997 election law, 10 registered political parties presented 120-candidate slates for Congress, and 9 parties presented presidential candidates; the Peru 2000 alliance presented President Fujimori as a candidate. Local NGO's, the Human Rights Ombudsman, and international groups monitored the electoral campaign and the first round of elections. These groups enjoyed access to electoral institutions and government officials. However, there were attacks in progovernment media against some of these groups at various points in the campaign (see Section 2.a.). At the Government's invitation, the OAS sent observers for the April 9 elections. OAS observers also worked with local electoral institutions in preparations for the second round runoff, but none of the observer groups fielded monitors for the May 28 runoff elections because of the Government's unwillingness to postpone the election date so that vote tabulation software could be tested.

International and domestic observers viewed the general elections on April 9 and presidential runoff elections on May 28 as significantly flawed. Conditions for free and fair elections fell short of international standards. Several factors created a seriously flawed electoral process: disagreement over the legitimacy of President Fujimori's candidacy for a third consecutive term; complaints by opposition candidates of unfair campaign conditions that favored progovernment candidates; lack of public confidence in electoral institutions; and lack of transparency in vote tabulation and reporting. Although the Government took steps to improve the electoral environment, they were insufficient to ensure a level playing field.

Preelection conditions heavily favored government candidates. Several groups of electoral observers reported that government resources were used to the benefit Fujimori's candidacy and others in his coalition. There were credible reports that military and police personnel worked on behalf of the progovernment candidates. The NGO Transparencia filed 170 formal complaints regarding use of government resources; the Public Ministry dismissed all but 2 of the complaints. In one case, prosecutors dismissed a complaint that employees of a public welfare and nutrition service distributed progovernment campaign literature. In another, the national tax authority conducted a surprise audit of one of the opposition candidate's businesses.

The JNE refused to investigate opposition complaints in many of these cases, stating that it did not have the resources or mandate to investigate. When the JNE or the Public Ministry did investigate, charges frequently were dismissed for lack of evidence. Only after repeated complaints from electoral observers did the JNE pledge to investigate use of government land for progovernment party paintings and signs. The President also issued a nationwide executive order against use of government resources. However, these measures were adopted too late in the campaign to overcome a widespread impression of preferential treatment enjoyed by the Peru 2000 alliance.

The preelectoral period also lacked impartiality and effectiveness in the administration in some significant areas. In late February, the newspaper *El Comercio* reported that a member party of the President Fujimori's Peru 2000 alliance had falsified over 1 million voter signatures in its registration drive. Accounts by 4 participants in the scheme detailed a large operation in which over 400 persons participated. The group allegedly worked for 1 month in a building behind the offices of progovernment legislator Oscar Medelius. Others accused of involvement included Peru 2000 official Luis Navarrete and Peru 2000 Secretary General Daniel Chuan. ONPE, the JNE, and the Attorney General pledged to investigate the allegations. ONPE concluded that the JNE had jurisdiction, and in March ONPE sent the JNE its report, along with the forged documents in question. In April the JNE deferred to the special prosecutor appointed to investigate the case. The JNE also ruled that Congress would have jurisdiction over legislators-elect with alleged links to the scandal. In July Congress absolved the legislators linked to the forgery scandal.

In June the prosecutor filed charges against the witnesses who had exposed evidence implicating government employees, and who had themselves participated in the falsified signatures scheme. In September a judge dismissed charges against the informers, while the National Council of Magistrates opened an investigation

against ONPE director Jose Portillo for allegedly investigating the case improperly. In October a judge ruled that no crime had been committed because official documents had not been falsified. However, the CNM removed Portillo from office.

Opposition candidates did not receive equal access to broadcast television station news coverage, and the progovernment tabloid press conducted smear campaigns against them (see Section 2.a.). The JNE claimed that it could not intervene because media laws did not give it authority to dictate programming on privately owned television stations. Formal complaints by candidates to the JNE often were dismissed for lack of evidence. Beginning in late March, broadcast television stations provided broadcast time to opposition candidates, but these spots were usually not aired during peak viewing hours. Though the opening reflected a government response to electoral observer criticism, the measure came too late to reverse the ill effects that opposition candidates had suffered from earlier lack of media access. Throughout the campaign, broadcast television coverage favored President Fujimori.

The April 9 elections were largely peaceful, and millions of citizens participated as voters, election workers, political party observers, and election monitors. Over 31,000 volunteers affiliated with local NGO's worked as poll monitors. International monitors found no specific instances of fraud during the polling.

However, there were widespread irregularities in the voting and vote tabulation processes. Observers cited illegal propaganda in or around polling areas as the most common irregularity. They also reported irregularities in voting materials, such as premarked ballots and some missing the name of the leading opposition candidate as a choice. Observers reported several instances of attempted intimidation of political party observers by police and military officials demanding their names and identification documents. Several hundred voting sites reported that more ballots were cast than the number of voters who had signed in. (Under the electoral law, the authorities count the extra votes unless the number of ballots exceeds the number of registered voters at that site.)

Several problems marred the vote tabulation and computation. Several vote tabulation centers did not open until late in the day. There were problems with the computer systems used to count the vote, and ONPE was unable to conduct a successful simulation of its data collection and tabulation process until shortly before polls closed. Although observers and party monitors were allowed to watch the computation at ONPE and regional collection centers, the systems used did not allow for independent verification of the results.

ONPE presented only partial results of the presidential returns on April 9, and an inexplicable delay in the computation created widespread allegations that politicians or others influenced the count. Election day exit polls and quick counts by the NGO Transparencia and polling firms showed that no candidate had won over 50 percent of the vote and that a runoff would be necessary. Electoral authorities released additional election results on April 12, and announced that it was "mathematically impossible" for any of the candidates to have won the first round. The next day officials confirmed definitively that there would be a second round. Final official results of the first round presidential elections were declared on April 28. Electoral monitors concluded that the vote tabulation and announcement process lacked transparency and created a lack of confidence in the official results.

