

# PERU

## @Reforms of anti-terrorism laws fail to match international human rights standards

Amnesty International is concerned that Peru's criminal laws and constitutional provisions aimed at controlling terrorism-related crimes continue to fall short of international human rights standards<sup>1</sup>. Despite positive but limited amendments to the criminal laws passed by the *Congreso Constituyente Democrático*, CCD, Democratic Constituent Congress, in November 1993, November 1994 and April 1995, thousands of prisoners detained and tried since May 1992 for terrorism-related crimes have been denied the right to a fair trial. Amnesty International is also concerned that the anti-terrorism laws in Peru provide a framework which facilitates the imprisonment of prisoners of conscience and possible prisoners of conscience<sup>2</sup>. Amnesty International has received information that, by the end of August 1995, some 1000 prisoners in Peru had been falsely charged with having committed terrorism-related offences.

### The 1992 anti-terrorism decree laws

In July 1990, when President Alberto Fujimori assumed power, his government inherited ten years of internal armed conflict which two previous governments had failed to solve. In the face of this problem President Fujimori's government sought to develop a new counter-insurgency strategy. Despite special powers granted to the executive in 1991 to pass legislation designed to underpin the new counter-insurgency strategy, in April 1992 President Fujimori announced that the country was to be ruled by an executive-led emergency government. The President suspended constitutional rule and provisionally closed the democratically elected two-chamber Congress and most of the judicial system. The armed forces, which have been closely associated with President Fujimori since he was elected in 1990, strongly supported the decision to suspend constitutional rule.

Between May and November 1992 President Fujimori and his Council of Ministers, who ruled the country by decree law up to the end of December of that year, issued a new set of wide-ranging anti-terrorism decree-laws. The decrees were issued in response to increasingly widespread violence by the armed opposition groups *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), and the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement. The President asserted that the decrees would overcome some of the major problems faced by the authorities in the fight against the armed opposition. These problems included a failure by the judiciary to secure the conviction of armed opposition suspects because prosecutors and judges were repeatedly threatened, and sometimes killed, by members of the armed opposition and, in the case of those prisoners who were convicted, the handing down of prison sentences which the government claimed were too lenient.

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<sup>1</sup>This report is based on information received by Amnesty International until 15 October 1995.

<sup>2</sup> 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 which there is no credible evidence to link them to the political beliefs and actions with which they have been imputed.

Decree Law N°25,475, which came into effect on 6 May 1992, was the first of the anti-terrorism decrees issued during President Fujimori's emergency government. Article 2 of this decree contains the basic legal definition of crimes of terrorism now in use in Peru. Article 2 states:

"[The person] who provokes, creates or maintains a state of uncertainty, alarm or fear among the population, or part of it; [who] carries out acts against the life, physical integrity, health, freedom and security of individuals, or against private and public property, the security of public buildings, means of communication, electricity generating plants and pylons, or any other property or service; [and who] through the use of weapons or explosive devices or substances, or through the use of any other means capable of causing damage or a serious disturbance of the peace or affects international relations or the security of civil society and of the State, will be deprived of his liberty for not less than 20 years." (unofficial translation)

This decree also set out police procedures for the detention and investigation of a person on suspicion of having committed a terrorism-related crime and outlined procedures encompassing the stages of judicial investigation, trial, conviction, sentencing and appeal.

Decree Law N°25,659, issued by President Fujimori's emergency government on 7 August 1992, contained the definition of the terrorism-related crime of treason. The crime of treason is defined in terms of Article 2 of Decree Law N°25,475, but takes into account a set of aggravating circumstances. These circumstances include the means used for the commission of terrorism-related acts and their effect 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. This decree also makes provision for civilians accused of treason to have their cases heard under the jurisdiction of military tribunals. By virtue of this decree, civilians accused of terrorism-related acts were brought before military tribunals for the first time in Peru's present internal armed conflict.

Decree Laws N°25,475 and N°25,659 are the basic decrees which regulate the procedures by which the police and courts handle terrorism-related cases. Other decrees issued during the emergency government added to or modified the procedures outlined in these two decrees.

The new anti-terrorism decree laws were issued between May and November 1992, during the period when Peru was ruled by the executive. On 31 December 1992 a newly elected single-chamber Congress was formally opened. Among its first legislative decisions, the newly elected parliament, known as the *Congreso Constituyente Democrático*, CCD, Democratic Constituent Congress, approved a law stating that the anti-terrorism decree laws would remain in effect until such time as they were revised or revoked by Congress. Since then the CCD has passed positive but limited amendments to the anti-terrorism laws on three different occasions: in November 1993, November 1994 and April 1995.

Amnesty International believes that prior to the first set of amendments passed in November 1993, the following features of the anti-terrorism laws, viewed singly and as a whole, conspired to undermine international fair trial standards:

- \* the virtually unlimited powers granted to the police in questioning suspects and formalizing charges;
- \* the limitations placed on access to the accused by representatives of the Public Ministry and independent lawyers during the police investigation stage;
- \* holding the accused in detention for inordinately lengthy periods while awaiting trial;
- \* the limitations imposed on examining judges, including that such judges have no choice other than to refer 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 impossibility of anyone petitioning for *habeas corpus* in favour of the accused at any time during the police investigation and trial stages;
- \* the transference of those charged with the "crime of treason" into the jurisdiction of military tribunals;
- \* the peremptory periods allowed for conviction, sentencing and appeal;
- \* the prohibition imposed on the lawyer chosen by the defendant to simultaneously represent other defendants in terrorism-related cases;
- \* holding trials in secret, both in civilian and military courts;
- \* the possibility of the accused being tried, convicted and sentenced *in absentia*.<sup>3</sup>

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<sup>3</sup> For an analysis of the 1992 anti-terrorism decree laws and Amnesty International's concerns in relation to them prior to the November 1993 amendments, see Amnesty International, Peru: Human rights since the suspension of constitutional government; AI Index: AMR 46/13/93, May 1993.

