

# PERU

## Amnesty laws consolidate impunity for human rights violations

A pattern of widespread and systematic human rights violations have afflicted Peru for over a decade. Human rights violations by the security forces occur against a background of extensive abuses by the clandestine armed opposition groups *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), and, to a lesser extent, by the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement. The PCP and the MRTA initiated their armed campaigns in 1980 and 1984 respectively.

Since 1981 the core of the authorities counter-insurgency strategy has been to declare a state of emergency in vast areas of the country. For the first two years, during which the Peruvian National Police had responsibility for combatting the armed opposition, Amnesty International only received reports of torture and ill-treatment by members of the police. However, in early 1983, with the transfer of counter-insurgency operations from the police into the hands of the armed forces, Amnesty International began to receive hundreds of complaints about “disappearances” and extrajudicial executions in the emergency zones, for which members of the army were held responsible. Between January 1983 and December 1992 Amnesty International documented at least 4,200 cases of people who had “disappeared” in Peru following detention by the security forces. Thousands more were killed by government forces in extrajudicial executions, including some 500 people in 19 separate massacres. Since early 1993 “disappearances” and extrajudicial executions have reduced markedly. However, Amnesty International continues to receive information as to the widespread and frequent use of torture and ill-treatment of detainees by members of the Peruvian security forces.<sup>1</sup>

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<sup>1</sup> Detailed accounts of the widespread and systematic pattern of “disappearances”, extrajudicial executions and torture in Peru can be found in several reports published by the organization since 1983, including in: *Peru: Human rights in a climate of terror*, AI Index: AMR 46/56/91, November 1991; *Peru: Human rights since the suspension of constitutional government*, AI Index: AMR 46/13/93, May 1993; and *Peru: Amnesty International’s concerns about torture and ill-treatment*, AI Index: AMR 46/19/94, November 1994.

Throughout these years Amnesty International has been seriously concerned by the failure of four successive governments to take the necessary steps to investigate promptly and effectively the vast majority of these human rights violations and bring those responsible to justice.<sup>2</sup>

Impunity, which nurtures the vicious circle of violence in which human rights violations go unpunished, has been institutionalized in Peru for more than a decade. In the words of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in his report of his 1993 visit to Peru: "the institutionalization of impunity in Peru [is one of] the main problems with regards to [a lack of respect for ] the right to life".

In mid-1995 the Peruvian authorities took forward this "institutionalization of impunity" by ensuring that impunity entered into law. On 14 June 1995 the Peruvian Congress passed Law N°26479, Article 1 of which grants a general amnesty to all those members of the security forces and civilians who were the subject of a complaint, investigation, indictment, trial or conviction, or who were serving prison sentences, for human rights violations committed between May 1980 and 15 June 1995.<sup>3</sup>

Amnesty International believes that, independent of its sweeping effects, the amnesty law was designed, in part, as a response to an ongoing investigation into the November 1991 Barrios Altos massacre, in which 15 men, women and children were killed, reportedly by a "death squad" attached to Peru's National Intelligence Service and known as the *Grupo Colina*. Prior to the amnesty law being passed, judicial investigations into this massacre had gained a significant momentum. In May 1993, and again in January 1995, dissident officers from the Peruvian army stated publicly that members of the *Grupo Colina* were responsible for the Barrios Altos massacre. The officers also stated that the head of the Joint Command of the Armed Forces and of the National Intelligence Service had full knowledge of the massacre. When judicial investigations into these allegations were opened before a civilian court in April 1995, the military courts filed a petition before the Supreme Court of Justice for jurisdiction over the case. However, before the Supreme Court of Justice ruled on the petition, the case was effectively closed by the passing of the amnesty law.

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<sup>2</sup> The four successive governments are those of former presidents Fernando Belaúnde Terry (1980 to 1985), Alan García Pérez (1985 to 1990) and Alberto Fujimori (1990-1995), and the present government of President Alberto Fujimori, which assumed power in July 1995.

<sup>3</sup> See Appendix 1 for the complete text of Law N°26479 in English and Spanish. The text of the law in English has been translated by Amnesty International. The Spanish version is a transcription of the law as published in the Official Gazette *El Peruano*.

Amnesty International has condemned this law in the strongest terms. A law stipulating that investigations and judicial proceedings linked to unresolved gross human rights violations be closed, and which renders ineffective those few sentences handed down to human rights violators, is an affront to the victims and their relatives.

