

PERU

Prisoners of conscience

Every day in prison one day too many

Hundreds of prisoners falsely accused of terrorism-related offences continue to be unjustly detained in Peruvian jails, under legislation which falls short of international fair trial standards.¹ Amnesty International considers all these prisoners -- commonly referred to in Peru as “*presos inocentes*”, “innocent prisoners” -- to be prisoners of conscience or possible prisoners of conscience².

Since 1992, when the authorities brought new anti-terrorism legislation into effect, the organization has documented the cases of at least 800 “innocent prisoners”, but Peruvian human rights organizations put the overall figure closer to 1400.

Some of these men and women have spent over five years in prison for crimes they have not committed. Many have already been released but at least 600 currently remain in prison. It is time the Peruvian authorities ensured that every “innocent prisoner” has his or her case promptly reviewed and is released. Every day they spend in prison is a day too many.

Following the suspension of constitutional rule and the dissolution of Congress in April 1992, President Alberto Fujimori and his Council of Ministers, who ruled the country by decree until the following December, issued a new and wide ranging set of anti-terrorism laws. These laws complemented a new government counter-insurgency strategy designed to halt armed attacks by the *Partido Comunista del Perú (Sendero Luminoso)*, Communist Party of Peru (Shining Path), and the *Movimiento Revolucionario Túpac Amaru, MRTA*, Túpac Amaru Revolutionary Movement. Their effect was to radically increase the number of convictions and significantly lengthen prison sentences³.

¹This report is based on information received by Amnesty International by 31 July 1997.

² *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, language, national or social origin, economic status, birth or other status, provided they have not used or advocated violence. This includes those prisoners which Amnesty International believes to have been falsely accused of criminal offences which are politically related, and for which there is no credible evidence to link them to the political beliefs and actions with which they have been imputed.*

³*In May 1980 Shining Path began a campaign of armed attacks against the Peruvian security forces, civilian authorities and sectors of the population*

which refused to collaborate with Shining Path. The campaign included widespread and systematic human rights abuses, including torture and summary executions. By 1990, when President Alberto Fujimori first came to power, the influence of Shining Path had spread from the interior of the country to Lima, the capital, and the surrounding urban shanty towns. Two years later, the armed actions of this group had become so significant that the state's capacity to survive was called into question. In 1984 the MRTA began its campaign of armed attacks, which included human rights abuses such as summary executions and hostage taking.

The implementation and consolidation of this new strategy was accompanied by a change in the pattern of human rights violations in Peru. Since 1993, “disappearances” and extrajudicial executions, widespread in the country for over a decade, decreased markedly⁴. However, the introduction of the anti-terrorism laws has meant that thousands of persons have been arrested, tried and convicted for terrorism-related offences under legislation which continues to render all trials as unfair⁵.

In addition to shortcomings in pre-trial and trial procedures, the legislation also contains a wide-ranging and imprecise definition of “crimes of terrorism”⁶. Amnesty International considers that the definition provides a framework which facilitates the imprisonment of persons for whom there is no evidence whatsoever to link them with Shining Path or the MRTA.

⁴ Only in a small number of cases have those responsible for these past gross human rights violations been held to account before the courts. The vast majority of the perpetrators benefitted from an unwritten policy of systematic impunity which, in 1995, became legalised through a law which granted a general amnesty to members of the security forces and civilians implicated in human rights violations committed between May 1980 and June 1995. See *Peru: Human rights in a time of impunity*, AI Index: AMR 46/01/96, May 1996.

⁵ For an inventory of the shortcomings in Peru’s anti-terrorism legislation see *Peru: Prisoners of conscience*, AI Index: AMR 46/09/96, May 1996, Appendix 1.

⁶ See *Peru: Prisoners of conscience*, AI Index: AMR 46/09/96, May 1996, for the official definition of “crimes of terrorism” in Peru’s anti-terrorism legislation.

Positive but limited amendments to the anti-terrorism legislation have been made on a number of separate occasions.⁷ However, these amendments have not resulted in the legislation being brought into line with international fair trial standards. The fact that civilians accused of the terrorism-related crime of treason are still tried by military courts; that trials, whether under civilian or military jurisdiction, continue to be heard in secret by “faceless judges”⁸; and that police and military personnel involved in the detention and questioning of the accused are still prohibited from appearing as witnesses before civilian or military courts, are examples of some of the characteristics of the current anti-terrorism legislation which continue to render all terrorism-related trials as unfair.