## Amendments to the 1992 anti-terrorism decree laws

In November 1993, a year and a half after President Fujimori's emergency government issued the first anti-terrorism decree laws, the first set of amendments to these laws was passed by the CCD<sup>4</sup>. The effect of these amendments was to:

- allow independent lawyers to simultaneously represent more than one defendant;
- re-introduce the right to *habeas corpus*;
- abolish the trial, conviction and sentencing of prisoners *in absentia*;
- permit examining judges, in cases being heard under the jurisdiction of the civilian courts<sup>5</sup>, to rule that defendants be unconditionally released if there was no case to answer. (However, such rulings could not be put into effect by examining judges, since they have to be referred for ratification or veto to the higher court at which the defendant is tried);
- make provision for military tribunals to review sentences in those cases in which proof as to the innocence of the defendant was ignored by the tribunal.

In November 1994 the CCD passed a further amendment to the anti-terrorism legislation. On this occasion the anti-terrorism *Ley de Arrepentimiento*, Repentance Law, was repealed. The Repentance Law, which came into effect in May 1992, included among its provisions clauses which benefitted members of the armed opposition who supplied information leading to the capture of other alleged members of the armed opposition. The benefits available to members of the armed opposition under the Repentance Law consisted of either the exemption, reduction or remission of their sentence<sup>6</sup>.

In April 1995 a third set of amendments to Peru's anti-terrorism legislation was passed by the CCD. The amendments, contained in Law N°26,447, came into effect on 22 April 1995, with

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<sup>4</sup> For an analysis of the 1992 anti-terrorism decree laws and Amnesty International's concerns in relation to them following the November 1993 amendments, see Amnesty International, Peru: Anti-terrorism laws continue to fall short of international human rights standards, AI Index AMR 46/05/94, April 1994

<sup>5</sup> Judicial procedures for civilian courts 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 and reviews are heard.

<sup>6</sup> Since 1992 Amnesty International has received detailed information on at least 600 prisoners who have been falsely charged with terrorism-related crimes. Many of the files on these cases contain information of the prisoner having been charged solely and exclusively on the basis of uncorroborated accusations made against him or her by members of the armed opposition who sought to benefit from the provisions contained in the Repentance Law.

the exception of those contained in Article 1, which are currently envisaged as coming into effect on 15 October 1996<sup>7</sup>

The modifications to the anti-terrorism legislation approved in Law N° 26,447 were initially proposed by the executive in a bill submitted to Congress. The executive's bill recommended that all the amendments come into force on 1 May 1995. However, the bill was modified to the effect that Article 1 should come into force on 15 October 1995. The president of Congress' Justice Commission, in justifying this delay, reportedly stated: "We must maintain this system [whereby the identity of judges and other court officials are concealed] because it has had a positive effect and terrorism has not yet been defeated". A similar argument was reportedly used in October 1995 by Congressman Daniel Espichán in justifying the further deferment of Article 1 to 15 October 1996. Daniel Espichán is reported to have argued that: "Nobody has said that the war against terrorism is over".<sup>8</sup>

Article 2 of Law N°26,447 stipulates that those arrested on suspicion of being implicated in a terrorism-related crime must have prompt access to a defence lawyer from the moment the police initiate their investigations, even if the prisoner is held in incommunicado detention<sup>9</sup>. Article 2 also stipulates that during the suspect's declarations before the police, a representative of the Public Ministry and a defence lawyer must be present. Amnesty International welcomes these provisions as practical measures which go some way towards complying with international fair trial standards, and also help in averting the torture and ill-treatment of prisoners<sup>10</sup>.

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<sup>7</sup> Article 1 of Law N°26,447 repeals provisions contained in Peru's anti-terrorism legislation which allowed the identity of judges, prosecutors and other court officials in high courts and the Supreme Court of Justice to be concealed. Instead, Article 1 makes provision for trial and appeal procedures in terrorism-related cases to be subjected to the normal procedural and administrative rules governing all criminal cases heard before civilian courts. In effect this means that Article 1 makes provision for judges, state prosecutors and other court officials hearing terrorism-related cases before civilian high courts and the Supreme Court of Justice, to be identified by their proper names, rather than by secret codes, and for court hearings to be public. The article does not affect procedures in cases heard before military courts. Military tribunals, by definition, are held in closed courts.

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<sup>9</sup> According to Peru's *Código Procesal Penal*, Code of Criminal Procedures, during their investigations the police can hold a prisoner incommunicado for up to 10 days.

<sup>10</sup> Since May 1992, the vast majority of complaints laid before the authorities about torture and ill-treatment are linked to prisoners detained under Peru's anti-terrorism laws. In November 1994 the United Nations (UN) Committee against Torture (CAT), established under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, examined the Government of Peru's initial report (UN reference: CAT/C/7/Add.16). At the end of the examination the CAT made an oral statement in which it expressed its profound

Article 3 of Law N°26,447 repealed anti-terrorism Decree Law N°25,564, which reduced the minimum age of criminal responsibility for "crimes of terrorism" from 18 to 15 years. As from 22 April 1995 the minimum age of criminal responsibility reverted to 18 years<sup>11</sup>.

### **Anti-terrorism provisions in the 1993 Constitution**

Amnesty International is also concerned that anti-terrorism provisions enshrined in Peru's new Constitution continue to undermine internationally recognised human rights standards. Such is the case with provisions relating to the use of military tribunals to try civilians accused of terrorism-related crimes and to the widening of the death penalty.