The Peruvian authorities, however, have been determined to ensure that the wide scope of Peru's amnesty law remains in effect. On 15 June 1995, the day the law came into effect, Dr. Antonia Saquicuray, the judge in charge of investigating the 1991 Barrios Altos massacre, argued that the amnesty law was inapplicable to this case. However, on 28 June 1995, before her ruling reached the High Court for ratification or veto, Congress passed a second amnesty law -- Law N°26492 -- which reinforced and extended the scope of the first.<sup>4</sup>

Article 1 of this second law prohibits the judiciary from ruling on the legality or applicability of the first amnesty law, thereby effectively overturning Dr. Antonia Saquicuray's ruling and blocking any similar judicial rulings in the future. Article 3 of this law also effectively widens the scope of Article 1 of the first amnesty law (Law N° 26479), by granting a general amnesty to military, police or civilian personnel who may face a complaint about a human rights violations committed between May 1980 and 15 June 1995, but not reported to the authorities till after the law came into effect.

National and international human rights defenders as well as intergovernmental bodies have strongly condemned both amnesty laws. Independent human rights organizations in Peru have started a country wide campaign for a national referendum on the amnesty laws. In addition, 20 members of Peru's Congress have drafted a bill which repeals Law N°26479 (except Articles 2 and 3), and Law N°26492, and presented it to Congress for consideration. The bill also proposes the creation of a National Truth Commission, which should be given the task of investigating "serious violations of human rights and of humanitarian law committed or carried out during the course of insurgent or counter-insurgency actions after 18 May 1980, and of the circumstances surrounding them". By 23 February 1996 this bill had not been debated by Congress.

On 2 August 1995 the UN Special Rapporteurs on extrajudicial, summary and arbitrary executions, on torture, and on the independence of judges and lawyers, as well as the Chairman of the UN Working Group on Enforced or Involuntary Disappearances, jointly wrote to the Government of Peru. In their communication the experts stated that both laws "favour impunity [and] are contrary to the spirit enshrined in human rights

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<sup>4</sup> See Appendix 2 for the complete text of Law N°26492 in English and Spanish. The text of the law in English has been translated by Amnesty International. The Spanish version is a transcription of the law as published in the Official Gazette *El Peruano*.

instruments, including the Vienna Declaration approved by the World Conference on Human Rights on 25 June 1993". The experts also concluded that the second amnesty law, in prohibiting the judiciary from reviewing the first, "violates the basic principles of the rule of law as well as contradicting the spirit of the ... [UN] Basic Principles on the Independence of the Judiciary".

In response to this communication by the UN experts, Francisco Tudela, Peru's Minister of Foreign Affairs, stated, in a letter dated 21 August 1995, that the promulgation of the first amnesty law was:

*"...parte del proceso de pacificación y como complemento de la ley de arrepentimiento, que benefició a más de cinco mil terroristas condenados y sentenciados y que comprendía tanto la reducción de penas como la excarcelación",*

"part of the process of pacification complemented the repentance law which benefitted more than five thousand convicted terrorists by reducing their sentences or releasing them from prison" (Amnesty International's translation)

The Minister of Foreign Affairs also informed the UN experts that the passing of the first amnesty law by Congress *"...no sólo no contradice los tratados [internacionales de derechos humanos]..., sino que éstos no prohíben expresamente la aplicación de los artículos 102° y 139° de la Constitución del Perú"*, "does not contradict [international human rights] treaties, because the latter do not expressly prohibit the application of articles 102 and 139 of the Constitution of Peru". (Amnesty International's translation)

The Chairman of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities also expressed the Sub-Commission's concern at the promulgation of the two laws. At the Sub-Commission's 47th Session, in August 1995, he endorsed the communication sent by the UN experts to the Government of Peru, and pledged to examine a draft resolution on the amnesty laws at the Sub-commission's next session in August 1996.

The concerns expressed by the UN experts reinforce the sentiments expressed by the UN Human Rights Committee on the subject of amnesty laws. At its 44th session in 1992, the UN Human Rights Committee made the following General Comment 20 (paragraph 15) to article 7 of the International Covenant on Civil and Political Rights, prohibiting torture and cruel, inhuman or degrading treatment or punishment: "Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee

freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future.”<sup>5</sup>

This General Comment by the UN Human Rights Committee is consistent with the principles outlined in the Declaration on the Protection of All Persons from Enforced Disappearance and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, both of which explicitly prohibit the granting of blanket immunity to those involved in human rights violations.

