

# PERU

## Government persists in retaining unfair trial procedures

In May 1980 the clandestine opposition group *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), began a campaign of armed attacks against the Peruvian authorities and sectors of the civilian rural population which refused to collaborate with the PCP. 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 the PCP 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.<sup>1</sup>

Against this background President Fujimori and his Council of Ministers, who ruled the country by decree between April and December 1992, introduced a new set of anti-terrorism laws. According to the authorities, these laws were designed to complement a new counter-insurgency strategy which included strengthening the role of the intelligence services and of military-backed civil defence patrols. In essence, the purpose of the new anti-terrorism laws was to ensure that the legislation made a significant contribution to halting the PCP's offensive by radically reducing the number of judicial acquittals and by significantly lengthening prison sentences.<sup>2</sup>

President Fujimori's new counter-insurgency strategy resulted in a change to the pattern of human rights violations which existed in Peru up to 1992. Throughout the period

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<sup>1</sup> In 1984 the clandestine opposition group *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement, also began a campaign of armed attacks. The MRTA, which has never attained the influence of the PCP, has committed human rights abuses on a lesser scale than the PCP.

<sup>2</sup> Peru first enacted provision for the control of "crimes of terrorism" in March 1981. Further substantive enactments took place in March and June 1987. In the 10-year-period during which these provisions were in force it is estimated that some 2,000 persons were sentenced to terms of imprisonment. In the four-year period following the introduction of the new anti-terrorism laws in 1992, it is estimated that at least 5,000 persons have been sentenced to prison terms. Hundreds more are in jail, awaiting trial.

1983 to 1992 thousands of cases of enforced disappearance and summary executions for which the security forces were held responsible, were filed before Peru's Public Ministry, and before human rights bodies attached to the United Nations (UN) and the Organization of American States. This pattern of systematic human rights violations was effectively ended in 1992 only to be replaced by a new one. From then on, thousands of persons charged under the new anti-terrorism legislation were denied the fundamental right to a fair trial, and hundreds were falsely accused of terrorism-related offences.

Amnesty International does not have exact figures as to how many persons have been tried or are awaiting trial under these laws.<sup>3</sup> However, in August 1995 the Peruvian Minister of Foreign Affairs, Francisco Tudela, informed the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions, on torture and on the independence of judges and lawyers, as well as the Chairman of the UN Working Group on enforced and involuntary disappearances, that at least 5,000 persons had been convicted and sentenced for terrorism-related offences under this legislation.

These prisoners have been tried under procedures which continue to fall short of international fair trial standards. For example, the anti-terrorism laws as they stand at present stipulate that civilians accused of the terrorism-related crime of treason are to be tried by military courts. In addition, trials, whether under civilian or military jurisdiction, are to be heard in secret and by "faceless judges"<sup>4</sup>, and police and military personnel involved in the detention and questioning of the accused are prohibited from appearing as witnesses before civilian or military courts.<sup>5</sup>

Amnesty International also believes that the anti-terrorism laws continue to provide a framework which facilitates the imprisonment of persons for whom there is no evidence whatsoever to link them with the armed opposition and whose detention appears to be politically motivated. Amnesty International considers these prisoners to be prisoners of conscience. The organization has documented the cases of at least 700

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<sup>3</sup> This report is based on information received by Amnesty International until 15 November 1996.

<sup>4</sup> The term "faceless judges" refers to the fact that all terrorism-related trials in Peru, whether under the jurisdiction of military or civilian courts, are conducted 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 appeal or review hearings, are held in precincts to which the public is denied access.

<sup>5</sup> For a full list of the shortcomings in Peru's anti-terrorism legislation see *Peru: Prisoners of conscience*, AI Index: AMR 46/09/96, May 1996, Appendix I.

prisoners of conscience and possible prisoners of conscience. Peruvian human rights organizations put the figure closer to 1,400.<sup>6</sup>

### **Criticisms of Peru's anti-terrorism laws**

The *Coordinadora Nacional de Derechos Humanos*, CNDDHH, National Human Rights Committee, an umbrella organization representing 47 independent human rights groups in Peru, has been campaigning to raise awareness about the reality faced by persons who have been unjustly imprisoned on charges of terrorism-related crimes. These groups have taken up at least 1,390 such cases and have actively worked for their release<sup>7</sup>.

The CNDDHH has also proposed to the authorities that they bring the anti-terrorism legislation into line with international fair trial standards, and has played a key role in informing the international community as to the plight of the hundreds of prisoners unjustly charged with crimes of terrorism<sup>8</sup>. It is in this context that in 1993 President Fujimori publicly admitted for the first time that there were persons unjustly charged with terrorism-related offences in Peruvian prisons.