#### ***The use of military tribunals to try civilians***

Article 173 of the Constitution makes provision for civilians accused of "the crimes of treason and of terrorism" to be transferred into the jurisdiction of military tribunals. The organization believes that military tribunals in Peru are neither competent, impartial nor independent, when hearing cases in which civilians are charged with criminal offences. Firstly, military judges lack competence because they are not known to receive formal and accredited legal training which allows them to hear civilian cases. Secondly, in cases where the military bring to trial civilians for terrorism-related offences, the military lack impartiality because they inevitably become both accuser and judge. Thirdly, military judges lack independence because they are part of the military chain-of-command structure, and therefore remain subject to the orders of their superiors.

#### ***The death penalty***

Article 140 of the Constitution 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

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concern about the practice of torture by the Peruvian security forces. The CAT concluded that there exists a widespread practice of torture during the interrogation phase in terrorism-related cases, and that impunity is enjoyed by the perpetrators. The CAT was also of the opinion that the current anti-terrorism legislation failed to measure up to international fair trial standards and was concerned to learn that civilians are subjected to trial under military jurisdiction. The CAT recommended to the Government to review Peru's anti-terrorism legislation, particularly those aspects which touched on incommunicado detention; the right of the accused to an adequate defence; the use of secret courts; the use of military tribunals to try civilians; and the independence and impartiality of the courts. For an analysis of the torture and ill-treatment of prisoners accused of terrorism-related offences, see Amnesty International, [Peru: Amnesty International's concerns about torture and ill-treatment](#), AI Index AMR 46/19/94, November 1994.

<sup>11</sup> In June 1995 Amnesty International received from an independent human rights organization in Peru a report which indicated that, at the time, approximately 100 people under the age of 18 were detained in Peruvian prisons for terrorism-related offences.

treaties to which Peru is party" (unofficial translation). By the end of September 1995 this provision remained enshrined in the 1993 Constitution, despite a formal petition to Congress by Peruvian citizens, requesting a reform of the Constitution to the effect that the death penalty be abolished. The petition, containing 45,000 signatories in compliance with official requirements as to the minimum number of signatories needed, was handed to Congress in September 1994. However, by September 1995 Congress had failed to take up the petition.

The article on the death penalty also remained enshrined in the 1993 Constitution, despite a Consultative Opinion having been issued by the Inter American Court of Human Rights (IACourtHR) in December 1994, in which the court ruled unanimously that: "the promulgation of a law in manifest conflict with the obligations assumed by a State upon ratifying or acceding to the [American] Convention [on Human Rights] is a violation of that treaty."<sup>12</sup>

The IACourtHR issued this Consultative Opinion specifically in relation to a request by the Inter American Commission on Human Rights (IACHR) for an opinion on the widening of the death penalty in Peru. The IACHR cited articles 4.2 and 4.3 of the American Convention on Human Rights (ACHR) in its petition to the IACourtHR. 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, enacted prior to the commission of the crime. Its application shall not be extended to crimes to which it does not presently apply." Article 4.3 reads: "The death penalty shall not be re-established in states that have abolished it." The IACourtHR's Consultative Opinion, however, is applicable to all American states who adhere or ratify the ACHR, both in relation to any widening of the death penalty or the issuing of any law which contravenes provisions enshrined in the ACHR.

Amnesty International is further concerned that, according to reports, at the end of September 1995 Jorge Muñiz, a Congressman who represents the government party of President Fujimori, submitted a draft bill to Congress to extend the death penalty to rapists of children. By the end of September 1995 the CCD had not yet debated the bill. However, Amnesty International believes that should Congress approve such a bill it also would contravene the ACHR and the ruling issued by the IACourtHR in December 1994.

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 fulfill any penal or social objectives which could not be achieved equally by other forms of punishment.

### **Amnesty International's concerns about the reformed anti-terrorism laws**

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<sup>12</sup> See Inter American Court of Human Rights (IACourtHR), Consultative Opinion OC-14/94 of 9 December 1994.

### *Pre-trial and trial procedures*

Despite the positive amendments to Peru's anti-terrorism criminal laws outlined above, Amnesty International believes that the laws retain many features which fail to match international pre-trial and trial standards enshrined in the International Covenant on Civil and Political Rights , ICCPR, (see Articles 9.2 to 9.4, 14 and 15.1), and the American Convention on Human Rights, ACHR, (see Articles 7.4 to 7.6, and 8)<sup>13</sup>, as well as in standards such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Basic Principles on the Independence of the Judiciary.

Amnesty International believes that the anti-terrorism legislation currently in force in Peru contravenes, in spirit and in practice, the standards referred to above. Indeed, the organization believes that the practical effect of Peru's anti-terrorism laws as they stand at present continue to render all terrorism-related trials as unfair.

Pre-trial and trial procedures under Peru's current anti-terrorism laws continue to fall short of international human rights standards because of:

- the virtually unlimited time 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 inordinately lengthy periods which the accused may be held in prison 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 before civilian or military courts, either at the hearings convened by examining judges or at the trial proper and the subsequent appeal hearings;
- the impossibility of granting the accused any form of bail or conditional liberty at any time after the accused is detained;
- the fact that people charged with the terrorism-related "crime of treason" must be transferred into the jurisdiction of military tribunals;

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<sup>13</sup> The ICCPR and the ACHR were ratified by Peru in 1978.