After the announcement that no presidential candidate had won in the first round, the Government negotiated with second place candidate Alejandro Toledo and the OAS regarding measures to improve electoral conditions. Several working groups formed by the Human Rights Ombudsman, ONPE, the OAS, and the political parties worked to address access to the media and media coverage, reform of ONPE's vote tabulation computer programs, and training of electoral personnel. While these groups made significant progress, the OAS sought postponement of the second round election to test ONPE's voting data computer programs.

Toledo withdrew from the race 10 days before the May 28 runoff, citing unfair electoral conditions and the Government's refusal to postpone the elections at the OAS's request. However, the JNE rejected his petition to remove his name from the ballot, and Toledo urged his supporters to purposely spoil their ballots in protest. On May 28, according to ONPE's unverifiable results, President Fujimori won 51 percent of the popular vote. Toledo won 17.68 percent of the votes and 29.93 percent were spoiled ballots of null. Observers, with the exception of one group, refused to monitor the vote, and Toledo and other opposition groups charged that the results were fraudulent.

Definitive results from congressional elections were not released until May 12, which also raised questions about the validity of those results. The JNE ratified the congressional results the same day, despite a number of pending challenges, including some claiming fraud. On April 12, initial returns had indicated that no party had won a controlling majority; however, in subsequent result announcements, there were significant changes in the results that favored progovernment candidates. There were, moreover, many changes of party affiliation that drew many representatives elected from opposition party lists to the progovernment coalition in Congress.

By the time the new Congress was sworn in on July 24, nearly a dozen legislators elected on opposition slates had changed parties to join the Peru 2000 alliance, which gave it a majority in the 120-seat unicameral Congress. There were widespread allegations of bribery, blackmail, and other illegal and questionable practices; however not all party affiliation changes were necessarily the result of illegal actions. For example, the promise of a position as committee chair or the potential of being able to help a regional constituency was a factor cited by some who changed party affiliation. However, circumstantial evidence suggests that questionable practices were used in a number of instances. Luis Caceres Velasquez was declared ineligible for Congress due to a previous felony conviction. After he declared his intent to change from an opposition to the government party, the Supreme Court overturned the conviction and the JNE gave him back his seat. Edilberto Canales, implicated in a vote buying scandal, changed alliances and his legal problems were settled. Jorge Polack, who complained that he had been harassed by criminal legal proceedings because of antigovernment views broadcast on his radio station, had charges against him dropped after he changed his membership to the ruling party.

There were also widely reported irregularities in ONPE's tabulation of preferential votes for individual Congressional candidates. Several parties alleged that ONPE employees had been bribed to alter voting results. The Attorney General appointed a special prosecutor to investigate these allegations. In June JNE officials declared that Congress would be responsible for investigating newly elected legislators who allegedly benefited from manipulated results. On July 6, Congress approved a report that found 31 ONPE data entry officials, several regional ONPE center managers, and ONPE's information chief responsible for altering voting returns. The report concluded that five legislators representing government and official parties who benefited from the altered vote bore no responsibility. A television news program reported that of the 30 congressional candidates who benefited from alteration of the individual preferential vote count, 10 eventually were elected. By year's end, none of these elected legislators had been investigated for violating election laws.

In June the OAS General Assembly discussed the country's elections. OAS election monitoring mission head Eduardo Stein reported that the elections had been carried out in accordance with international standards. The OAS foreign ministers concluded that "the credibility of both the process and the outcome of those elections has been undermined by persisting reports of irregularities" and agreed to send OAS Secretary General Cesar Gaviria and Canadian Foreign Minister Lloyd Axworthy to Peru to establish a dialog on reforming the country's democratic institutions.

The OAS mission met with government officials, members of the opposition, and civil society representatives in late June and developed 29 recommendations grouped in 5 categories: (1) ensuring judicial independence; (2) freedom of expression and the media; (3) electoral reforms; (4) supervision and balance of powers among the executive branch and congress; and (5) measures to strengthen congressional oversight, reforms to the intelligence and military services. Although opposition and some civil society groups continued to call for new elections, the OAS delegation noted that the OAS General Assembly mandate explicitly precluded discussion of new elections. However, delegates of the OAS added that local figures were not precluded from continuing to advance new elections.

The OAS dialog began in August. At the opposition's insistence, the Government agreed to form four working groups to address priority issues including the return to the Inter-American Court of Human Rights, the reestablishment of the Constitutional Tribunal, the resolution of Baruch Ivcher's nationality and ownership of television stations 2 and 13 (see Sections 1.d. and 2.a.), and the reorganization of the intelligence services.

In September Moral Independence Front party leader Fernando Olivera presented a videotape showing opposition legislator-elect Alberto Kouri taking a \$15,000 payment from then-de facto intelligence service chief Vladimiro Montesinos. The video showed Montesinos presenting Kouri with a contract committing him to switch party alliances. Montesinos was recorded remarking that he was aiming for a progovernment majority of at least 70 seats. When asked about the transaction, Kouri claimed that the money was a personal loan. Congress formed a committee to investigate Kouri and suspended him for 120 days. Kouri left the country when he learned of the investigation.

The airing of the tape also apparently influenced President Fujimori to announce on September 16, that there would be new national elections in which he would not be a candidate. He later appointed a special prosecutor to investigate Montesino's role in illegal activities. By year's end, the investigation had expanded to include investigation into his role in money laundering, illegal arms sales, narcotics trafficking, and bribery of public officials. Montesinos fled the country in October in order to avoid prosecution in these matters.