In September 1993 an international commission created by agreement between the governments of Peru and the United States of America, known as the Commission of International Jurists, visited Peru to review the judicial system handling terrorism-related cases. The Commission's report, widely known as the "Goldman Report"<sup>9</sup>, concluded "that the present administration of justice in terrorism and, especially, treason cases is seriously flawed and at odds in many key respects with Peru's international legal obligations"<sup>10</sup>.

In May 1994 a delegation of the Association of the Bar of the City of New York also visited Peru to study the functioning of the criminal justice system, in particular the

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<sup>6</sup> Prisoners unjustly accused of crimes of terrorism are known in Peru as "innocent prisoners".

<sup>7</sup> See 1995 Annual Report by the *Coordinadora Nacional de Derechos Humanos*.

<sup>8</sup> See *En nombre de los inocentes, II parte*, *Coordinadora Nacional de Derechos Humanos*, Lima, October 1995, and *300 Historias de prisión injusta en el Perú, Los inocentes tienen nombre*, Lima, November 1995.

<sup>9</sup> The Commission of International Jurist was presided over by Robert Goldman, a human rights lawyer attached to the Law School Center for Human Rights and Humanitarian Law at the American University in Washington, D.C.

<sup>10</sup> *Report of the Commission of International Jurists on the Administration of Justice in Peru*, 30 November 1993, page 49.

anti-terrorism legislation. In a press release issued at the end of the visit, the delegation stated: “We begin by acknowledging that every country has a right to defend itself against terrorist attacks and to ensure that those who commit these terrible crimes be brought to justice. However, it appears that some of the measures that the government has adopted in its struggle against terrorism have produced [...] violations of human rights”.<sup>11</sup>

In a similar vein, UN bodies responsible for monitoring human rights have also expressed concern in relation to these laws and have provided the Peruvian government with recommendations designed to ensure that the legislation conforms to international fair trial standards.

For example, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in his report on his visit to Peru in mid-1993 stated that he was “deeply concerned at the implications of the severe restrictions on fair trial guarantees [under the anti-terrorism legislation], which contravene numerous safeguards embodied in international human rights instruments.” In addition, the Special Rapporteur urged the Peruvian authorities to “revise the legislation governing preliminary investigations and judicial proceedings so that they would conform to internationally recognized fair trial standards”.<sup>12</sup>

In November 1994 the UN Committee against Torture examined the Government of Peru’s initial report on how it gave effect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee concluded that the anti-terrorism legislation failed to measure up to international fair trial standards and was concerned to learn that civilians are subjected to trials under military jurisdiction.<sup>13</sup>

In July 1996 the UN Human Rights Committee, responsible for monitoring the adherence by State parties to the International Covenant on Civil and Political Rights (ICCPR), initiated its consideration of the Government of Peru’s third periodic report. On 25 July the Committee, having agreed to resume its unfinished considerations of Peru’s report the following October, published its Preliminary Observations. Among its recommendations the Committee urged the Peruvian government to “take immediate measures with a view to release innocent prisoners [and to ensure] that the system of ‘faceless judges’ be abolished, [...]that public trials for all defendants, including those

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<sup>11</sup> Press release by the Association of the Bar of the City of New York, 9 May 1994, Lima, Peru.

<sup>12</sup> UN Doc. E/CN.4/1994/7/Add.2, paras. 76 and 78, 15 November 1993.

<sup>13</sup> See *Peru: Amnesty International’s concerns about torture and ill-treatment*, AI Index: AMR 46/19/96, November 1994.

charged with terrorist-related activities, be reinstated immediately, [...and] that all trials [be] conducted with full respect for the safeguards of fair trial provided by article 14 [of the ICCPR].”<sup>14</sup>

The recommendation by the Committee that fair trial procedures be promptly reinstated went unheeded. Between the Committee making its July recommendations and resuming its consideration of Peru’s report at the end of October, the Peruvian authorities passed legislation extending, rather than abolishing, the use of “faceless judges”.<sup>15</sup> The UN Human Rights Committee deplored these developments. Having concluded its consideration of Peru’s report, the Committee stated: “The Committee deplores the fact that Peru not only failed to take steps in relation to the recommendations outlined in paragraph 25 (sic)<sup>16</sup> of its [preliminary] observations and that, to the contrary, only days prior to the examination of the second part of its report, Peru extended the use of the system of ‘faceless judges’. The Committee expresses its profound concern about this situation, since it detracts from the judicial system and could, once again, lead to the conviction of innocent persons who did not enjoy the right to a fair trial”.<sup>17</sup>

In September 1996 the UN Special Rapporteur on the independence of judges and lawyers visited the country. According to reports, at the end of his mission the Special Rapporteur publicly stated: “There is no doubt that ‘faceless tribunals’ have tried many cases without observing the due process.” The Special Rapporteur went on to recommend that such tribunals “be abolished forthwith”, that “all pending cases should be transferred for trial to the ordinary courts”, and that “civilians should not longer be tried before the military courts.”