- the peremptory periods allowed for judicial examinations, trials and appeals in both civilian and military courts. (The maximum periods allowed for judicial examination in civilian lower courts is 30 consecutive days, extendable by a further 20 days; 15 consecutive days for the trial in civilian higher courts; and 15 days for appeal hearings in the Supreme Court of Justice. In cases heard before military courts the examination, trial and sentence must be completed all within ten days);
- the fact that trials, whether under civilian or military jurisdiction, are not held in public;
- the continuing use of measures designed to conceal the identity of civilian and military judges and other court officials involved in terrorism-related hearings.<sup>14</sup>

### ***Prisoners of conscience***

Amnesty International also believes that the anti-terrorism laws as they stand at present continue to provide a framework which facilitates the imprisonment of prisoners of conscience.

Since the current anti-terrorism legislation came into effect, Amnesty International has adopted 83 prisoners charged with terrorism-related offences as prisoners of conscience<sup>15</sup>. In addition the organization has documented the cases of at least 600 possible prisoners of conscience.

In a report issued in early 1995, the *Coordinadora Nacional de Derechos Humanos*, CNDDHH, an umbrella organization bringing together some 45 independent Peruvian human rights organizations, claims that by the end of 1994 local human rights organizations took up the cases of at least 700 prisoners for whom there is compelling evidence of their having been falsely accused of terrorism-related offences. This figure was reported by one of the human rights organizations attached to the CNDDHH to have increased to 1000 prisoners by the end of August 1995.

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<sup>14</sup> Amnesty International recognizes that the government has a duty to implement measures designed to protect judges and other court officials where there is evidence that their safety is in jeopardy as a result of reprisals by the armed opposition. However, the organization believes that such measures cannot be a justification for not complying with elementary procedures designed to safeguard the fundamental rights of the defendant to a fair trial. Amnesty International has been given an account by a Peruvian human rights defender of a trial in which a court policeman informed the defendant's lawyer that he had wasted his time in presenting his client's case, because at the time the judges had not been present behind the screen used to conceal their identity. Amnesty International is not able to confirm or deny the accuracy of this account. However, the organization has noted the observations made by a member of the UN Committee against Torture to the representatives of the Government of Peru in response to such an account. He stated that : "There is no corroboration of [the] anecdote, but it was easy to imagine such a scene taking place; it was inconceivable that the rights of the defence could be protected under such circumstances." (see CAT/C/SR. 193, paragraph 60, 14 November 1994)

<sup>15</sup> See Appendix 1 for a list of prisoners of conscience who remained incarcerated by 15 October 1995.

The organization believes that there are three sets of circumstances surrounding Peru's anti-terrorism laws which facilitate the imprisonment of these prisoners. The first is the wide-ranging and imprecise definition of "crimes of terrorism" contained in article 2 of Decree Law N°25,475 (see p. 2 above). This and other articles in Decree Law N°25,475 make reference to acts of "terrorism" by employing an open-ended definition of the means used to carry out such acts. Thus articles 2,3,4,6,7 and 8 of this decree make use of the open-ended phrase "by whatever means" when referring to the means by which "crimes of terrorism" are carried out. By employing the phrase "by whatever means" Amnesty International believes suspects are detained under imprecise "catch-all" laws.

The second set of circumstances which facilitates the imprisonment of prisoners of conscience and possible prisoners of conscience refers to the shortcomings in pre-trial and trial procedures referred to above (see p 8).

The third set of circumstances which Amnesty International believes contribute to the detention of prisoners of conscience and possible prisoners of conscience concerns the necessity of the government to politically demonstrate the effectiveness of the anti-terrorism laws and policies in combatting the armed opposition. One way of doing this was for the authorities, in the wake of arresting suspects, to bring them before the television cameras or encourage the press to publish their photographs dressed in striped prison clothes<sup>16</sup>. A second technique was for the authorities to publicly contrast the relatively low number of arrests and convictions during the period 1980 to 1992 with the high number of arrests and convictions after the government's new anti-terrorism legislation came into effect in May 1992. Amnesty International believes that in the drive to demonstrate the success of the new counter-insurgency strategy, the authorities became more determined with securing convictions than with strictly following fair trial standards set out in international law.

### ***Re-detention of absolved prisoners of conscience and possible prisoners of conscience***

Amnesty International is seriously concerned to have learned that some 300 former prisoners of conscience and possible prisoners of conscience falsely accused of terrorism-related crimes, currently face re-detention.

These prisoners of conscience and possible prisoners of conscience were released following a decision by the higher court that there was no case to answer. However, under Peru's current anti-terrorism legislation this decision has to be referred to the Supreme Court of Justice for ratification or veto. In recent months the Supreme Court of Justice has frequently annulled higher courts' decisions to release acquitted prisoners, because of procedural or administrative errors committed during higher court hearings. Their cases have now to be heard again before

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<sup>16</sup> Bringing suspects of terrorism-related offences before the television cameras or publishing their photographs in newspapers was abolished in January 1995. However, those suspected of the "crime of treason" are exempted from this rule.

higher courts which, under Peru's current anti-terrorism legislation, are compelled to order the re-detention of the defendant.<sup>17</sup>

Out of the 55 prisoners of conscience adopted by Amnesty International who had already been released by 15 October 1995, the Supreme Court of Justice is reported to have annulled the higher courts' verdicts in eight cases. In the event of their re-detention, Amnesty International would consider them once again to be prisoners of conscience.

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<sup>17</sup> For example, prisoner of conscience Juan Alberto Huapaya Palomino was re-detained on 19 July 1995, after having been acquitted twice in October 1992 and October 1993 for the same terrorist-related offence. The Supreme Court of Justice overturned the first acquittal. As a result, the higher court ordered his re-detention. Having spent 9 months in prison between January and October 1993, he is currently in prison once again awaiting a new trial. The case of Juan Alberto Huapaya Palomino illustrates the problem faced by at least 300 former prisoners of conscience. On 5 October 1995 the CNDDHH stated that "Human rights organizations know of approximately 300 former prisoners who, having already gained their freedom after months or years in prison, know only too well the meaning of once again having to face the hell that is imprisonment." See Urgent Action 237/95, *Peru: Fear of re-detention/Fear of torture - César Augusto Sosa Silupú, former prisoner of conscience and 300 former prisoners*, AI Index AMR 46/22/95, 12 October 1995.