The authorities have also taken partial positive steps to resolve the situation faced by hundreds of prisoners who have been falsely accused of "terrorism". In August 1996 Congress passed a law creating an *ad hoc* Commission charged with proposing to the President of the Republic that these prisoners benefit from the *derecho de gracia*, right to clemency, or from an *indulto*, pardon, thereby bringing about their prompt release. The Commission, which

⁷ See *Peru: Prisoners of conscience*, AI Index: AMR 46/09/96, May 1996, Appendix 1, for a description of those amendments passed between November 1993 and March 1996. In June 1997 the authorities approved a further amendment to the anti-terrorism legislation by introducing new regulations governing prison conditions and visits for those persons awaiting trial or convicted for terrorism-related offences. The regulations are designed to give greater flexibility to the prison regime under which prisoners are held. Their introduction follows sustained criticism of the Peruvian authorities for holding prisoners accused of “terrorism” under conditions, including prison visits, deemed to be inhumane. By the end of July the new regulations had been on the statute books for an insufficient time to allow for an evaluation of their implementation and effectiveness. The regulations do not apply to civilians imprisoned in military bases.

⁸ The term “faceless judges” refers to the fact that all terrorism-related trials in Peru, whether under the jurisdiction of military or civilian courts, have been conducted over the past five years by judges whose identity is concealed by screens placed between themselves and the defendant, and by the use of numbers, rather than their proper names, on all court documents. In addition, all trial proceedings and subsequent appeals or review hearings are held in precincts to which the public is denied access.

was initially given until February 1997 to complete its mandate, subsequently had its mandate extended to the following August ⁹.

According to a March 1997 report by the *ad hoc* Commission, during the first phase of its mandate, that is from August 1996 to February 1997, the Commission received 1908 applications. Of this number, the Commission was able only to “study a little over 20% of these”, “estudiado un poco más del 20% de las mismas”.¹⁰

Of those cases reviewed by the *ad hoc* Commission until March 1997, 110 prisoners were released, having been granted a pardon or the right to clemency by President Alberto Fujimori. These 110 prisoners, all considered by Amnesty International to be prisoners of conscience or possible prisoners of conscience, were released prior to 17 December 1996, date on which the MRTA broke into the residence of the Japanese Ambassador in Lima and held 72 people hostage for over four months ¹¹.

⁹ Prior to the *ad hoc* Commission having been established, and since the Commission commenced its work, some “innocent prisoners” regained their liberty following a judicial resolution by a court of law.

¹⁰ According to reports, by the end of July 1997 the number of applications received by the *ad hoc* Commission had gone up to 2,150.

¹¹ On 17 December 1996 a heavily armed unit of the MRTA broke into a function being held at the residence of the Japanese Ambassador to Peru. Some 700 people were taken hostage, but by the end of January 1997 at least 600 had been released. The MRTA unit demanded the release of several hundred members of the MRTA held in Peruvian prisons. On 22 April 1997 the MRTA hostage crisis was brought to an end as a result of a military intervention by the Peruvian security forces. Of the 72 hostages who remained in the residence at the time of the assault, 71 were rescued and one was killed. In addition, two members of the Peruvian security forces and all 14 members of the MRTA unit were killed as a result of the operation. Amnesty International's concerns in relation to the hostage crisis are to be found in five press releases issued by the organization, including *Peru: Amnesty International alarmed at MRTA taking of hostages*, AI Index: AMR 46/28/96, 18 December 1996, and *Peru: Amnesty International expresses regret about loss of life during operation to end hostage crisis*, AI Index: AMR 46/18/97, 23 April 1997.