### **Amnesty International and the anti-terrorism legislation**

Amnesty International has repeatedly expressed its concerns about Peru’s current anti-terrorism legislation and has appealed to the authorities to adhere to internationally

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<sup>14</sup> UN Doc. CCPR/C/79/Add.67, paras. 22 and 26, 25 July 1996.

<sup>15</sup> See below, page 7.

<sup>16</sup> Amnesty International believes that the Human Rights Committee may have intended this reference to be “paragraph 26”, the paragraph in their Preliminary Observations of July 1996 in which they urge the Government of Peru to abolish the use of “faceless judges”.

<sup>17</sup> UN Doc. CCPR/C/79/Add. 72, para. 11, 8 November 1996. The Committee’s Final Observations and Recommendations were published in Spanish. The translation into English is by Amnesty International.

recognised fair trial standards. The organization has conveyed its concerns to the authorities through reports<sup>18</sup>, press statements and in talks with government representatives.

The last of these talks were held in May 1996 when an Amnesty International delegation, which included a judge from Spain's Supreme Court of Justice, visited Peru. The delegation met with the Minister of Justice, Carlos Hermoza Moya; the Minister of Foreign Affairs, Francisco Tudela; the President of the Supreme Council of Military Justice, General (EP) Guido Guevara Guerra; a judge from the Supreme Court of Justice, Luis Felipe Almenara; Peru's first-ever Ombudsman, Jorge Santistevan y de Noriega; and with Congress' Human Rights and Justice Commissions.

The authorities, with the exception of General (EP) Guido Guevara, reiterated affirmations made previously by President Fujimori that men and women had been unjustly imprisoned for terrorism-related offences. General Guevara informed the delegation that in the case of military tribunals these had not committed any miscarriages of justice in relation to the 1,200 civilians charged with the terrorism-related crime of treason.

The Ministers of Justice and Foreign Affairs informed the delegation that provisions in the anti-terrorism laws, including the use of "faceless judges" and military tribunals, were justified by the serious threat posed to the state by the armed opposition, but added that the laws would be reformed as the country became increasingly "pacified".

Amnesty International reminded the authorities that actions by the armed opposition can never justify the violation of fundamental human rights, and urged them to ensure that fair trial procedures be reinstated and that all prisoners of conscience be released immediately and unconditionally.

### **The Government of Peru and the anti-terrorism laws**

The repeated appeals to the Government of Peru to adhere to international fair trial standards have been met with a mixed response. On the one hand, the authorities have

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<sup>18</sup> See *Peru: Human rights since the suspension of constitutional government*, AI Index: AMR 46/13/93, May 1993; *Peru: Anti-terrorism laws continue to fall short of international human rights standards*, AI Index: AMR 46/05/94, April 1994; *Peru: Reforms of anti-terrorism laws fail to match international human rights standards*, AI Index: AMR 46/06/95; and *Peru: Prisoners of conscience*, AI Index AMR 46/09/96, May 1996.

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periodically passed positive, but only partial, amendments to these laws. Thus, in November 1993 the right to *habeas corpus* was reintroduced and the trial, conviction and sentencing of prisoners *in absentia* abolished. In November 1994 the Repentance Law, which included among its provisions clauses benefitting members of the armed opposition who supplied information leading to the capture of other alleged members of the armed opposition, was also abolished.<sup>19</sup> In April 1995 provision was made for suspects to have prompt access to a defence lawyer. The last of these amendments, in March 1996, made provision for the issuing of a summons to defendants to attend a new trial, rather than issuing a warrant for their detention, in cases where the Supreme Court of Justice annulled a verdict of acquittal by a High Court.<sup>20</sup>

On the other hand, the authorities have persisted in retaining provisions in the anti-terrorism laws which continue to deny all prisoners the fundamental right to a fair trial. This persistence is exemplified by the authorities' disregard for the recent recommendation made by the UN Human Rights Committee for the system of "faceless judges" to be promptly abolished. Thus, although the reforms adopted in April 1995 proposed that the use of "faceless judges" be abolished in October 1995, Congress has subsequently voted twice to extend their use by a further twelve months, the last until October 1997.