## Amnesty International, the Government of Peru and the anti-terrorism legislation

Since 1992 Amnesty International has been calling on the Peruvian authorities to promptly and comprehensively review its anti-terrorism laws to ensure that pre-trial and trial procedures contained in these laws are brought into line with those set out in international human rights standards. The organization has also urged the Peruvian authorities to release all prisoners of conscience immediately and unconditionally.

In May 1994 an Amnesty International delegation, headed by the Secretary General, visited Peru. President Alberto Fujimori's government rejected a request by the delegation to have talks with President Fujimori and members of his government. The Secretary General, however, did meet with the then president of Congress, Jaime Yoshiyama Tanaka, and with the then president of Congress' Human Rights and Pacification Commission, Carlos Blanco Oropieza, as well as with the members of this Commission. During these meetings Amnesty International expressed its serious concerns about Peru's anti-terrorism legislation. The delegation also handed the president of Congress and Congress' Human Rights and Pacification Commission a list of Peruvian prisoners whom the organization considered to be prisoners of conscience and whose immediate and unconditional release it requested.

The president of Congress informed the delegation that Congress had plans to make further amendments to the anti-terrorism laws, including that Congress would be establishing a Commission of Notable Jurists which would review the cases of both convicted and unconvicted prisoners for whom there was compelling evidence of their having been falsely accused of terrorism-related offences. Furthermore, the president of Congress informed the organization that Peru's new Constitution provided the possibility, under article 118 (21), for the President of the Republic to pardon such prisoners, once all judicial avenues to review their cases had been exhausted.

However, on 20 February 1995, in the absence of any evidence that mechanisms had been established to review terrorism-related cases, or indeed that the President had availed himself of powers granted to him under article 118 (21) of the Constitution to pardon those prisoners for whom there was compelling evidence that they had been falsely accused of "terrorism", Amnesty International wrote to the then president of Congress, Jaime Yoshiyama. On the same date the organization also wrote to the then president of Congress' Human Rights and Pacification Commission, Carlos Blanco Oropieza. Amnesty International requested information on any steps taken so far by any congressional bodies to review the cases of those prisoners thought to have been falsely accused of terrorism-related offences. A list of Amnesty International's prisoners of conscience in Peru at the time was included in both letters. By the end of September 1995 neither the president of Congress nor the president of Congress' Human Rights and Pacification

Commission had replied<sup>18</sup>. Copies of these letters are included in Appendix 2 and Appendix 3 respectively.

On 20 February 1995 Amnesty International also wrote to Peru's Minister of Justice, Fernando Vega Santa Gadea, in relation to the Note verbale presented by the Permanent Mission of Peru to the UN Office in Geneva on 12 August 1994, during the 46th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities<sup>19</sup>. A copy of this letter is included in Appendix 4. In the part of the statement which refers to the Peruvian authorities investigating allegations of prisoners accused of terrorism-related offences having been arbitrarily detained, the Note verbale states:

"The Peruvian State cannot neglect its obligation to carry out an investigation into all persons suspected of participation in terrorist activities. Likewise, Peru confirms that if the relevant legal proceedings do not prove the guilt of those accused, they will be freed.

In this connection, attention should be drawn to the recent approval by the Democratic Constituent Congress of a law submitted by the Executive on the creation of a Commission responsible for considering and assessing the case of citizens allegedly detained unjustly in accordance with the law currently in force. This Commission will be composed of officials from both the Executive and the Legislative, thereby underlining the unequivocal political will to deal with situations alleged to be unjust, without interfering with the Judiciary, in pursuit of the common objective of respect and guarantees for the human rights of the population as a whole."

In its letter to the Minister of Justice Amnesty International requested a copy of the law referred to in the Note verbale and asked whether the creation of the Commission proposed by this law had already been established. By the end of September 1995 the Minister of Justice had not replied. Amnesty International has no evidence of such a law having ever been passed or of the Commission having been established.

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<sup>18</sup>In March 1995 the Peruvian Embassy in London wrote to Amnesty International in relation to the letters the organization sent to the President of Congress and the President of Congress' Human Rights and Pacification Commission. The letter only informed Amnesty International of the current legal situation of prisoners of conscience which were included in both letters. In April 1995 one of the members of Congress' Human Rights and Pacification Commission, Gilberto Siura, responded to Amnesty International but did not provide the organization with any information which referred to Amnesty International's concerns and queries.

<sup>19</sup> This Note verbale was made public by the UN Economic and Social Council with the reference E/CN.4/Sub.2/1994/51, 15 August 1994.

## Recommendations to the Government of Peru

Amnesty International urges the Peruvian authorities to:

- ◆ immediately and unconditionally release all prisoners of conscience;
- ◆ take the necessary steps to ensure that those prisoners falsely accused of terrorism-related offences who have already been acquitted and released are not re-detained;
- ◆ promptly and comprehensively review the present anti-terrorism laws to ensure that they are brought into line with those set out in international human rights standards;
- ◆ definitively abolish the death penalty for all offences.

## Amnesty International and abuses by Peru's armed opposition

Amnesty International works within the framework of international law as it concerns the human rights obligation of governments, and of principles derived from humanitarian law which **all parties** involved in an armed conflict must respect. The Peruvian government has a duty to control acts of violence by armed opposition groups. However, Amnesty International believes that in exercising such a duty, the government must at all times ensure that fundamental human rights are fully respected. 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], ..."20.

