

## CURRENT ISSUES IN CRIMINAL JUSTICE

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## INTRODUCTION

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As Mark Findlay notes in his comments "From the Director's Desk", 1993 is indeed a challenging year for the Institute of Criminology. One of the most interesting tasks we have undertaken in the past two years is to revamp our journal and to turn it into a publication at the forefront of criminological research and debate.

This most recent issue certainly goes a long way towards meeting the high standards we have set for ourselves. It contains articles and comments notable not only for their scholarly content but for the breadth and diversity of issues and problems with which they deal. It contains articles and comments not only on strictly local Australian matters but also comments on current issues from both Israel and Peru. Phil Dickie and Paul Wilson offer insights into the ever perplexing problem of defining organised crime. What is of particular interest in their contribution is the way in which theoretical and practical (operational) concerns are combined. Philip Pettit and John Braithwaite introduce readers to one of the most interesting and lively debates in current criminology in their reply to von Hirsch and Ashworth on the heated question of retribution versus republican liberty in the criminal justice system. Each of these articles, in its own way, addresses issues and questions which are likely to be of concern for years to come. The journal looks forward to reader response to these and other topics in the future.

Arie Freiberg also addresses an issue of current theoretical and practical import when he discusses the vexing area of juvenile justice and the sentencing of juvenile offenders. In light of the political role which this area seems increasingly to enjoy, Professor Freiberg's insights could again be at the forefront of criminology and criminal justice debate in Australia.

The Contemporary Comment section is equally topical, carrying a contribution by Gail Reekie and Paul Wilson on Queensland's Goss government's policy decision to further criminalise the area of prostitution. Turning to the international field, Gloria Weisman provides our readers with valuable insights into recent legislative developments in Israel on the domestic violence issue. Craig Everson brings our readers' attention to the current state of play in Peru's "war of terrorism" with his analysis of the "trial" of Abimael Guzman, leader of *Sendero Luminoso*, and of the arrest and imprisonment of Peruvian lawyers involved in the defence of political prisoners.

This volume of *Current Issues in Criminal Justice* is a testament to the diversity and breadth of criminology research in Australia and overseas. It also testifies to the ongoing commitment of the Institute of Criminology to play a leading role in disseminating information and in acting as a forum for the exchange of information and ideas.

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**IN VIOLATION OF INTERNATIONAL LAW TO WHICH PERU IS BOUND:  
THE RAILROAD AND IMPRISONMENT OF ABIMAEI GUZMAN**

The international community should be reacting very strongly to this, because we haven't seen anything like this in decades ... a prisoner exhibited in a cage, a clandestine summary proceeding, the president of the country announcing the sentence before the trial begins. This is clearly just an index of what life is like in Peru today.<sup>1</sup>

**THE COURAGEOUS DEFENDERS OF POLITICAL PRISONERS IN PERU**

Lawyers in Peru are putting their lives on the line to defend revolutionary political prisoners and other women and men accused of terrorism. Members of the Association of Democratic Lawyers (ADL) in Peru have received death threats from right-wing paramilitary groups linked to the government, been detained without trial, become targets of assassination attempts, been sentenced to life imprisonment for "apologising for terrorism" and treason, and tortured and killed in custody.

Dr Alfredo Crespo, the lawyer for Dr Abimael Guzman, the leader of the revolution in Peru, was arrested on his way to work on Monday 11 January 1993 by Peru's counterinsurgency police — the National Anti-Terrorist Directorate (DINCOTE). Crespo was later shown on Peruvian television declaring that he had been detained for persisting in his job as Dr Guzman's lawyer despite incessant government harassment and death threats. Four days after his arrest Crespo was convicted and sentenced to life imprisonment. Three weeks later Peru's highest military court had confirmed the conviction and sentence for treason.

On the same day two other members of the now banned Association of Democratic Lawyers — Jorge Cartegena and Andres Coello were also arrested. Cartegena is the lawyer for Martha Huatay — a founding member of the ADL herself arrested on terrorism charges in October 1992. Five ADL lawyers were detained by the military in early December 1992 in Chiclayo in northern Peru on the charge of "apologising for terrorism" and remain in custody. Six ADL lawyers including Crespo and Cartegena were detained in the DINCOTE shortly after the coup of President Fujimori on 5 April 1992. Their offices and homes were ransacked in a search for evidence of links to "subversives". Nothing was found and they were released after 15 days.

When I was in Peru in late November 1992 I met with a number of lawyers including Crespo and Cartegena. They spoke of the horrible torture being meted out to the revolutionary political prisoners in Peru's prisons. The case of Martha Huatay was illustrative of this new wave of repression in Peru. At her trial it was apparent she had been tortured to the point where she was unable to speak and unaware of her surroundings. The International Red

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<sup>1</sup> Leonard Weinglass, US defence attorney and participant in the Ad Hoc International Lawyers Delegation to Observe the Trial of Abimael Guzman in Lima, Peru, Sept 30-9 Oct 1992.