Throughout his first administration, and since he was re-elected to the presidency in July 1995, President Alberto Fujimori has repeatedly pledged his government’s respect for human rights. However, closing all investigations into human rights violations by the promulgation of Peru’s amnesty laws does not reflect these pledges.

Amnesty International believes that both amnesty laws are in effect laws designed to protect those responsible for thousands of unresolved human rights violations committed in Peru between May 1980 and June 1995. Both prevent the emergence of the truth and subsequent accountability before the law. As such, Peru’s amnesty laws are unacceptable to Amnesty International.

The effective investigation of human rights abuses is essential if the full truth is to emerge. Victims, their relatives and society at large all have a vital interest in knowing the truth about unresolved human rights violations. In addition, bringing the perpetrators to justice sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable.

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<sup>5</sup> UN Doc. HRI/GEN/1, para.15.

**APPENDIX 1****ENGLISH TRANSLATION - FIRST AMNESTY LAW OF 14 JUNE 1995****LAW N°26479<sup>6</sup>****THE PRESIDENT OF THE REPUBLIC****WHEREBY:**

The Democratic Constituent Congress has passed the following Law:

**THE DEMOCRATIC CONSTITUENT CONGRESS;**

Has passed the following law:

**Article 1.** Grant a general amnesty to the Military, Police or Civilian personnel, whatever their Military Police or Official status, who face a formal complaint, investigation, criminal charge, trial, or conviction for common or military crimes, whether under the jurisdiction of the civil or military courts, in relation to all events derived or originated from, or a consequence of, the fight against terrorism, and which may have been committed either individually or by two or more persons between May 1980 and the date on which this law is promulgated.

**Article 2.** Grant a general amnesty to Active, Reserve or Retired military personnel who have been denounced, tried or convicted in connection with the events of 13 November 1992.

**Article 3.** Grant a general amnesty to Active, Reserve or Retired military personnel who have been denounced, tried or convicted for the crimes of Disloyalty, Insult to the Nation and to the Armed Forces, in connection with the recent conflict on the northern border.

**Article 4.** The Judiciary, Civilian Courts, Military Courts, and the Executive, will be responsible for and immediately proceed to annul all police, judicial and criminal records which may have been filed against those persons pardoned by this law and not to enforce any form of detention which could affect their liberty. Equally, they will proceed to release those pardoned who are currently under arrest, detention, serving a prison

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<sup>6</sup> Source: "Normas Legales", *Diario Oficial El Peruano*, Lima, 15 June 1995. The translation is by Amnesty International.

sentence or any other sentence which restricts their liberty, and make all the administrative steps required for such releases as permanent.

**Article 5.** The Military, Police or Civilian personnel who face a formal complaint, investigation, judicial process or conviction for the crimes of Illegal Drug Trafficking, of Terrorism and of Treason as regulated by Law N°25,659, is excluded from the provisions in this law.

**Article 6.** The events or crimes covered by the amnesty law, all rulings in favour of definitively closing a judicial process, and acquittals, are not subject to investigation, inquiry or summary proceedings; all judicial cases, whether ongoing or executed, remaining definitively closed.

**Article 7.** This Law will come into effect the day following its publication in the Official Gazette *El Peruano*.

Inform the President of the Republic for its promulgation

Lima, the fourteenth day of June of nineteen ninety five

JAIME YOSHIYAMA  
President of the Democratic Constituent Congress

VICTOR JOY WAY ROJAS  
Second Vice-president of the Democratic Constituent Congress

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREFORE:

Order that it be published and observed:

Passed in Government House, Lima, on the fourteenth day of June of nineteen ninety-five

ALBERTO FUJIMORI FUJIMORI  
Constitutional President of the Republic

EFRAIN GOLDENBERG SCHREIBER  
President of the Council of Ministers

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**SPANISH TRANSCRIPTION - FIRST AMNESTY LAW OF 14 JUNE 1995****LEY N°26479<sup>7</sup>****EL PRESIDENTE DE LA REPÚBLICA**

POR CUANTO:

El Congreso Constituyente Democrático ha dado la Ley siguiente:

EL CONGRESO CONSTITUYENTE DEMOCRÁTICO;

Ha dado la ley siguiente:

**Artículo 1°.-** Concédase amnistía general al personal Militar, Policial o Civil, cualquiera que fuere su situación militar o Policial o Funcional correspondiente, que se encuentre denunciado, investigado, encausado, procesado o condenado por delitos comunes y militares en los fueros Común o Privativo Militar, respectivamente, por todos los hechos derivados u originados con ocasión o como consecuencia de la lucha contra el terrorismo que pudieran haber sido cometidos en forma individual o en grupo desde mayo de 1980 hasta la fecha de la promulgación de la presente Ley.

**Artículo 2°.-** Concédase amnistía general al personal militar en situación de Actividad, Disponibilidad o Retiro y civil implicados, procesados o condenados por los sucesos del 13 de noviembre de 1992.

**Artículo 3°.-** Concédase amnistía general al personal militar en situación de Actividad, Disponibilidad o Retiro denunciado, procesado o condenado o los delitos de Infidencia, Ultraje a la Nación y a las Fuerzas Armadas, con ocasión del reciente conflicto en la frontera norte.

**Artículo 4°.-** EL Poder Judicial, Fuero Común, Fuero Privativo Militar y el Ejecutivo, procederán en el día, bajo responsabilidad, a anular los antecedentes policiales, judiciales o penales, que pudieran haberse registrado contra los amnistiados por esta Ley, así como dejar sin efecto cualquier medida restrictiva de la libertad que pudiera afectarles. Procederán igualmente a excarcelar a los amnistiados que estuvieran sufriendo arresto, detención, prisión o pena privativa de la libertad, quedando subsistentes las medidas administrativas adoptadas.

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<sup>7</sup> Fuente: “Normas Legales”, Diario Oficial *El Peruano*, Lima, 15 de junio de 1995.



**Artículo 5°.-** Esta excluido de la presente ley el personal Militar, Policial o Civil que se encuentra denunciado, investigado, encausado o condenado por los delitos de Tráfico Ilícito de Drogas, de Terrorismo y Traición a la Patria regulado por la Ley N°25659.

**Artículo 6°.-** Los hecho o delitos comprendidos en la presente amnistía, así como los sobreseimientos definitivos y las absoluciones, no son susceptibles de investigación, pesquisa o sumario; quedando, todos los casos judiciales, en trámite o en ejecución, archivados definitivamente.

**Artículo 7°.-** La presente Ley entrará en vigencia el día siguiente de su publicación en el Diario Oficial *El Peruano*.

Comuníquese al Presidente de la República para su promulgación.

En Lima, a los catorce días del mes de junio de mil novecientos noventa y cinco.

JAIME YOSHIYAMA  
Presidente del Congreso Constituyente Democrático

VICTOR JOY WAY ROJAS  
Segundo Vicepresidente del Congreso Constituyente Democrático

AL SEÑOR PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA

POR TANTO:

Mando se publique y cumpla

Dado en la Casa de Gobierno, en Lima, a los catorce días del mes de junio de mil novecientos noventa y cinco

ALBERTO FUJIMORI FUJIMORI  
Presidente Constitucional de la República

EFRAÍN GOLDENBERG SCHREIBER  
Presidente del Consejo de Ministros

**APPENDIX 2****ENGLISH TRANSLATION - SECOND AMNESTY LAW OF 28 JUNE 1995****LAW N°26,492<sup>8</sup>****THE PRESIDENT OF THE REPUBLIC**

WHEREBY:

The Democratic Constituent Congress has passed the following Law:

THE DEMOCRATIC CONSTITUENT CONGRESS;

Has passed the following law:

**Article 1.** Let it be understood that, in accordance with provisions enshrined in article 139, section 3 of the Constitution, the amnesty granted by Law N°26479 does not constitute an interference in the functioning of the judiciary, nor does it undermine the duty of the State to respect and guarantee the full enforcement of those human rights as recognized by article 44 of the Constitution and by, among other human rights Treaties, Article 1, Section 1, of the American Convention on Human rights.

**Article 2.** Let it be stated that the amnesty referred to above, insofar as it is a right of grace which can only be granted exclusively by Congress, in accordance with provisions in article 102, section 6, of the Constitution, is not subject to review by a judicial authority.

