

PERU

@Anti-terrorism laws continue to fall short of international human rights standards

Amnesty International is seriously concerned that Peru's wide-ranging anti-terrorism laws, which came into effect in 1992, continue to fall far short of standards enshrined in international human rights instruments. Despite positive but limited amendments to the laws passed by the *Congreso Constituyente Democrático*, CCD, Democratic Constituent Congress, in November 1993, the organization believes that the anti-terrorism laws currently in force do not conform to pre-trial and fair trial procedures enshrined in international human rights standards and, furthermore, that they are conducive to the detention and imprisonment of prisoners of conscience. Amnesty International is also concerned that anti-terrorism provisions contained in the new Constitution, which came into effect on 31 December 1993, also fall short of international human rights standards ratified by Peru.¹

The November 1993 amendments to Peru's anti-terrorism laws

Between May and November 1992 President Alberto Fujimori and his Council of Ministers, who ruled the country by decree law between April and December of that year, issued a new set of wide-ranging anti-terrorism decree laws². In January 1993 the then newly elected CCD approved a law stating that the decree laws would remain in effect until such time as they were revised or revoked by Congress. Subsequently, in November 1993, the CCD approved positive but limited amendments to the anti-terrorism legislation. The amendments resulted in:

- independent lawyers chosen by defendants, who previously were only allowed to represent one client at a time, being now permitted to simultaneously represent more than one defendant;
- Decree Law N° 25,728, which allowed for the accused to be tried, convicted and sentenced *in absentia*, being repealed;

¹ This report was written in April 1994 and is based on information received by Amnesty International until 31 March 1994.

² For a fuller analysis of the anti-terrorism decree laws prior to their amendment, see the following document by Amnesty International: Peru: human rights since the suspension of constitutional government; AI Index: AMR 46/13/93, May 1993.

- the right to *habeas corpus*, which had previously been suspended during pre-trial and trial procedures, being re-introduced;
- examining judges³, who previously were prohibited from ruling that defendants be unconditionally released when there was no case to answer, now being able to do so. (Such a ruling, however, must be referred to the higher court at which the defendant is to be tried, and which must then ratify or veto it);
- provision being made for military tribunals to review prison sentences in those cases in which the defendant was convicted of treason without having taken into consideration evidence as to the innocence of the accused. (However, this amendment does not apply to those persons convicted on charges of "belonging to a group which fulfils a leadership role in a terrorist organization").

Amnesty International's concerns about the present anti-terrorism laws

Pre-trial and fair trial procedures

Amnesty International believes that despite the positive but limited changes outlined above, the anti-terrorism legislation still retains many features which fail to match pre-trial and fair trial procedures enshrined in international human rights standards. The relevant standards underpinning such procedures are to be found in the International Covenant on Civil and Political Rights (see Articles 9.2 to 9.4, 14 and 15.1), and in the American Convention on Human Rights (see Articles 7.4 to 7.6, and 8). Peru is party to both these treaties. Amnesty International believes that many of the provisions contained in the anti-terrorism legislation currently in force contravene, in spirit and in practice, the standards referred to above. Indeed, the organization believes that the practical effect of the anti-terrorism laws is to render all terrorism-related trials as unfair.

The anti-terrorism laws fall short of international human rights standards because of:

³ Judicial procedures for civilian tribunals encompass three successive stages: first, a *juzgado de instrucción*, lower court, presided over by an examining judge; second, a *Corte Superior*, higher court, where the accused is tried and sentenced; and third, the *Corte Suprema de Justicia*, Supreme Court of Justice, where appeals are heard.

- the virtually unlimited powers granted to the police in questioning suspects and formalizing charges. (During their investigations the police can hold a prisoner for up to 15 days, and, should they decide it necessary for the effective completion of their investigations, the police may extend such a period indefinitely);
- the limitations placed on access to the accused by representatives of the Public Ministry and independent lawyers during the police investigation stage. (During their investigations the police can hold a prisoner incommunicado for up to 10 days);
- the inordinately lengthy periods which the accused may be held in detention while awaiting trial. (The periods may extend to 30 months for terrorism-related cases "of a complicated nature" and, in cases which prove "especially difficult", the period of pre-trial imprisonment may be extended to 5 years);
- the limitations imposed on civilian examining judges, including that such judges have no choice other than to refer all their cases for judgement and sentence to a higher court;
- the prohibition imposed on police and military personnel involved in the detention and questioning of the accused from appearing as witnesses;
- the impossibility of granting the accused any form of bail or conditional liberty at any time;
- the peremptory periods allowed for judicial examinations, trials and appeals in both civilian and military courts. (The maximum periods allowed in civilian courts is 30 consecutive days, extendable by a further 20 days, in the lower court; 15 consecutive days in the higher court; and 15 days in the appeal court. In cases heard before military courts the examination, trial and sentence must be completed within ten days);
- the fact that trials, whether under civilian or military jurisdiction, are not held in public;
- the fact that people charged with the terrorism-related "crime of treason" must be transferred into the jurisdiction of military tribunals⁴. Amnesty International believes Peruvian military courts hearing terrorism-related cases lack competence, impartiality and independence.