Cross examined her and found a fractured skull and brain lesions. She was sentenced to life imprisonment.

Jorge Cartegena — bearing the severe wound to his head from the machine-gun fire emptied into his law office one evening in July 1992 — explained the position of the Association of Democratic Lawyers. As lawyers who are defending the political prisoners, the ADL are the ones who know about their conditions and the abuse coming down on them. They feel a special responsibility, because of this knowledge, to speak out. As far as the ADL lawyers are concerned remaining silent, knowing these atrocities, would mean being complicit in them.

Alfredo Crespo explained that the Association of Democratic Lawyers had placed a motion opposing the death penalty before Lima's Bar Association — the Colegio de Abogados — which was approved. Crespo pointed to how the Peruvian state has been applying the death penalty for a long time and concluded that now the government sought to legalise the death penalty. "Many prisoners are locked up and killed ... in the countryside, the Peruvian government is fighting a war without prisoners. Those detained are not taken to any police authority, they are killed ... 'disappearances' are increasing. In this way, the death penalty has been applied in our country for a long time" said Crespo.

In the face of severe attacks Crespo and the other ADL lawyers have courageously continued to defend the life of Dr Abimael Guzman and the other political prisoners — meeting with international delegations, pressing for Red Cross visits to Guzman, petitioning Amnesty International to intervene on Guzman's behalf, communicating with overseas and international legal organisations, and getting the word out internationally about what is happening to Guzman and other political prisoners.

The arrest of Dr Crespo and his colleagues is another indication that for political prisoners in Peru there is no legal defence allowed. And it is not possible for lawyers to practice law if they have the courage to defend individuals who have been accused of opposing the government.

For all those following the campaign to defend the life of Abimael Guzman, the news of the life sentence from a kangaroo military court for Guzman's lawyer was a flashback to the trial of Guzman himself.

#### A BEND IN THE ROAD

On 12 September 1992, Peru's CIA-trained and equipped DINCOTE arrested seven alleged members of the Partido Comunista del Peru's central committee including the former philosophy professor whom the world's press alternately came to label "the most dangerous man of the decade" and "the world's Public Enemy No 1". Dr Abimael Guzman, known by his nom de guerre Presidente Gonzalo, is the leader of the Partido Comunista del Peru (PCP), also known as Sendero Luminoso or Shining Path.

Since May 1980 the PCP has waged an armed struggle with the Maoist strategy of surrounding the cities from the countryside. The PCP has set up base areas in large swathes of the countryside comprising a third of the country's population and their presence is felt

throughout all of Peru. The call to prepare for the seizure of power countrywide was issued a year before Guzman's capture.

The efforts of successive Peruvian regimes to stem the flow of revolution has achieved international notoriety. The human rights organisation America's Watch states in its 1992 publication *Peru Under Fire* that in the last ten years the military has killed 23,000 people and forced another 200,000 peasants to flee their villages and move into the slums around Lima and other cities. Peru's General Cisneros explains that "to kill one guerilla, it is necessary to kill ten peasants". The regime is notorious not only for the many thousands it has "disappeared" but also for the large numbers of political prisoners it has massacred (300 at Fronton prison in 1986 and 40 in May 1992 in the prison of Canto Grande).

Alberto Fujimori's "auto-coup" of 5 April 1992 saw Peru's parliament dismissed, Constitution suspended and judges sacked. Martial law was declared and Fujimori began ruling by Presidential decree. The prisons that house the captured fighters of the PCP and other political prisoners were placed under the direct control of the military. The offence of "apologising for terrorism" was beefed up with a minimum penalty of 6 years in prison. Thousands were detained and tortured by the police and military.

Abimael Guzman was taken into custody on warrants of apprehension for acts of violence allegedly done by the PCP and was to be brought before the criminal jurisdiction of Peru's civil courts. But shortly after his arrest, Fujimori announced that Guzman would be taken before a military tribunal. Fujimori publicly supported the death sentence for Dr Guzman, even though the Peruvian Constitution specifically bans capital punishment.

On 24 September, his captors paraded Dr Guzman before several hundred assembled journalists and guards in an iron cage at the DINCOTE headquarters in a declared effort to "break down his aura of invincibility". Dr Guzman refused to answer questions from the press and instead delivered a fiery seven minute speech in defence of the PCP's views and actions declaring at one point:

We are here in these circumstances. Some think that this is a great defeat. We say let them dream on. This is merely a bend in the road. Nothing more! A bend along the road. The road is long and we will travel it to the end. We will reach our goal and we will win! You will see it! You will see it!