Amnesty International promotes minimum international standards of humane behaviour, such as the humanitarian standards enshrined in common Article 3, paragraph 1(a), (b) and (c) of the Geneva Conventions of 1949, which any government and armed opposition group should abide by, and it urges them to endorse and uphold these standards.

Amnesty International is fully aware of extensive human rights abuses by the armed opposition groups, the *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path) and, to a lesser extent, the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement. Since 1980 Amnesty International has received thousands of reports of abuses attributed to these two groups. These abuses have included 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

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<sup>20</sup> See UN Doc. CCPR/79/Add.23, paragraph 8

prisoners; the use of torture; and the taking of hostages. The organization reiterates its unequivocal condemnation of these abuses by the armed opposition.

Since 1992, when leaders of the PCP and MRTA were arrested, independent analysts have stated that both these groups have suffered significant setbacks in their attempts to achieve their aims. However, both, the PCP and MRTA continue to engage in armed attacks, despite President Fujimori's claims, made in 1992, that the authorities would completely defeat the MRTA by mid-1993 and the PCP by mid-1995.

During the second half of February 1995, for example, Amnesty International received press reports of the killing of 20 civilians by the PCP, in three separate attacks, in the vicinity of the towns of Aucayacu and Tingo María, Leoncio Prado province, Huánuco department. According to the information contained in Peruvian press reports and received by the organization, out of the 20 people killed, seven were killed in circumstances which suggest that the PCP first detained them.

In the first of these attacks, among the victims were Félix Tolentino Villanueva and Glicerio Tadeo. Both were taken captive by members of the PCP, conducted to the main square of the village of Anda, some 30 kms from the town of Tingo María, and killed with machetes. In a separate attack, four members of a civil defence patrol, Emerson Eliseo Rivera, Matarío Enciso, Eliseo Rivera Sacramento and Juan Salinas, from the hamlet of Julio C. Tello, some 20 kms from the town of Aucayacu, were also reported to have been arbitrarily and deliberately killed. All four were taken to an empty plot of ground and killed in front of the community. According to reports the assailants told the community that they "deserved this punishment because they promoted civil defence patrols". During the same incident a fifth person, Eusebio Sacramento, managed to escape wounded to the town of Tingo María where he was transferred to a local hospital. In a third separate attack, on 20 February 1995, Fernando Mori, a chauffeur from the town of Aucayacu, was killed by PCP militants.

According to reports, on 14 May 1995 members of the MRTA raided Miricharo village, in the district of Pichanaki, Chanchamayo province, Junín department. The assailants forced Mariano Ancarino Quispe, a municipal worker, out of his home and killed him.

On 15 May 1995 armed members of the PCP reportedly deliberately and arbitrarily killed Elena Trebejo Parada, who was nine months pregnant, and her husband in front of their five children, in their home in the hamlet of Ocoro, district of Chacco, Antonio Raymondi province, Ancash department.

In the early hours of the morning of 24 May 1995 a car bomb attributed to the PCP exploded in front of the María Angola Hotel, in the residential and commercial district of Miraflores, in Lima, the capital. Four civilians died and at least 16 others were injured.

On 4 October 1995 PCP members are reported to have deliberately and arbitrarily killed five peasants in the town of Aucayacu, Leoncio Prado province, Huánuco department. The PCP are reported to have possibly massacred more people in the same incident.

Amnesty International has repeatedly and unequivocally condemned abuses by the PCP and the MRTA. The organization, first condemned the PCP's abuses in August 1983, in a letter directed to former president Fernando Belaúnde Terry expressing concern about evidence of human rights violations by the armed forces in the emergency zones. Since then the organization has explicitly condemned abuses by the PCP and the MRTA in its publications, submissions to international human rights organizations and letters to successive Peruvian governments. Amnesty International has also expressed publicly its condemnation of armed opposition abuses through interviews broadcast internationally and within Peru, and through letters and extensive interviews published in the Peruvian press. For instance, in July 1992 Amnesty International publicly condemned the PCP car bomb attack in Miraflores, Lima, which killed some 22 civilians; and in May 1994, during a visit by an Amnesty International delegation to Peru which included investigating human rights violations by the government's security forces and abuses by the armed opposition, the Peruvian press reported on a public statement made by Amnesty International in which the organization expressed its unqualified condemnation and opposition to the thousands of abuses perpetrated by the PCP.

### **Recommendations to the Peruvian 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 four Geneva Conventions of 1949, whatever the extent of their resort to violence, and whatever the level of fighting or violent confrontations with the government. 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."

## APPENDIX 1

*AMNESTY INTERNATIONAL'S PRISONERS OF CONSCIENCE CHARGED WITH CRIMES OF TERRORISM 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	10 years	Miguel Castro Castro Prison, Lima.
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.
BAZÁN VENTURA, Eugenio	Farmer.	Nov 92	30 years	El Milagro Prison, Trujillo, La Libertad department.
CASTIGLIONE MENDOZA, Jesús Alfonso	Journalist and political candidate.	Apr 93	20 years	Miguel Castro Castro Prison, Lima.