⁴ Decree Law N°25,659, issued in August 1992, defines the terrorism -related "crime of treason" within the terms set out in Decree Law N° 25,475, but links this crime to the means employed and their effects on property and life. In addition, those accused of being members of an armed opposition group, whether in their capacity as leaders or by engaging in operations designed to attack and kill, and anyone who aids and abets the commission of "crimes of terrorism", may be charged with treason under its provisions.

Prisoners of conscience

Amnesty International also believes that the anti-terrorism laws provide a judicial framework which facilitates the imprisonment of prisoners of conscience.⁵ Decree Law N° 25,475, which was the first of a set of anti-terrorism decrees issued in 1992, contains the basic judicial definition of "crimes of terrorism" now in use in Peru. The definition is wide-ranging and lacks precision. Persons accused of "crimes of terrorism" range from those who "carry out acts against the life, physical integrity, health, freedom and security of individuals", to those who, "by whatever means" (Amnesty International's emphasis), incite the commission of terrorism-related crimes, are seen to favour or excuse such crimes, or obstruct the investigation of "crimes of terrorism" and judicial procedures associated with them.

The organization believes that the imprecise and wide description of acts constituting "crimes of terrorism" in the present anti-terrorism laws, allows for the arbitrary detention of individuals who do not have any links with the armed opposition, and who are in many cases critical of the present government's policies.

Amnesty International also has evidence of prisoners of conscience and possible prisoners of conscience being detained solely on the basis of accusations made against them by members of the armed opposition who have made use of Peru's anti-terrorism *Ley de Arrepentimiento*, Repentance Law. The Repentance Law, which came into effect in May 1992, includes among its provisions clauses which benefit members of the armed opposition who supply information leading to the capture of other alleged members of the armed opposition.⁶

The *Reglamento de la Ley de Arrepentimiento*, Repentance Law Regulations, which came into effect in May 1993, state that the police "... tiene como responsabilidad efectuar la verificación de la información proporcionada por el solicitante,..." "...has the responsibility of verifying the information supplied by the applicant..."(unofficial translation). However, Amnesty International has learned of many cases in which the police, after having detained a suspect identified by a member of an armed opposition group, fail to comply with this regulation. The organization considers these prisoners, when there appears to be no evidence linking them to armed opposition groups, and provided they have not used or

⁵ Amnesty International defines prisoners of conscience as those persons detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs, or by reason of their ethnic origin, sex, colour or language, provided they have not used or advocated violence. This includes those prisoners which Amnesty International believes have been falsely accused of criminal offences which are politically related, and for whom there is no evidence to link them to the political beliefs which the authorities accused them of holding.

⁶ The Repentance Law makes provision for the identity of the beneficiaries to remain secret.

advocated violence, to be prisoners of conscience. Some of these prisoners have subsequently been convicted and sentenced to lengthy terms of imprisonment.

Independent human rights organizations have frequently claimed that *"arrepentidos"*, repentants who make use of the Repentance Law, sometimes falsely accuse leaders of popular organizations who have opposed the activities of the armed opposition, such as trade union, political and community activists, rather than identify actual members of the armed opposition. Other critics of the Repentance Law have identified cases where *"arrepentidos"* identify individuals who have participated in activities by the armed opposition, but who have been forced to do so under threats. These individuals know that to refuse to participate in such activities means that they or their families run the risk of being killed by the armed opposition. For example, a victim accused by someone who made use of the Repentance Law told a journalist working for *Caretas*, a Peruvian magazine: *"No sé por qué no señalan... [a] los que andan armados, los arrepentidos son muy vivos, no dan los nombres de los verdaderos terroristas sino de los forzados."* "I do not know why they do not point to those that go armed. Those who repent are very clever, they do not give the names of the real terrorists but of those that are forced into it."