The Government of Peru's persistence in allowing the identity of judges to be concealed also disregarded one of the recommendations made by the Special Rapporteur on the independence of judges and lawyers in September 1996, only days before Congress approved the latest of the extensions maintaining to the use of "faceless judges". At the end of his visit to Peru the Special Rapporteur publicly stated that "the continuing use of 'faceless judges' makes a mockery of human rights [and] should be abolished immediately"<sup>21</sup>. It was also in view of this last extension that the UN Human Rights Committee "deplored" the government's disregard of its recommendation for the abolition of the system of "faceless judges" and reiterated that they be promptly abolished.<sup>22</sup>

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<sup>19</sup> Many of the cases of people unjustly held for crimes of terrorism documented by Amnesty International and Peruvian human rights organizations were accused, charged and convicted solely on the basis of uncorroborated accusations by armed opposition members seeking to benefit from provisions in the Repentance Law.

<sup>20</sup> For a full description of these amendments see *Peru: Prisoners of conscience*, AI Index: AMR 46/09/96, May 1996, Appendix 1.

<sup>21</sup> *Urge suprimir tribunals sin rostro*, press release by the *Coordinadora Nacional de Derechos Humanos*, 9 October 1996.

<sup>22</sup> See above, pages 4-5.

### **The Government of Peru and prisoners falsely accused of terrorism**

On several occasions from 1993 onwards, President Fujimori and other government representatives have acknowledged the existence of prisoners who have been falsely accused of committing “crimes of terrorism”. Indeed, since 1994 at least seven draft bills designed to resolve this problem were put before Congress, but none of them were ever debated.

In May 1996 the President of Congress’ Justice Commission informed Amnesty International that the Commission was awaiting a draft bill from the executive proposing to resolve the problem faced by prisoners unjustly accused of terrorism-related offences. Two months later, in July 1996, Amnesty International learnt that two legislative bills on this issue had been prepared by the Office of the Ombudsman and by the Ministry of Justice respectively.<sup>23</sup>

In August 1996 Congress finally passed a law similar in scope to that proposed by the Office of the Ombudsman. The law created an *ad hoc* Commission charged with proposing to the President of the Republic that prisoners awaiting trial on false charges of terrorism benefit from the *derecho de gracia*, right to clemency, and that those who had been convicted be pardoned, thereby bringing about their release. The Commission, made up of the Ombudsman, Jorge Santistevan y de Noriega, the Minister of Justice, Carlos Hermoza Moya, and a representative of the President of the Republic, Father Hubert Lanssiers, was given 180 days to complete its mandate, extendable for a further 180 days.

By 15 November 1996, 74 prisoners unjustly accused of terrorism-related offences had been released, following a review of their cases by the *ad hoc* Commission. All of these prisoners, held in prison for periods ranging from several months to over four years, are considered by Amnesty International to have been prisoners of conscience or possible prisoners of conscience.

Amnesty International welcomes the release of all these prisoners. However, the organization remains concerned that these prisoners have not benefitted from a judicial review leading to the annulment of the charges faced by those who awaited trial, or the quashing of the verdict and sentence handed down to those convicted. The failure to annul charges or quash sentences has continued implications for their civil status, since those released retain a criminal record. In addition, Amnesty International remains concerned that no provision has been made for all those who have been arbitrarily detained

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<sup>23</sup> For the full text of both bills, see *Peru: Legislative bills for pardoning prisoners unjustly convicted of terrorism*, AI Index: AMR 46/18/96, 16 July 1996.

to receive adequate compensation for the ordeal they suffered during their detention. In the recent words of the UN Human Rights Committee on concluding their examination of Peru's third periodic report: "Without prejudice to expressing our satisfaction at the release of 69 persons, the Committee is of the opinion that the pardoning of prisoners does not offer full reparation to the victims of unfair trial procedures [...]."<sup>24</sup>

### **Recommendations to the Government of Peru**

Amnesty International urges the Government of Peru to ensure:

- ◆ a prompt review of the anti-terrorism legislation designed to bring it into line with international fair trial standards;
- ◆ the immediate and unconditional release of all prisoners of conscience;
- ◆ the judicial annulment of all terrorism-related charges for those prisoners who were awaiting trial but were released as a result of benefitting from a right to presidential clemency;
- ◆ the judicial quashing of the verdict and sentence for those prisoners who were convicted of terrorism-related charges but were released as a result of benefitting from a presidential pardon;
- ◆ that all prisoners who have been arbitrarily detained on false charges of terrorism-related offences are adequately compensated;
- ◆ a careful consideration of the observations and recommendations made by Special Rapporteurs attached to the UN Commission on Human Rights and by the UN Human Rights Committee.

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<sup>24</sup> 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.