On November 22, President Fujimori sent his resignation to Congress from Japan, where he remained at year's end. Congress refused to accept his resignation and instead voted to remove him from office for "moral incapacity." The President of Congress Valentin Paniagua of the Popular Action Party succeeded to the presidency on November 22. He announced that he would uphold legislation allowing for new presidential and congressional elections in April 2001, and he accelerated the implementation of democratic reforms initiated in

the OAS-sponsored talks.

By November participants in the OAS talks had agreed upon, and Congress had ratified, amendments to the Constitution that would end the term of the President and Congress in July 2001, thereby making new elections possible. The OAS dialog also produced agreement on deactivating the SIN, with provisions for including a civil society member in the executive branch's oversight commission and for creating a bipartisan congressional oversight committee.

The OAS dialog drew to a close after Paniagua assumed the presidency in November. Congress approved and the Paniagua administration continued to implement many of the OAS recommendations. By year's end, the Government made significant legal and electoral reforms (see Section 1.e.).

Legal actions against potential opposition candidates for congressional campaigns removed some of them from eligibility for public office. In 1999 Congress passed a law prohibiting candidacies for certain offices such as president or congress by anyone who had served in high office and had been charged with a crime against the State. In effect this law presumes the guilt of any persons charged but not convicted of a crime and removes the right to compete for office. This law disqualified former Labor Minister Jorge Mufarrech and Representative Beatrice Merino from standing as candidates. Congress annulled the law in October.

Women and some minorities participate actively in government and politics, although they are underrepresented in both fields. From August to November, the president and three vice presidents of Congress were women. In December Congress amended the electoral law to include provisions requiring parties to include at least 30 percent of candidates on their slates to be of each sex; previously the level was 25 percent. At year's end there were 26 women in the 120-seat Congress. One of 15 cabinet ministers and several vice ministers are women, as are 3 of the 36 judges of the Supreme Court, and the Attorney General. In conjunction with the year's election campaign, four women's organizations sought to identify female candidates, promote women's interests, increase the number of female voters, prepare a woman's political agenda, and train women who were elected to office.

Citizens of Asian descent hold numerous leadership positions in government; former President Fujimori is of Japanese descent and one recent president of the Council of Ministers was of Chinese descent.

Several members of Congress have mixed ancestry, and a recent Vice President was a Quechua speaker, as was a recent Minister of Transportation and Communications. However, it is rare for indigenous people, who make up more than one-third of the population, to hold high public offices. The Afro-Peruvian minority, unofficially estimated at 3 to 5 percent of the total population, is not represented in the leadership of any branch of the Government. There are three Afro-Peruvian members of Congress.

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

In general the Government permitted numerous NGO's dedicated to monitoring and advancing human rights to operate freely; however, the authorities at times sought to hinder the operations of human rights monitors, including harassment of members of the National Human Rights Coordinator.

Military commanders often did not grant access to local and international human rights monitors to investigate alleged abuses on military bases. However, by year's end, this policy began to change under the Paniagua administration. In December members of the Human Rights Ombudsman's office were granted access to the naval military prison in Callao for the first time ever.

Government, military, judicial, and police officials, as well as some members of Congress publicly accused NGO's and the IACHR of being overprotective of criminals and terrorists to the detriment of victims. These statements at times created a hostile environment for human rights groups but did not appear to hamper their ability to carry out their work. For much of the year, communication between the human rights community and the military ranged from strained to nonexistent. However, dialog between the NGO human rights community and civilian authorities improved significantly with the opening of the OAS sponsored dialog in August (see Section 3). By year's end, human rights organizations and the Government were represented in a number of the working groups which were examining legal reforms and pursuing the idea of a truth commission to examine past human rights abuses. Human rights community members reported that the Paniagua administration had initiated improvements in government-civil society relations, including the appointment of several former NGO leaders to his cabinet.

Most human rights NGO's are independent, thorough, and generally objective. The National Coordinator for

Human Rights (Coordinadora), established in 1985, provides an umbrella organization for 60 human rights NGO's. The Coordinadora does not politicize its positions on human rights issues, although its constituent members may do so in their own names. A number of other human rights groups associated with the Catholic Church or with government institutions operate on the margins of the Coordinadora.

The Office of the Human Rights Ombudsman, created in 1993, receives funds from the Government and foreign governments and is considered an independent and effective institution for bringing citizens justice. The Ombudsman has investigative independence and the ability to inform the public of his conclusions and recommendations. However, the office has no enforcement mechanism other than moral suasion. Because of its reputation and role in society, the Ombudsman's office was asked to join in the OAS dialog to address the problems of the election and the ongoing process of democratization. The Ombudsman's office issued reports throughout the year on the elections, freedom of the press, the activities of the ad hoc Pardons Commission, the situation of 4,000 unresolved disappearance cases, and an annual report on the overall human rights situation, among others.

The Human Rights Ombudsman has a legal mandate to monitor prison facilities. However, until December, Ombudsman representatives continued to be denied access to the military prison in Callao (see Section 1.c.).

In July the IACHR published a report updating its 1998 fact-finding mission. Although the Government welcomed the Commission's recognition of action it had taken, such as the creation of the Human Rights Ombudsman's office and the abolition of faceless judges, the report concluded that the Fujimori administration continued to reject the Commission's call to return to the Inter-American Court (see Section 1.e.). The IACHR report also noted the existence of impunity, restrictions on the freedom of expression, significant problems regarding the free practice of political freedoms and flawed elections, and the subjugation of the other branches by the executive branch under the Fujimori administration. In addition, the report stated that the significant problems that occurred during the electoral process were the "foreseeable outcome of several years in which the arbitrary will of the Government has prevailed over the law and democratic institutions."