In the face of this kind of criticism, the Special Prosecutor for Terrorism-related Crimes, Daniel Espichán Tumay, has reportedly stated: *"He recomendado a la Policía Nacional, que en la elaboración de los atestados, se tenga mucho cuidado porque una simple aseveración de un arrepentido o de un terrorista no es prueba para meter preso a un ciudadano. Se tiene que investigar bien. No se puede encarcelar a cualquiera."* "As far as the preparation of police statements are concerned, I have recommended to the National Police that they be very careful, because the straight-forward claim of a repentant or a terrorist is not sufficient proof to put a citizen behind bars. Investigations have to be properly conducted. One cannot imprison just anyone." (unofficial translation). In March 1994 the Special Prosecutor reiterated that information supplied by "terrorists who had repented be checked painstakingly because some of [it has] been false and led to the detention of innocent people".

President Alberto Fujimori has frequently stated that by the end of his term of office in July 1995 the armed opposition in Peru will be eradicated. The application of the anti-terrorism laws passed in 1992 is one key element of the government's counter-insurgency strategy which the President has claimed is serving to meet this objective. Within this context, a lawyer writing in *Ideele*, a Peruvian magazine published by an independent organization of human rights lawyers, argued in the December 1993 issue, that prisoners who have taken advantage of the Repentance Law *"...se han convertido, en 1993, en un instrumento clave de la estrategia contrainsurgente.... Estos han sido también usados como parte de la estrategia psico social en la lucha contra la subversión (o de propaganda de la "eficacia" del gobierno,...)"* "...", "have become a key tool in [Peru's] counterinsurgency strategy

during 1993.... They have also been used [by the government] as part of the psychological war in the fight against subversion (or as propaganda for the government's 'efficiency',...)..."

According to reports, statistics issued by the Joint Command of the Armed Forces show that in the 21 months between June 1992 and February 1994, 7,667 members of the clandestine armed opposition groups, the *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path) and the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement, were captured. This compared to 5,403 members captured in the 12 years from 1980 through to 1991. The same source revealed that since the Repentance Law came into effect in May 1992, 4,099 applicants have made use of its provisions.

Since the current anti-terrorism legislation came into effect, Amnesty International has identified and adopted 50 prisoners as prisoners of conscience. By the end of March 1994, 28 of these prisoners had been released. The remainder - 22 prisoners - were still incarcerated.⁷ Amnesty International, as a matter of principle, calls for the immediate and unconditional release of all prisoners of conscience. In addition, the organization has identified and documented the cases of at least a further 150 prisoners who are possible prisoners of conscience. Amnesty International believes that these prisoners represent only a small proportion of the known cases, and that there may be hundreds more "nameless" prisoners who may be wrongly imprisoned, but whose cases have not come to the attention of human rights defenders.

Anti-terrorism provisions and the new Constitution

Amnesty International is also concerned that anti-terrorism provisions in Peru's new Constitution, which came into effect on 31 December 1993, has also served to undermine internationally recognised human rights standards. Such is the case with provisions relating to detention procedures, the use of military tribunals to try civilians accused of treason, and the death penalty.

Firstly, Amnesty International is concerned
that the
Constitution
makes
provision

⁷ Please see Appendix A for a list of these prisoners of conscience

for the police to detain and interrogate a suspect without giving him or her prompt access to a defence lawyer and a representative of the Public Ministry. Article 2(24.f) of the Constitution grants the police the power to hold persons accused of terrorism-related crimes for up to 15 days prior to bringing them before a judge; and article 2(24.g) grants the police the power to hold

persons
incommunicado for
up to ten
days "en
caso
indispensa
ble para el
esclarecimi
ento de un
delito", "if it
is
indispensa
ble for the
clarificatio
n of a
crime"
(unofficial
translation)
. Amnesty
Internation
al believes
that both
these
articles,
taken on
their own
and in
combinatio
n with the
pre-trial
procedures
in Peru's
current
anti-terroris
m
legislation,
do not
conform
with the
principles
contained

in
international
human
rights
standards
adopted by
the United
Nations,
such as the
UN Body
of
Principles
for the
Protection
of All
Persons
under Any
Form of
Detention
or
Imprisonm
ent.
Principle
11 states:

"A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority...."