CRUZ FERNÁNDEZ, Ubildor	Agricultural worker.	May 92	20 years	Miguel Castro Castro Prison, Lima.
CHACÓN RODRÍGUEZ, Alfonso Rosely	Primary teacher, supporter and former member of the political party Cambio 90.	Apr 92	10 years	Picsi Prison, Chiclayo, Lambayeque department.
CHUCHÓN ZEA, Carlos	Builder.	Dec 92	30 years	Yanamayo Prison, Puno department.
DÍAZ BARBOZA, Oscar	Environmental activist.	Sep 94	20 years	Picsi Prison, Chiclayo, Lambayeque department.
ENCARNACIÓN EVANGELISTA, Simeón	Trader, community leader.	Mar 93	12 years	Miguel Castro Castro Prison, Lima.
FORONDA FARRO, María Elena (f)	Environmental activist.	Sep 94	20 years	Huacoriz Prison, Cajamarca department.
GALVEZ VARGAS, Myriam Guadalupe (f)	Student.	Mar 93	20 years	Chorrillos High Security Prison for Women, Lima.
HUAPAYA PALOMINO, Juan Alberto	Trade union leader.	Jul 95	AW	Miguel Castro Castro Prison, Lima.

JARA PARADES, Celestino	Farmer.	Apr 92	20 years	Picsi Prison, Chiclayo, Lambayeque department.
LÓPEZ CURI, Liborio	Teacher.	Jul 92	10 years	El Milagro Prison, Trujillo, La Libertad department.
MEDINA QUISPE, Nery Fermín	Medical doctor.	Sep 92	20 years	Socabaya Prison, Arequipa department.
MOLERO COCA, Carlos Florentino	Student.	Oct 92	12 years	Miguel Castro Castro Prison, Lima.
OCAMPO SALDAÑA, Mario	Health worker.	Feb 92	15 years	Miguel Castro Castro Prison, Lima.
RIVERA GUERRERO, Hermes	Journalist.	May 92	20 years	Picsi Prison, Chiclayo, Lambayeque department.
SALCEDO PIZARRO, Pelagia (f)	Trader.	Dec 92	30 years	Chorrillos High Security Prison for Women, Lima.

SÁNCHEZ GUTIÉRREZ, Juan Antonio	Student.	Apr 92	30 years	Miguel Castro Castro Prison, Lima.
SOTO RODRÍGUEZ, Michael	Student.	Mar 92	20 years	Miguel Castro Castro Prison, Lima.
SUMINA TACO, Fortunato	Medical doctor.	Sep 92	20 years	Socabaya Prison, Arequipa department.
TARAZONA TINOCO, Efraín Isidro	Electrical engineer.	Apr 93	20 years	Miguel Castro Castro Prison, Lima.
TENORIO TORREJÓN, Elvia (f)	Ran a restaurant.	Jan 93	AW	Chiclayo Prison for women, Lambayeque department.
TENORIO TORREJÓN, Elsa (f)	Ran a restaurant.	Jan 93	AW	Chiclayo Prison for Women, Lambayeque department.
VALQUI ZUTA, Euménides	Teacher.	Feb 92	15 years	Miguel Castro Castro Prison, Lima.
VEGA VALLE, Pedro Telmo	Community leader.	Jan 93	30 years	Miguel Castro Castro Prison, Lima.

## Appendix 2

### Text of Amnesty International's letter to Peru's president of Congress' Human Rights and Pacification Commission.

Ref.: TG AMR 46/95.01

Carlos Blanco Oropeza  
President of Congress' Human Rights  
and Pacification Commission  
Lima 1  
PERU

10 February 1995

Dear Mr. Blanco,

May I take this opportunity to thank you and the Human Rights and Pacification Commission you preside over for receiving me and the rest of Amnesty International's delegation on 20 May 1994, during the organization's last visit to your country. I found listening to the views expressed by you and the other members of the Commission on the human rights situation in Peru extremely valuable.

On the occasion of our meeting we expressed our serious concern that Peru's current anti-terrorism laws provide a judicial framework which facilitates the imprisonment of prisoners of conscience. As you know 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 the organization believes have been falsely accused of offences which are politically related, and for which there is no credible evidence to link them to the political beliefs with which they have been imputed.

During our meeting the delegation handed you a list of 27 Peruvian prisoners whom Amnesty International considered to be prisoners of conscience and whose immediate and unconditional release it requested. I am extremely pleased to learn that since our meeting nine of these prisoners have been unconditionally released, following judicial decisions taken by the higher courts and the Supreme Court of Justice. All of these prisoners were released following periods of up to 30 months in prison.

However, Amnesty International continues to be seriously concerned that at present 18 of the list of prisoners handed to you continue to be held in prison. In addition, since our meeting the organization has adopted a further eight prisoners of conscience whom, according to the information at our disposal, have not yet been released. I attach an updated list of all of these prisoners.

The delegation also expressed concern that the provisions for pre-trial and trial procedures in Peru's anti-terrorism laws do not conform to international human rights standards to which your

country is party. At the time of our meeting I acknowledged the positive but limited amendments to the anti-terrorism legislation which came into effect in November 1993. The organization has also now noted that as from 1 November 1994 the anti-terrorism Repentance Law is no longer in force. The organization welcomes this step, in particular because it has evidence of people believed to be prisoners of conscience having been detained solely on the basis of uncorroborated accusations made against them by members of the armed opposition who made use of the Repentance Law. However, despite these amendments Amnesty International continues to believe that the procedures provided for in the anti-terrorism legislation fall far short of international human rights standards.

It is in the context of the concerns outlined above that I am respectfully requesting you to inform Amnesty International of steps taken by the Commission you preside over to review the cases of those prisoners for whom there is compelling evidence that they have been falsely accused of terrorism-related offences. In particular, I would be interested to know if you have made public the results of any such reviews. The organization would also like to learn of any steps that have been taken by the Human Rights and Pacification Commission or other congressional bodies to review the anti-terrorism legislation and draft a bill which will bring the legislation into line with pre-trial and trial procedures set out in international human rights standards.

A copy of this letter is being sent to each of the members of the Commission over which you preside.

I look forward to your reply.