During the hostage crisis no further presidential pardons were granted to “innocent prisoners”. Peruvian and international human rights organization, including Amnesty International, expressed concern that no prisoners falsely accused of terrorism-related offences were being pardoned and released while the hostage crisis remained unresolved. In April 1997, prior to the hostage crisis coming to an end, an Amnesty International delegation visiting the country expressed this concern to Dr Jorge Santistevan y Noriega, the president of the *ad hoc* Commission and Peru’s *Defensor del Pueblo*, Ombudsman. Dr. Santistevan explained that “innocent prisoners” would not be benefitting from a presidential pardon or the right to clemency while the hostage crisis remained unresolved, in order to avoid any interpretation that the authorities were giving in to the MRTA demands.

In June 1997 the ad hoc Commission’s mandate was extended by a further six months, from August 1997 to February 1998. On 25 June 1997, two months after the hostage crisis was resolved, a further 116 “innocent prisoners” benefitted from a presidential pardon or the right to clemency and were promptly released.

Amnesty International welcomes the release of the 226 “innocent prisoners” who have so far benefitted from a presidential pardon or the right to clemency. Thirty-two of these prisoners have been cases of prisoners whom Amnesty International adopted as prisoners of conscience. However, the organization is concerned that these prisoners have not benefitted from a judicial review leading to the annulment of the charges faced by those who awaited trial at the time of their release, or the quashing of the conviction and sentence handed down to those who had been tried. The failure to annul charges or quash convictions has continued implications for their civil status, since those released retain a criminal record¹². In addition, Amnesty International remains concerned that no provision has been made for all those who have been arbitrarily detained to receive adequate compensation for the ordeal they suffered during their unjust detention. In the words of the UN Human Rights Committee on concluding its examination of Peru’s third periodic report: “(...) the Committee is of the

¹² *Amnesty International is aware that on 22 May 1997 congressman Gilberto Siura presented a bill proposing to annul the charges or quash the sentences of all those “innocent prisoners” who benefit from a presidential pardon or the right to clemency. However, by the end of July 1997 Congress had not yet debated this bill.*

opinion that the pardoning of prisoners does not offer full reparation to the victims of unfair trial procedures (...)"¹³.

Amnesty International also remains seriously concerned that 35 prisoners of conscience adopted by the organization have not yet been released. These prisoners are listed in the Appendix to this report. The organization urges the Peruvian authorities to release these prisoners of conscience immediately and unconditionally.

Furthermore, the organization remains seriously concerned that the anti-terrorism legislation continues to fall short of international fair trial standards. Unless Peru's current anti-terrorism laws are brought into line with these standards, Amnesty International believes the legislation will continue serving as a framework which facilitates the detention of further "innocent prisoners"¹⁴. Amnesty International urges the Peruvian authorities

¹³ UN Doc. CCPR/C/79/Add.72, para 10, 8 November 1996. The Committee's Final Observations and Recommendations were published in Spanish. The translation into English is by Amnesty International.

¹⁴ For example, between 24 February and 11 March 1997 some 30 peasants were detained in or near the village of Alto Yurinaki, Chanchamayo province, Junín department, and falsely accused of being members of the MRTA. They were detained by members of the Peruvian army. The peasants claimed that they were tortured while in military custody. They were subsequently transferred into police custody. Peruvian human rights defenders who visited the detainees and the Alto Yurinaki region were able to ascertain that the detainees were "innocent prisoners". By the end of March they were all released without charges, following worldwide reporting about their fate and the mounting of a campaign in their favour by APRODEH, a Peruvian human rights organization. Had this case not come to light, it is possible that these peasants could have faced years in prison for crimes they did not commit. See Amnesty International Urgent Action (UA) 87/97, AI Index: AMR 46/08/97, 27 March 1997, and follow-up information published on 3 and 10 April 1997.

to bring the anti-terrorism legislation into line with international fair trial standards enshrined in the United Nations International Covenant on Civil and Political Rights and the American Convention on Human Rights, to which Peru is party.

Amnesty International is aware that the number of prisoners of conscience it has adopted to date is only a tiny fraction of the "innocent prisoners" in Peru. It is the experience of the organization that for each name that becomes known, for each case that becomes news, there are many others who remain unknown.

It is the duty of the Peruvian state to ensure that all people under its jurisdiction have their human rights fully respected. Amnesty International will continue to campaign for the immediate and unconditional release of Peru's prisoners of conscience until they have all been released.