Subsequent commentary on the impact of Guzman's capture upon the PCP by counterinsurgency experts confirms the Guzman forecast.

In an interview published by the Lima magazine *Caretas* on 10 September 1992, Gordon McCormick — who works for the RAND Corporation, a private think-tank that carries out studies for the US Defence and State Departments — spoke of the fragility of the current Peruvian regime in contrast to "the robust and strong nature of Sendero". A "very disciplined force", built "so that if Guzman is missing, the chain of command will seek out somebody to replace him". According to McCormick, "the only thing Sendero has to do to win is to continue doing what it has been doing up to now. They were advancing, two steps forward, one step back, but advancing nonetheless." And according to Peruvian General Sinesio Jarama, the renewed guerrilla offensive of late 1992 to early 1993 means that "the Shining Path has shown its organisation hasn't been destroyed and that it has managed to rebuild its leadership."<sup>2</sup>

### FIRST THE VERDICT THEN THE TRIAL

On 1 October 1992, Dr Abimael Guzman was tried by a secret military tribunal on an island naval base near Fronton prison. On the *previous* day Peru's President Fujimori announced the outcome and sentence — guilty of treason and life imprisonment. In a throwback to the Spanish Inquisition, three anonymous military officers wearing black hoods acted as judges. No one else was permitted to witness this judicial farce apart from the military, Dr Guzman, and his defence counsel Dr Alfredo Crespo, the President of the Association of Democratic Lawyers.

Dr Crespo reported that he was permitted only a fifteen minute consultation with his client before the proceeding. In the three and a half hours of the proceeding he was present, Dr Crespo reported that his client was more or less continually interrogated by the inquisitors he faced. The hooded generals' questions related to the politics of Dr Guzman and the Communist Party he leads.

In response to this questioning Dr Guzman freely admitted to being Presidente Gonzalo. He made a statement accepting full responsibility ideologically and politically for the Partido Comunista del Peru but said he could not take responsibility for every one of the actions allegedly done in the name of the PCP.

Guzman's lawyer, Dr Crespo, was not permitted to cross-examine prosecution witnesses, whose evidence in any event was not given *viva voce*, but rather in statements that together comprised part of the prosecution brief handed up to the "court" and accepted as proof in full of the treason charge against Dr Guzman. Similarly, Dr Crespo was not permitted to call witnesses for the defence, or to present any evidence.

Dr Crespo reported that none of the allegations against his client particularised actions in which Dr Guzman was directly involved. In fact there were no allegations that he ordered or participated in any acts of violence at all. The only evidence to found the charge he faced of "treason against the fatherland" was Dr Guzman's political and ideological leadership of the Communist party.

### INTERNATIONAL LAWYERS DENOUNCE THE RAILROAD OF DR GUZMAN

The first delegation organised under the auspices of the International Emergency Committee to Defend the Life of Dr Abimael Guzman included lawyers from France, Germany and the United States: Peter Erlinder (President-Elect of the National Lawyers Guild, USA); Martin Heiming (representative of the Federation of Republican Lawyers, Germany); Anne-Marie Parodi (defender of Algerian militants of the National Liberation Front in Algeria's war of independence against France and defender of the leaders of the May 1968 revolt); and Leonard Weinglass (known for his representation of political dissidents in the US including former Black Panther Mumia Abu-Jamal on death row in Pennsylvania these past eleven years).



Identifying themselves as the Ad Hoc International Lawyers Delegation to Observe the Trial of Abimael Guzman, these four independent attorneys were refused entrance to the Guzman trial. They met with lawyers familiar with the case, including Guzman's defender Alfredo Crespo and scrutinised international treaties, portions of the Peruvian Constitution, Presidential decrees and the documents submitted by Dr Crespo to Peru's civil courts. They issued a press statement detailing the results of their investigation whilst still in Peru. They concluded that:

the current trial of Dr Abimael Guzman and the six other political prisoners is being conducted in violation of international law to which Peru is bound and must be stopped at once. Any verdict or sentence in any resulting proceeding should be considered null and void as a matter of international law.

For their remaining days in Peru, the delegation was subjected to the threat of arrest by government spokespeople for "apologising for terrorism" as a result of their outspoken criticism of the railroad of Dr Guzman.

The second international delegation to Peru defending the life of Guzman was arrested within minutes of assembling in Lima for their press conference. They were detained by the DINCOTE for 36 hours and deported. The Fujimori government's grounds for the expulsion were investigation for "apologising for terrorism".

The third IEC delegation was able to get in and out of Peru in late November 1992 with fresh evidence of the brutal treatment of political prisoners and human rights abuses.