Human Rights Watch and other groups reported on harassment or attacks on human rights workers. Among such attacks were telephonic threats against Jesus Agreda Paredes, who investigated the death of a detainee in police custody, and death threats against members of the Legal Defense Institute. NGO's reported that such harassment and threats dropped significantly after the Paniagua administration took office in November.

In July 1999, the Government announced its decision to withdraw from the contentious jurisdiction of the Inter-American Court of Human Rights after the Court determined that the Government failed to provide due process in the case of four Chileans convicted of treason by a military tribunal. Members of the OAS dialog discussed with the Government terms for its return to the Court beginning in August. By year's end, legislation approving a return to the Court's jurisdiction had been approved by committees and was waiting for a plenary vote, and the Government was preparing to return to the Court's contentious jurisdiction.

At least two human rights organizations reported theft of their documentation during the year. On November 1, burglars stole computers and other documentation that the Human Rights Commission collected regarding human rights violations. On November 4, armed burglars broke into the office of the NGO Peace and Hope in Lima. The burglars held a security guard at gunpoint while they removed information from computers. In both cases burglars did not take valuable items or machines. AI alleged that the burglaries were organized by the SIN, and that their objective was to intimidate the human rights community. Police investigations had not identified those responsible by year's end.

There were no reports of Sendero Luminoso hampering the work of human rights monitors.

#### 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, although progress is being made in a number of areas. In December Congress passed legislation that made racial discrimination a crime.

#### Women

Violence against women, including rape, spousal abuse, and sexual, physical, and mental abuse of women and girls, continued to be a chronic problem. Such abuses are aggravated by insensitivity on the part of law enforcement and judicial authorities toward the female victims of abuse. A 1999 Population Council study

estimated that 80 percent of women surveyed were beaten by their husbands. Human rights organizations believe a large number of domestic violence cases remain unreported. Nationwide in 1998 there were 27,935 complaints of domestic abuse (77 percent for violence and 23 percent for psychological abuse). Although official figures for the number of arrests and convictions in abuse cases are unavailable, NGO sources contend that the vast majority of reported cases do not result in formal charges due to fear of retaliation from the accused spouse, or because of the cost involved in pursuing a complaint. In addition, legal and physical protection is limited by delays in legal processes, ambiguities in the law, and lack of alternative shelter and income for victims.

The 1997 domestic violence law gives judges and prosecutors the authority to prevent the convicted spouse or parent from returning to the family's home. The law also authorizes the victims' relatives and unrelated persons living in the home to file complaints of domestic violence. Whereas previously victims of domestic violence had to have a specialist in legal medicine certify their injuries and had to pay for the report, the new law eliminated the required fee and stipulated that the report may be prepared by any health professional. In March Human Rights Watch called on the Government to improve legislation on domestic violence by eliminating mandatory conciliation sessions between victims and abusers, and by providing law enforcement and social service providers with training to improve their sensitivity to victim's needs.

In March 1999, PROMUDEH created the Women's Emergency Program to call attention to the legal, psychological, and medical problems facing women and children who were victims of violence. The program received approximately 9,000 cases during the year. PROMUDEH continued its public education campaign to sensitize government employees and the public on domestic violence.

According to the Human Rights Ombudsman's office, many women complain that police officers react indifferently to charges of domestic violence, even though the law requires all police stations to receive such complaints. The Ministry of Women's Advancement and Human Development, with NGO assistance, educates police about domestic violence and trains officers in all police stations in processing domestic violence cases. The Ministry also runs over 30 facilities, staffed entirely by women, that bring together in one place representatives of all government institutions--police, prosecutors, counselors, and public welfare agents--to which abused women might have recourse.

According to the Human Rights Ombudsman, many rape victims complain that court-appointed medical examiners inappropriately delved into their past sexual histories. They also accused judges of looking more favorably on rape victims who were virgins prior to the rape and of believing that a woman who was raped must have enticed her attacker.

In 1999 Congress responded to an appeal from the Human Rights Ombudsman and amended the Criminal Code to provide greater protection to victims of sexual violence. The amendments eliminated provisions that had allowed rapists and other sexual predators the opportunity to avoid prosecution if they reached a private settlement with their victims. In addition, the Ombudsman recommended rescinding the provision that specifies that, in cases of sexual abuse of victims over 14 years of age, only victims themselves may file a complaint; in November, the Government rescinded that provision of the law. Many victims are afraid of personally filing a complaint of sexual abuse, particularly in cases where the perpetrators were police officers.

In 1999 the Human Rights Ombudsman published an updated report on sterilization without informed consent of women in public hospitals and family planning clinics, and the Government took action on some of its recommendations during the year (see Section 1.f.). Acting on the Human Rights Ombudsman's findings, clinics implemented procedures to insure that patients are fully apprised of their options and their consequences. There were isolated complaints regarding this problem during the year.

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. Racial and sexual discrimination in employment advertisements or announcements of educational training opportunities is prohibited; however, it continues to occur in practice. In 1998 Congress removed the police rank of health-care professionals in police hospitals and accorded them civilian status only. Since over 80 percent of such professionals are women, the Human Rights Ombudsman challenged the constitutionality of the new law and its implementing regulations, on grounds of discrimination. The Superior Court of Lima ruled against the Ombudsman, who then appealed to the Supreme Court. By year's end, the Supreme Court had determined that the workers were stripped improperly of their police rank but had not made a decision concerning damages. In 1999 the Congress passed legislation protecting pregnant women against arbitrary firing.