**Article 3.** Article 1 of Law N°26479 is to be interpreted in the sense that all Judicial Bodies are under the obligation to apply the general amnesty to all events derived or originated from, or a consequence of, the fight against terrorism, whether committed individually or by two or more persons between May 1980 and 14 June 1995, and whether or not the military, police or civilian personnel implicated, face a formal complaint, investigation, is subject to criminal proceedings, or has been convicted; all judicial cases, whether ongoing or executed, remain definitively closed in accordance with article 6 of the above mentioned Law.

**Article 4.** This Law will come into effect the day following its publication in the Official Gazette *El Peruano*.

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<sup>8</sup> Source: "Normas Legales", *Diario Oficial El Peruano*, Lima, 2 July 1995. The translation is by Amnesty International.

Inform the President of the Republic for its promulgation

Lima, the twenty eighth day of June of nineteen ninety five

JAIME YOSHIYAMA  
President of the Democratic Constituent Congress

VICTOR JOY WAY ROJAS  
Second Vice-president of the Democratic Constituent Congress

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREFORE:

Order that it be published and observed:

Passed in Government House, Lima, on the thirtieth day of June of nineteen ninety-five.

ALBERTO FUJIMORI FUJIMORI  
Constitutional President of the Republic

EFRAIN GOLDENBERG SCHREIBER  
President of the Council of Ministers

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**SPANISH TRANSCRIPTION - SECOND AMNESTY LAW OF 28JUNE 1995****LEY N°26492<sup>9</sup>****EL PRESIDENTE DE LA REPÚBLICA**

POR CUANTO:

El Congreso Constituyente Democrático ha dado la Ley siguiente:

EL CONGRESO CONSTITUYENTE DEMOCRÁTICO;

Ha dado la ley siguiente:

**Artículo 1°.-** Entiéndase que la amnistía otorgada por la Ley N°26479, según lo dispuesto en el inciso 3 del Artículo 139° de la Constitución Política, no constituye interferencia en el ejercicio de la función jurisdiccional ni vulnera el deber del Estado de respetar y garantizar la plena vigencia de los derechos humanos, reconocido por el Artículo 44° de la Constitución Política y, entre otros Tratados sobre la materia, el numeral 1 del Artículo 1° de la Convención Americana sobre Derechos Humanos.

**Artículo 2°.-** Precísase que dicha amnistía, en cuanto es un derecho de gracia cuya concesión corresponde exclusivamente al Congreso, de conformidad con lo dispuesto en el inciso 6 del Artículo 102° de la Constitución Política, no es revisable en sede judicial.

**Artículo 3°.-** Interpretese el Artículo 1° de la Ley N°26479 en el sentido que la amnistía general que se concede es de obligatoria aplicación por los Órganos Jurisdiccionales y alcanza a todos los hechos derivados u originados con ocasión o como consecuencia de la lucha contra el terrorismo cometidos en forma individual o en grupo desde el mes de mayo de 1980 hasta el 14 de Junio de 1995, sin importar que el personal militar, policial o civil involucrado, se encuentre o no denunciado, investigado, sujeto a proceso penal o condenado; quedando todos los casos judiciales en trámite o en ejecución archivado definitivamente de conformidad con el Artículo 6° de la Ley precitada.

**Artículo 4°.-** La presente Ley entrará en vigencia al día siguiente de su publicación en el Diario Oficial *El Peruano*.

Comuníquese al Presidente de la República para su promulgación.

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<sup>9</sup> Fuente: "Normas Legales", Diario Oficial *El Peruano*, Lima, 2 de julio de 1995.

En Lima, a los veintiocho días del mes de junio de mil novecientos noventa y cinco.

JAIME YOSHIYAMA  
Presidente del Congreso Constituyente Democrático

VICTOR JOY WAY ROJAS  
Segundo Vicepresidente del Congreso Constituyente Democrático

AL SEÑOR PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA

POR TANTO:

Mando se publique y cumpla.

Dado en la Casa de Gobierno, en Lima, a los treinta días del mes de junio de mil novecientos noventa y cinco.

ALBERTO FUJIMORI FUJIMORI  
Presidente Constitucional de la República

EFRAÍN GOLDENBERG SCHREIBER  
Presidente del Consejo de Ministros