### BURIED ALIVE

October 11, 1992 was the last day Dr Crespo (or anyone other than his captors) saw Abimael Guzman who is being held in a concrete bunker on San Lorenzo Island naval base under total solitary confinement. A Peruvian military officer remarked, "This will be his tomb."

Guzman suffers from the chronic skin disease psoriasis and a stomach ailment which requires a special diet. The Red Cross have been denied access to Guzman as have all his would be visitors. Guzman has been refused all reading material and his eyeglasses.

According to an Associated Press report released on 1 February 1993, Dr Abimael Guzman is to be transferred from his cell on San Lorenzo to a more secure prison: an underground six and a half foot by 13 foot concrete cell in the naval base of Lima's port of Callao. The AP story reported further that "the Lima daily newspaper *Expresso* quoted unnamed sources as saying Guzman had lost 44 pounds since he was captured". If this is true, it represents an extremely dangerous loss of weight, over 10 pounds a month.

### DEATH THREATS

The Peruvian regime has repeatedly made threats against the life of Dr Abimael Guzman. Fujimori has announced there would be a referendum to reinstate the death penalty and that Peru would withdraw from the Inter-American Human Rights Convention which renounces capital punishment. If the death penalty is reinstated, Fujimori has promised to

hold Dr Guzman and other political prisoners responsible for any actions carried out by the revolutionary forces in Peru and impose the death penalty on the sentenced prisoners. It should be noted that Presidential decrees issued in 1992 changed Peruvian law so that an accused person can be convicted of the offences of terrorism and treason without the commissions of any violent act — ideas and writings, or even the possession of "subversive propaganda" will suffice for a conviction.

### CONSPIRACY OF SILENCE

The railroad of Dr Guzman, his comrades and their lawyers is unprecedented — yet it has earned the silent, and in some cases open, approval of the world powers and their media. Robert Torricelli — the Chair of the US Congress Subcommittee on Western Hemisphere Affairs — publicly called for Guzman to be put to death. Articles have appeared in the press enumerating the different possible excuses that could be used for the extra-judicial murder of Dr Guzman.<sup>3</sup>

The fact that Abimael Guzman is considered by millions of workers, peasants, indigenous people and others of various walks of life in Peru as their leader in a just revolutionary war has been deliberately ignored. The 12 year long war Guzman has been leading is ignorantly and falsely dismissed as mere "acts of terrorism".

### OUTPOURING OF INTERNATIONAL PROTEST DEFENDS GUZMAN'S LIFE

This unprecedented railroad of a world renowned political prisoner has met with an equally unprecedented outpouring of protest. The International Emergency Committee to Defend the Life of Dr Abimael Guzman was formed immediately in London. A Call from the IEC has been signed by many tens of thousands of people from around the globe including prominent lawyers and judges, scholars, artists and musicians, literary figures and parliamentarians — Tony Benn, Jim Cairns, Ramsey Clark, Sinéad O'Connor, Bani Sadr, being just a few.

More than 10,000 people in Nepal and more than 7,000 people in Istanbul, Turkey including hundreds of political prisoners on hunger strike have signed the IEC Call which states in part that:

In no way can Dr Guzman be denied the stature of a captured leader of a revolutionary party and army. Dr Abimael Guzman merits the broad international support that all imprisoned opponents of imperialism and reactionary regimes have always benefitted from ...

It is urgent that many voices be heard to demand that the Peruvian state respect the international conventions concerning the treatment of political prisoners.

All over the world progressive minded people from various political persuasions have come together and formed committees to save the life of Abimael Guzman. There have

3 See for example the "advice" of the 19 September 1992 issue of Britain's *Economist*: "Guzman might well get ill, 'try to escape' or simply not receive the daily medicine he needs for his psoriasis and other ills. To keep Mr Guzman alive would be a huge risk ...".



been numerous telegrams to the Peruvian embassies abroad, delegations have delivered protests to the Embassies and Fujimori's Lima fax number has been changed due to its inundation with protest notes from around the globe. Amnesty International's world headquarters in London have reportedly received more correspondence demanding that they intervene on Guzman's behalf than for any other prisoner.

#### A CRUCIAL BATTLE

Defending the life of Abimael Guzman is a crucial political battle that concentrates key questions including the rights of political prisoners and solidarity with liberation struggles in the oppressed countries. A favourable outcome in this battle necessitates the creation of an international political climate which forces the Fujimori regime to respect Dr Guzman's rights as a political prisoner and which prevents the Peruvian government and military from killing him by reinstating the death penalty or by other "extra-legal" means. All those who seek to stand by justice won't find justice standing by this political battle's sidelines.

*CRAIG EVERSON\**

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