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 from the country's pervasive poverty and unemployment. "Mibanco," a program supported by the Government and a consortium of NGO's, represents an effort to improve women's ability to generate income by providing credit to small businesses started by enterprising women. More than 60 percent of its clients are women.

### Children

The Government provides free, compulsory education through secondary school. Education is generally available throughout the country. However, approximately 6 percent of children between the ages of 6 and 12, and 17 percent of adolescents between the ages of 12 and 17, either never have attended school or have abandoned their education. Among children and adolescents who live in poverty or extreme poverty, the corresponding figures are 47.7 percent for children under 5 years old, 51 percent for children ages 5 to 9 years old, and 49.9 percent for children age 10 to 14. School nonattendance is highest in rural and jungle areas and affects girls more than boys. In 1998 Congress amended the Child and Adolescent Code to provide pregnant school-age girls with the right to begin or continue attending school. The law also provided for regional offices to enforce children's rights.

The Children's Bureau of the Ministry of Women's Advancement and Human Development coordinates child and adolescent related government policies and programs. The National Initiative on the Rights of the Child is the largest NGO of its kind and coordinates the work of 27 groups concerned with the problems of children throughout the country

At the grassroots level, 1,010 Children's Rights and Welfare Protection Offices receive and resolve complaints ranging from physical and sexual abuse to child support, abandonment, and undetermined guardianship. Provincial or district governments operate some 55 percent of these offices, while schools, churches, and NGO's run the remaining 45 percent. Law students staff most of the units; only the offices in the wealthiest districts of the country have professionally trained lawyers, psychologists, and social workers. When these offices cannot resolve cases, officials typically refer them to the local prosecutors' offices of the Public Ministry. Settlements adjudicated by these offices are binding legally and have the same force as judgments entered by a court of law.

Violence against children and the sexual abuse of children are serious problems. It is estimated that only 10 to 20 percent of mistreatment and abuse cases are reported, since many persons believe that such problems belong within the family and should be resolved privately. Nonetheless, in Lima alone, at least 400 rapes of minors are reported annually.

According to the 1993 Census, 69.6 percent of children 6 to 17 years old lived in poverty. Of these, roughly half live in rural areas. Of all children and adolescents under 17 years of age, 20 percent live in extreme poverty. In 1996 the infant mortality rate was 43 per 1,000. However, this figure masks wide regional disparities: it is 30 per 1,000 in urban areas, compared with 62 per 1,000 in rural areas. Approximately 26 percent of children under age 5, and 48 percent of children ages 6 to 9, suffered from chronic malnutrition. In those homes where the mother has a low level of education, as many as 50 percent of the children suffer from chronic malnutrition, and 114 per 1,000 die from preventable causes before they reach age 5.

According to a study by the National Institute of Statistics, children who live in poverty are less likely to reach high levels of education. The study indicated that approximately 75 percent of children not living in poverty attend school through the high-school level, whereas, only 43 percent of children living in poverty reach high school. Children living in poverty average only 4.5 years of education, compared to 9.3 years for children living above the poverty line. Only 1.2 percent of children living in extreme poverty attain university-level education, compared with 25.6 percent of children who live above the poverty line.

Street crime committed by children and adolescents, including robbery, physical assault, and vandalism, is often gang-related. According to a 1998 congressional commission study, gangs carry out 75 percent of all acts of vandalism, 29 percent of assaults, and 23 percent of robberies. The majority of these crimes are committed under the influence of drugs and alcohol, and their underlying causes are unemployment, nonattendance at school, and difficult family relationships.

In 1999 the Government repealed a series of measures that had been used to reduce street crime, including prosecuting 16- to 18-year-old criminal gang members in military courts and sentencing those convicted to no less than 25 years in adult prisons.

As many as 1.9 million children work to help support their families. Of this total, some 500,000 children are under the age of 14, while 700,000 are between the ages of 15 and 17 (see Section 6.d.).

Although laws exist that prohibit sexual abuse of minors and police enforce such laws, there continued to be reports that minors work in the sex trade.

#### 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." In 1998 comprehensive legislation established the National Council for the Integration of People with Disabilities and specified the rights, allowances, programs, and services that should be provided for the disabled. The statute prohibits discrimination, mandates that public spaces be barrier-free and that buildings be architecturally accessible, and provides for the appointment of a disability rights specialist in the Human Rights Ombudsman's office. However, in practice the Government devotes little attention and resources to the disabled, and they remain economically and socially marginalized.

The Government does not allocate sufficient funds to make genuine integration of the disabled into the economy possible. According to the National Coordinator of the Association of Disabled People, the Government allocates an annual budget of approximately \$250,000 (1 million soles) to integrate the disabled into the economy. Although the law prohibits discrimination in the workplace, it is vague regarding the source of funds to pay for the human assistance, technological support, and environmental adaptations that often are necessary to enable disabled workers to be productive. As a result, disabled individuals and the private agencies serving them generally must rely on public charity and on funding from international organizations.

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 estimate that the actual number of disabled persons could be as high as 3 million, or 13.8 percent of the population.

It is difficult for many disabled persons to obtain insurance coverage because carriers typically believe that a severe disability necessarily increases a person's vulnerability to accidents and illnesses.

Although construction regulations mandate barrier-free access by persons with physical disabilities to public service buildings, no effort has been made to implement this provision. Nor do accommodations exist, such as accessible polling stations, interpreters for the deaf in government service offices, and Braille or recorded versions of the Constitution, which would facilitate the participation of the disabled in the basic processes of democracy and citizenship. The Government made efforts to make voting easier for disabled persons in the April and May elections, although there were many complaints about inadequate access. In November the Human Rights Ombudsman's office announced a program to facilitate voter education and access for the handicapped for elections scheduled for April 2001.