Principle 15 states:

"... communication of the detained or imprisoned person with the outside world, and in particular with his family or counsel, shall not be denied for more than a matter of days."

Secondly, Amnesty International is concerned that Article 173 of the new Constitution makes provision for civilians accused of terrorism-related crimes and of the "crime of treason" to be judicially investigated under the jurisdiction of military tribunals. The organization believes that military tribunals in Peru are neither competent, impartial nor

independent, when it comes to hearing cases in which civilians are charged with criminal offences. These tribunals are not competent because military judges in Peru are not known to receive formal and accredited legal training which allows them to hear civilian cases; they are not impartial because, in cases where the military bring to trial civilians for insurgency-related offences, the military inevitably become both accuser and judge; and they are not independent because military judges remain subject to a military chain-of-command structure, and therefore subject to the orders of their superiors.

Thirdly, the organization is seriously concerned that Article 140 of the new Constitution makes provision for the widening of the death penalty. Article 140 reads: "The death penalty may only be applied for the crime of treason in times of war, and of terrorism, in accordance with national laws and international treaties to which Peru is party" (unofficial translation). In the event of capital punishment being legislated for in Peru's Criminal Code, and it being applied in conjunction with the procedures enshrined in current anti-terrorism legislation, Peru would be executing prisoners who did not receive a fair trial. The death penalty could also be the fate of youths between 15 and 18 years of age who have been convicted of terrorism-related offences⁸.

Amnesty International opposes the death penalty as a matter of principle, considering it to be a violation of the right to life and the ultimate form of cruel, inhuman and degrading punishment inflicted by the State. The organization considers it to be a penalty which is not justified under any circumstances. The organization also believes the death penalty does not fulfil any penal or social objectives which could not be achieved equally by other forms of punishment. By extending the scope of the death penalty Peru is contravening its obligations to abide by the American Convention on Human Rights (ACHR).

Article 4.1 of the ACHR states:

"Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

Article 4.2 of the ACHR states:

"In countries that have not abolished the death penalty, this may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment,

⁸ As from June 1992, under Decree Law N° 25,564, the age of criminal responsibility for "crimes of terrorism" was reduced from 18 to 15 years. Article 37 (a) of the Convention on the Rights of the Child, adopted by the UN General Assembly in 1989, and to which Peru is party, states: "...Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;..."

enacted prior to the commission of the crime. Its application shall not be extended to crimes to which it does not presently apply. (Amnesty International's emphasis)

Article 4.4 of the ACHR states:

"In no case shall capital punishment be inflicted for political offences or related common crimes."

Recommendations to the Government

Amnesty International urges the Peruvian authorities to:

- * immediately and unconditionally release all prisoners of conscience;
- * promptly and comprehensively review the present anti-terrorism laws to ensure that the police and trial procedures contained in these laws are brought into line with those set out in international human rights standards;
- * promptly review the Constitution to ensure that its provisions on police detention are brought into line with international human rights standards;
- * definitively abolish the death penalty for all offences.

Amnesty International and armed opposition abuses

Amnesty International is aware that anti-terrorism legislation in Peru is a response to widespread human rights abuses by the PCP and the MRTA. The organization has repeatedly and unequivocally condemned the grave human rights abuses by these groups. These include the deliberate and arbitrary killing of thousands of civilians; the killing of members of the security forces who are *hors de combat*, or who have been incapacitated, have surrendered or been taken prisoner; the use of torture; and the taking of hostages.

Amnesty International's condemnation of such abuses is based on principles derived from international humanitarian law, in particular the humanitarian standards enshrined in Common Article 3, paragraph 1(a), (b), and (c), of the Geneva Conventions of 1949. The preamble to Common Article 3, and the paragraph sections referred to above, state:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment."

Amnesty International believes that the kind of abuses referred to above, and which Common Article 3 is designed to safeguard against, can never justify the violation by the authorities of fundamental human rights. In the words of the UN Human Rights Committee, "...recognizing that the Government has a duty to combat terrorism, the Committee considers that the measures taken to do so should not prejudice the enjoyment

of fundamental rights enshrined in the [International] Covenant [on Civil and Political Rights], ..." (UN Doc. CCPR/C/79/Add.23, para 8).

Recommendation to the armed opposition

Amnesty International urges the PCP and the MRTA to:

* fully respect and abide by the humanitarian standards enshrined in Common Article 3, paragraph 1(a), (b), and (c), of the Geneva Conventions of 1949, whatever the extent of their resort to violence, and whatever the level of fighting or violent confrontations with the government.