Yours sincerely,

Pierre Sané  
Secretary General

**Appendix 3****Text of Amnesty International's letter to Peru's president of Congress**

Ref.: TG AMR 46/95.02

Jaime Yoshiyama Tanaka  
President of Congress  
Lima  
PERU

10 February 1995

Dear Mr. Yoshiyama,

May I take this opportunity to thank you for receiving me and the rest of Amnesty International's delegation on 20 May 1994, during the organization's last visit to your country. I found listening to the views expressed by you on the human rights situation in Peru extremely valuable.

On the occasion of our meeting we expressed our serious concern that Peru's current anti-terrorism laws provide a judicial framework which facilitates the imprisonment of prisoners of conscience. As you know 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 the organization believes have been falsely accused of offences which are politically related, and for which there is no credible evidence to link them to the political beliefs with which they have been imputed.

You informed us at the meeting that some of the prisoners reported to have been falsely charged with terrorism-related offences had already been unconditionally released by the courts. You also informed us that Congress would be establishing a Commission of Notable Jurists which would review the cases of both convicted and unconvicted prisoners for whom there is compelling evidence of having been falsely accused of terrorism-related offences. Furthermore, you informed us that there exists the possibility of the President of the Republic making use of Article 118 (21) of Peru's Constitution, to pardon such prisoners, once all judicial avenues to review their cases have been exhausted.

However, Amnesty International, has no knowledge of any such special Commission of Notable Jurists having been established since our meeting with you, nor has it any knowledge of any prisoners having been pardoned by the President under Article 118 (21) of the Constitution.

The delegation handed you a list of 27 Peruvian prisoners whom Amnesty International considered to be prisoners of conscience and whose immediate and unconditional release it requested. I am extremely pleased to learn that since our meeting nine of these prisoners have been unconditionally released, following judicial decisions taken by the higher courts and the Supreme

Court of Justice. All of these prisoners were released following periods of up to 30 months in prison.

However, Amnesty International continues to be seriously concerned that at present 18 of the list of prisoners handed to you continue be held in prison. In addition, since our meeting the organization has adopted a further eight prisoners of conscience whom, according to the information at our disposal, have not yet been released. I attach an updated list of all of these prisoners.

At our meeting with you I also addressed issues surrounding Peru's current anti-terrorism laws, and acknowledged the positive but limited amendments to the anti-terrorism legislation which came into effect in November 1993. However, I expressed concern that, despite the amendments, Peru's anti-terrorism laws still did not conform to pre-trial and trial procedures provided for in international human rights standards to which your country is party.

In response you informed us that Congress had plans to make further amendments to the anti-terrorism laws. Amnesty International has since noted that as from 1 November 1994 the anti-terrorism Repentance Law is no longer in force. The organization welcomes this step, in particular because it has evidence of people believed to be prisoners of conscience having been detained solely on the basis of uncorroborated accusations made against them by members of the armed opposition who made use of the Repentance Law. However, despite this latest amendment Amnesty International continues to believe that the pre-trial and trial procedures provided for in the anti-terrorism legislation still fall far short of international human rights standards.

It is in the context of the concerns outlined above that I am respectfully requesting you to inform Amnesty International of steps taken by any congressional bodies to review the cases of those prisoners for whom there is compelling evidence that they have been falsely accused of terrorism-related offences. In particular, I would be interested to know if you have made public the results of any such reviews. The organization would also like to learn of any steps taken by Congress to review the anti-terrorism legislation and draft a bill which will bring the legislation into line with pre-trial and trial procedures set out in international human rights standards.

I look forward to your reply.

Yours sincerely,

Pierre Sané  
Secretary General

#### Appendix 4

##### Text of Amnesty International's letter to Peru's Minister of Justice

Ref.: TG AMR 46/95.03

Fernando Vega Santa Gadea  
Minister of Justice  
Lima  
PERU

10 February 1995

Dear Minister,

As you know Amnesty International has been seriously concerned about the numerous prisoners in Peru currently awaiting trial or already convicted and sentenced for terrorism-related offences, but about whom there is evidence that they were falsely accused. Since May 1992, when the new anti-terrorism legislation came into effect, Amnesty International has received information on prisoners who fall into this category. Amnesty International acknowledges that some of these prisoners have already been unconditionally released by the courts. However, the organization continues to be extremely concerned about those who remain in prison.

It is in this context that I read with great interest the *Note verbale*, dated 12 August 1994, from the Permanent Mission of Peru to the United Nations Office at Geneva, presented under item 6 of the 46th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and which was made public by the UN Economic and Social Council with the reference E/CN.4/Sub.2/1994/51. I enclose a copy of this document for your reference. In particular, my attention was drawn to the part of the statement which refers to the Peruvian authorities investigating allegations of prisoners accused of terrorism-related offences having been arbitrarily detained. The *Note verbale* reads:

"In this connection, attention should be drawn to the recent approval by the Democratic Constituent Congress of a law submitted by the Executive on the creation of a Commission responsible for considering and assessing the case of citizens allegedly detained unjustly in accordance with the law currently in force. This Commission will be composed of officials from both the Executive and the Legislative, thereby underlining the unequivocal political will to deal with situations alleged to be unjust, without interfering with the Judiciary, in pursuit of the common objective of respect and guarantees for the human rights of the population as a whole." (E/CN.4/Sub.2/1994/51, 15 August 1994.)

May I take this opportunity to respectfully request from you a copy of the law referred to by the Permanent Mission of Peru in the *Note verbale*. I would also like you to inform me whether the Commission has already been established, who are its members and what are its terms of reference. In the event of the Commission having commenced its work, I would be most interested to learn of any reports or findings it may have made public.

I look forward to your response.

Yours sincerely,

Hervé Berger  
Deputy Secretary General