According to officials of the Institute for Social Security, less than 1 percent of severely disabled citizens actually work. Among those who do, many have been channeled into a restricted number of occupations traditionally assumed to be "suitable" for the disabled, such as telephone switchboard operation and massage, in the case of the blind. Some private companies have initiated programs to hire and train the disabled, and a private foundation provides small loans to the disabled for the purpose of starting their own businesses. Nevertheless, disabled persons faced discrimination by potential employers. For example, the statute governing the policies and procedures of the judicial branch specifically prohibits the blind from serving as judges or prosecutors, a discriminatory provision that the National Judiciary Council has interpreted to apply to all persons with disabilities. In 1998 SEDAPLA, Lima's water utility, dismissed all its blind switchboard operators, ostensibly as part of a nondiscriminatory, across-the-board cost-cutting measure. However, the chief advocate for the disabled in Congress reported that all the blind operators immediately were replaced by younger, sighted recruits. The disabled only recently have begun to organize and demand equal rights and opportunities as a minority.

#### Indigenous People

The Constitution prohibits discrimination based on race and provides for the right of all citizens to speak their native language; however, the large indigenous population still faces pervasive discrimination and social prejudice. Many factors impede the ability of indigenous people to participate in, and facilitate their deliberate exclusion from, decision making directly affecting their lands, culture, traditions, and the allocation of natural resources. According to indigenous rights groups, the provisions in the 1993 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. 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 normally would identify them as full citizens and enable them to play an active part in society.

Persons of indigenous descent who live in the Andean highlands speak Aymara and Quechua, which are recognized as official languages. They are ethnically distinct from the diverse indigenous groups that live on the eastern side of the Andes and in the tropical lowlands adjacent to the Amazon basin. A 1998 regulation stipulating that all school teachers be certified initially caused fears that uncertified indigenous teachers would lose their jobs, and that the continued use of Aymara and Quechua as languages of instruction, as well as the very survival of indigenous cultures, had been put in jeopardy; however, due to the unwillingness of many certified teachers to work in rural areas, uncertified Aymara and Quechua-speaking teachers continue to work.

The native population of the Peruvian Amazon, estimated at between 200,000 and 300,000 persons, faces pervasive discrimination and social prejudice. In accordance with local culture and traditions, most of the native communities have a spiritual relationship with their land, and the concept of land as a marketable commodity is alien to them. Nevertheless, according to the director of the Human Rights Ombudsman's Native Communities Program, the only right still statutorily set aside for this native population with respect to its land is that of "unassignability," which prevents the title to such lands from being reassigned to some nonindigenous tenant by right of tenure. However, the marketing and sale of the lands are no longer prohibited.

Many other factors also contribute 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 limit the access and participation of indigenous people in society.

In many jungle areas, encroachment on native lands comes from a variety of sources, including colonists and coca growers, terrorists, and business interests in search of exploitable natural resources. For example, there are approximately 25 oil exploration fields and numerous gold mining operations on indigenous lands in the Amazon region. The 45,000 Aguaruna and the 5,000 Huambisa people, who inhabit the area near the Peru-Ecuador border are only two of many indigenous groups that complain about intolerable living conditions and inaccessible public services. In the same region, along the Pastaza River, the 4,700 Achuar people live in 36 communities, only 12 of which have title to their land. In addition, the Achuar are fighting an incursion by oil exploration and drilling interests, as well as against a government-sponsored influx of colonists. Title to land does not include mineral or other subsoil rights; this condition leads to conflicts between mining interests and indigenous communities. Such encroachment often can damage the environment and negatively affect the health of the native people. About 20 indigenous groups in the Amazon Basin have requested communal reserves to hunt game, which is allowed under the law, but the Government took no action on this request.

The two principal NGO's that represent the interests of the native population of the Peruvian Amazon are the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSESEP) and the Confederation of Amazonian Nationalities of Peru (CONAP). Both organizations joined the Permanent Conference of Indigenous Peoples, an umbrella body that coordinates the activities of the country's indigenous population. Both AIDSESEP and 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, CONAP believes that mining and other development operations are inevitable and, therefore, wants native communities to share appropriately the benefits of that development. AIDSESEP remains opposed to territorial encroachments by government, commercial, and other interests.

Although indigenous rights advocates protest the low priority assigned by the Government to the socioeconomic condition of indigenous people and the lack of consultation regarding matters affecting their welfare, the Human Rights Ombudsman believes that the Government's attitude has changed. The Government's Indigenous Affairs Commission, formed in November 1998, is working to fulfill its mandate to coordinate all available state services to meet the needs of indigenous people better. The Commission, which is chaired by the Ministry of Women's Advancement and Human Development, has among its members officials from a variety of relevant ministries as well as four representatives of the indigenous peasant population in the highland and coastal areas and the native population of the Amazon jungle. In 1999 Congress created an Indigenous Affairs Committee; however, the Committee was largely inactive during the year.

Sendero Luminoso continued to be a leading violator of the rights of indigenous people. Isolated primarily along the Ene River in Junin department, Sendero Luminoso continued to coerce indigenous Ashaninkas to join its ranks, which resulted in further internal displacement in this region.

#### National/Racial/Ethnic Minorities

In December Congress passed legislation that made racial discrimination a crime. The minority population includes several racial minorities, the largest of which are persons of Asian and African descent. Afro-

Peruvians, who tend to be concentrated along the coast, often face discrimination and social prejudice, and they are among the poorest groups in the country.