APPENDIX A

AMNESTY INTERNATIONAL'S PRISONERS OF CONSCIENCE IN PERU

NAME	OCCUPATION/ POLITICAL AFFILIATION	MONTH AND YEAR OF ARREST	AWAITING TRIAL (AW)/SENTENCE	PLACE OF DETENTION
ALANIA OSORIO, Francisco	Street vendor.	Aug 91	AW	Miguel Castro Castro Prison, Lima.
ALEJOS MORILLO, Francisco	Peasant leader.	Mar 94	AW	Not known.
ÁLVAREZ PACHAS, José Antonio	Journalist.	Jun 92	6 years	Miguel Castro Castro Prison, Lima.
AMBROSIO CONCHA, Marco Antonio	Student.	Apr 92	10 years	Miguel Castro Castro Prison, Lima.
CASTIGLIONE MENDOZA, Jesús Alfonso	Journalist and political candidate.	Apr 93	AW	Palace of Justice Prison, Lima.
NAME	OCCUPATION/	MONTH	AWAITING/TRIAL	PLACE OF

	POLITICAL AFFILIATION	AND YEAR OF ARREST	(AW)/SENTENCE	DETENTION
CÓRDOVA CASTILLO, Roger	Peasant leader.	Mar 94	AW	Not known
CRUZ FERNÁNDEZ, Ubildor	Agricultural worker.	May 92	20 years	Picsi Prison, Chiclayo province, Lambayeque department.
CRUZ MORI, Wagner	Student.	Apr 92	AW	Picsi Prison, Chiclayo province, Lambayeque department.
CHACÓN RODRÍGUEZ, Alfonso Rosely	Primary teacher, supporter and former member of the political party <i>Cambio 90</i> .	Apr 92	10 years	Miguel Castro Castro Prison, Lima.
CHOLAN RAMÍREZ, Juan José	Student.	Apr 92	20 years	Picsi Prison, Chiclayo province, Lambayeque department.
NAME	OCCUPATION/ POLITICAL AFFILIATION	MONTH AND YEAR OF ARREST	AWAITING TRIAL (AW)/SENTENCE	PLACE OF DETENTION

ENCARNACIÓN NIETO, Filomeno Arturo	Book keeper, student.	Nov 92	20 years	Picsi Prison, Chiclayo province, Lambayeque department.
ESPINOZA CASTILLO, Tomás	Peasant leader.	Mar 94	AW	Not known.
HERRERA GONZÁLEZ, Domiciano	Farmer, radio technician, and member of the political party <i>Acción Popular</i> .	May 92	5 years	Picsi Prison, Chiclayo province, Lambayeque department.
LAYME BEJAR, Santosa (f)	Community activist.	Feb 94	AW	Not known.
MALLEA TOMALLIA, Juan	Clothes trader and occasional taxi driver.	Jul 93	AW	Miguel Castro Castro Prison, Lima.
MOLERO COCA, Carlos Florentino	Student.	Oct 92	12 years	Miguel Castro Castro Prison, Lima.
NAME	OCCUPATION/ POLITICAL AFFILIATION	MONTH AND YEAR OF ARREST	AWAITING TRIAL (AW)/SENTENCE	PLACE OF DETENTION
MORI ZAVALETA, Rómulo	Student, employee of the	May 92	20 years	Picsi Prison, Chiclayo

	local water company, and member of the political party <i>Partido Unificado Mariateguista</i> .			province, Lambayeque department.
PATIÑO RIVERA, Vicente	Head of personnel in a military college.	Sep 93	AW	Miguel Castro Castro Prison, Lima.
RAMÍREZ YALTA, César Luis	Student.	Apr 92	20 years	Picsi prison, Chiclayo province, Lambayeque department.
SOTO RODRÍGUEZ, Michael	Student.	Mar 92	AW	Miguel Castro Castro Prison, Lima.
VALDÉZ BERNALES, Pedro	Designer, picture editor and journalist.	Nov 93	20 years	Miguel Castro Castro Prison, Lima.
NAME	OCCUPATION/ POLITICAL AFFILIATION	MONTH AND YEAR OF ARREST	AWAITING TRIAL (AW)/SENTENCE	PLACE OF DETENTION
ZAVALETA CASTILLO, Zacarías	Peasant leader.	Mar 94	AW	Not known.