Afro-Peruvians generally do not hold leadership positions in government, business, or the military; however there are three Afro-Peruvian members of Congress. Both the navy and the air force are widely believed to follow unstated policies that exclude blacks from the officer corps. The law prohibits employment advertisements in the newspapers from specifying the race of the candidates sought, but employers often find discreet ways to relegate blacks to low-paying service jobs. The law prohibits various forms of discrimination by retail establishments against prospective customers. However, the law has not deterred significantly discriminatory practices. In one reported case, a foreign diplomat and his family were denied membership to a prestigious Lima social club because of race.

According to two organizations specializing in the rights of persons of African descent, police continue to detain persons of African descent on suspicion of having committed crimes, on the basis of their skin color. Similarly, police rarely act on complaints of crimes against Afro-Peruvians. Afro-Peruvians are portrayed unflatteringly by the entertainment industry as individuals of questionable character.

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

## Section 6 Worker Rights

### a. The Right of Association

The Constitution and the law provide for the right of association; however, worker rights advocates claim that the laws are overly restrictive. About 5 percent of the total work force of 8.5 million belong to organized labor unions. More than half of all workers participate 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, groups including the International Confederation of Free Trade Unions (ICFTU) assert that laws promulgated by the Fujimori administration in 1992, as well as provisions included in the 1993 Constitution, fail to protect the rights of workers to form unions. Labor rights advocates claim that many workers are reluctant to organize due to fear of dismissal.

The International Labor Organization (ILO) indicated that several aspects of the labor law are not consistent with the international standard of freedom of association. The ILO specifically criticized a provision that permits businesses to employ youth workers between the ages of 16 to 25 as up to 30 percent of the workforce; workers in this age bracket are precluded from union membership and participation. The ILO requested modifications to the laws that regulate the right to strike, including a requirement that a majority of workers in an enterprise, regardless of union membership, must vote in favor of any strike.

Unions represent a cross section of political opinion. Although some unions traditionally have been associated with political groups, the law prohibits unions from engaging in explicitly political, religious, or profit-making activities. The several union leaders who ran for Congress in the April elections all did so in their own names, without official union sponsorship. Nevertheless, some union activists who run for public office receive unofficial backing from their unions.

The main union confederations have criticized the Employment Promotion Act, amended in 1995 and 1996, for restricting the rights of workers, including the freedom of association. Unions also complain that the law eliminates the right of dismissed workers to compulsory reinstatement if they prove that employers dismissed them unjustly. In practice, the legislation allows companies to offer financial compensation instead of reinstatement. Although the law prohibits companies from firing workers solely for their involvement in union activities, this provision has not been rigidly enforced. In practice, the legislation continued to have a negative impact on the right of association by making it easier for companies to fire workers involved in union activities. There is no legal protection against employer interference in trade unions.

The Peruvian General Workers' Union (CGTP) and other labor groups held several general strikes throughout the country during the year. According to press accounts, one strike in August drew support from civil service workers, health providers, and construction workers, as well as support from a broad range of religious and social organizations and opposition politicians. In September a work stoppage culminated in protest marches around the country, including a large gathering of up to 20,000 persons in downtown Lima. The Government

took no actions to prevent the strikes or reprimand participants.

On July 25, unknown persons broke into the headquarters of the United Worker's Center (CUT) and stole printed material and other items just before the Four Quarters March. The ICFTU noted that the police refused to register the CUT's complaint or begin an investigation. Moreover, the ICFTU asserted that police officers attempted to infiltrate union and other demonstrators who were planning the march.

Confrontations in Lima between union-affiliated protesters and police occurred in several different instances. In some cases these confrontations were reportedly provoked by protesters who burned tires, threw rocks, and tried to destroy public and private property. Police action resulted in injuries in several cases.

In August medical workers undertook a 2-day strike to protest low wages and working conditions. In November the Paniagua administration met with labor leaders in the health care sector to try to resolve wages and benefit related complaints. The Paniagua administration leaders also met with union leaders from the education sector to discuss their long standing grievances.

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 ICFTU, the international trade secretariats, and regional bodies.

#### b. The Right to Organize and Bargain Collectively

The Constitution recognizes the right of public and private sector workers to organize and bargain collectively; however, it specifies that this right must be exercised in harmony with broader social objectives. Labor regulations provide that workers may form unions on the basis of their occupation, employer affiliation, or geographic territory. The regulations prohibit probationary, apprentice, and management employees from union membership. The law does not prohibit temporary employees from joining a union, but they cannot join the same union as permanent workers.

According to the regulations, union officials must be active members of their union, but the number of individuals each union may designate as "official" is limited, as is the amount of time they may devote to union business on company time. The Labor Code requires employers to reinstate workers or compensate financially those whom companies have fired. It is illegal to fire workers for union activities, though reports from labor activists indicate that this is a common practice.

To become an official collective bargaining representative, a union must represent at least 20 workers. 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.

Proposals for a strike require secret ballot approval of a majority of all workers in a company, whether union members or not; labor activists find the requirement to be onerous. A second vote must be taken, if petitioned by at least 20 percent of the workers. However, labor rights advocates complain that many workers are reluctant to participate even in secret ballots, due to fear of employer retaliation, particularly since a full list of workers who attend meetings in which such ballots are taken must be submitted to management. Strikes can only be called in defense of labor rights. Unions that employ workers in public services deemed essential by the Government are further restricted from striking.

In November the ILO's Committee of Freedom of Association issued a report in response to allegations of antiunion discrimination. It recommended that the Government enact and enforce legislation protecting workers from dismissal on account of membership in a union or participation in union activities.

The labor movement criticizes the amended Employment Promotion Law, which it asserts makes it easier for employers to dismiss employees and thereby to impede the right of workers to bargain collectively. There are no legal restrictions that prevent unions from negotiating for higher levels of worker protection than the baseline standards provided for by law.

Labor regulations 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 that they give their employees at least 15 days' notice of such changes. However, worker 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.

In December the Paniagua administration established a national labor council to promote dialog among business, labor, government, and international organizations. The dialog focused on discussing reforms to legal provisions regarding dismissal policies and collective bargaining rights.

Although a conciliation and arbitration system exists to resolve management and labor disputes, union officials complain that their proportionate share of the costs of arbitration often exceeds their resources. In addition, union officials claim that, as the law prohibits temporary workers from participating in the same union as permanent workers, companies have resorted to hiring workers on temporary, personal services contracts to prevent increases in the number of union members. Although the law restricts the number of temporary workers hired to 20 percent of a company's work force, worker rights advocates allege that this quota rarely is respected. Employers deny that they are biased against unions, and argue 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 law 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. As a result, workers in such zones have difficulty in unionizing, although worker rights advocates admit 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, and there were no reports of forced labor during the year. The law specifically prohibits forced or bonded labor by children. Forced labor previously was found in the gold mining industry in the Madre de Dios area; however, the changing nature of the industry and government efforts to regulate it seem to have addressed the problem. During the year, the Ministry of Energy and Mines reported that the number of registered dredging companies fell, while informal operations continued. NGO sources and the ILO reported in 1999 that mechanization largely has replaced manual labor, and the Ministry of Labor inspection programs helped deter illegal child labor in this industry. According to the ILO, PROMUDEH, and the Ministry of Labor, there were no reports of forced child labor.

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

The Child and Adolescent Code of 1992 governs child and adolescent labor practices. The legal minimum age for employment is 14. However, children between the ages of 12 and 14 may work in certain jobs to help support their families if they obtain special permission from the Ministry of Labor and certify that they also are attending school. In certain sectors of the economy, higher minimums are in force: age 14 in agricultural work; age 15 in industrial, commercial, or mining work; and age 16 in the fishing industry. Certain types of employment are prohibited, such as work underground; work that involves the lifting and carrying of heavy weights; work where the child or adolescent is responsible for the safety of others; night work; or any work that jeopardizes the health of children and adolescents, puts at risk their physical, mental, and emotional development, or prevents their regular attendance at school. The ILO and NGO's report that child labor remained a problem nationwide, and especially in the informal sector.

Human and labor rights groups criticized the modification of the Child and Adolescent code, passed in August, that maintained the current minimum age for work at 12 years old (with permission), and argued that it contradicts international guidelines on the minimum age of child workers.

The Constitution provides for compulsory, free education through secondary school. Nevertheless, largely because of widespread poverty, approximately one-third of all school-age children and adolescents work during daytime hours rather than attend classes, and only a few of them attend classes at night.

Many 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. Other children and adolescents work either in formally established enterprises, or as unpaid workers at home, or at times in the sex trade (see Section 5).

Adolescent workers must be authorized to work and must be registered unless they are employed as domestic workers or as unpaid family workers. Adolescents may only work a certain number of hours each day: 4 hours for ages 12 through 14, and 6 hours for ages 15 through 17. Adolescent employment must be remunerated in

accordance with the principle of equal pay for equal work. In practice, the Child and Adolescent Code provisions are violated routinely, especially in the informal sector. Child and adolescent laborers work long hours in the agricultural sector. Many other children are at times reportedly employed in dangerous occupations or in high-risk environments, such as gold mining, garbage collection, loading and unloading produce in markets, and brick making, or work in stone quarries and fireworks factories, among others.

In recent years, government surveys have estimated the number of child and adolescent workers at anywhere from 500,000 to 1.9 million. A 1996 government study found that 8 percent of the work force is between the ages of 6 and 14 (see Section 5). Child and adolescent labor tends to be seasonal, with the highest survey statistics reported during school vacation periods.

There were two allegations of child labor in the informal gold mines of Madre de Dios department in during the year. The authorities investigated the incidents and intervened with the families involved.

The Constitution does not prohibit specifically forced or bonded labor by children, although there are laws which prohibit this practice (see Section 6.c.).

#### 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."

In March the Government raised the statutory minimum wage to \$117 (410 soles) a month, which is not considered sufficient to provide a decent standard of living for a worker and family. That year the Government estimated the poverty line to be about \$45 (157 soles) a month per person. According to some estimates, as much as half the work force earns the minimum wage or below.

The Constitution provides for a 48-hour workweek, a weekly day of rest, and an annual vacation. In addition, it prohibits discrimination in the workplace; however, it continued to be a problem in practice. The labor code provides for a 48 hour work week for women. Labor advocates state that workers have been pressured to work longer hours to avoid dismissal.

While occupational health and safety standards exist, the Government lacks the resources to monitor firms or enforce compliance. Labor advocates continued to argue that the Government dedicated insufficient resources to enforce existing legislation. The Ministry of Labor employs a force of 100 inspectors to carry out unannounced visits throughout the country. When firms are found to be in violation of the law, the Government sanctions them with fines or, in some cases, closure. In cases of industrial accidents, the level of compensation awarded to the injured employee usually is determined by agreement between the employer and the individual involved. The worker does not 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. The Ministry of Labor continued to receive worker complaints and intervened in hundreds of cases.

#### f. Trafficking in Persons

There are no laws that specifically address trafficking in persons. In November 1999, the Government adopted legislation that criminalized alien smuggling, which is defined as promoting, executing, or assisting in the illegal entry or exit of persons from the country. Prostitution is legal, but the law prohibits and sanctions activities of those who would obtain benefits from prostitution, such as pimping. Laws prohibiting kidnaping, sexual abuse of minors, and illegal employment are enforced and could be used to sanction traffickers in persons. Available information suggests that trafficking in persons to, from, within, or through from the country is not a significant problem.

[End.]