

PERU

@Death penalty proposal violates the American Convention on Human Rights

Amnesty International is deeply concerned that the scope of the death penalty in Peru may be extended in the forthcoming new Constitution and is calling on the international community and all governments throughout the world to repudiate this move by the Peruvian authorities. The organization is further urging that the death penalty be definitively abolished in Peru in the forthcoming Constitution.

On 10 June 1993 the *Comisión de Constitución*, a commission set up by Congress to draft a new Constitution, approved an article which reads: "The death penalty may only be applied for the crimes of treason and terrorism, in accordance with national laws and international treaties to which Peru is party." Congress is expected to approve the new Constitution, including the death penalty article, sometime in July 1993, in readiness for President Alberto Fujimori to present it to the nation on 28 July, Peru's Independence Day. The Constitution, prior to coming into effect, may then go forward to a national referendum for final approval. If this step is taken, the referendum is expected to be held in August.

The death penalty proposal has been put forward in the context of an internal armed conflict which has afflicted Peru since 1980. Under the present Constitution capital punishment may only be applied for the crime of treason in times of war with a foreign power. Should the new Constitution include the proposed article, Peru would be violating the American Convention on Human Rights. The Convention, which Peru ratified in 1978, explicitly prohibits any extension of the death penalty (Article 4.2), and prohibits its application for political offences or related common crimes (Article 4.4). State parties cannot derogate from Article 4 on the right to life, and one of the central tenets of the Convention, under any circumstances whatsoever.

Amnesty International believes that by widening the scope of the death penalty the Government of Peru would be seriously undermining the spirit in which the American system for the protection of human rights has been strengthened over the past two decades.

Amnesty International is also concerned that, in the event of a new law on capital punishment being applied, prisoners sentenced to death would be executed following conviction in trials which, under present procedures, fall far short of international human

rights standards ratified by Peru. Some of these prisoners may be prisoners of conscience.¹ Indeed, since May 1992, when the first of a new set of wide-ranging anti-terrorism decree laws came into effect, Amnesty International has documented scores of cases of prisoners who were reported to have been falsely charged and convicted. Among them are many prisoners of conscience.

Amnesty International opposes the death penalty as a matter of principle, considering it to be a violation of the right to life and the ultimate form of cruel, inhuman and degrading punishment inflicted by the State. The organization considers it to be a penalty which is not justified under any circumstances. The organization also believes the death penalty does not fulfil any penal objectives which could not be achieved equally by other forms of punishment.

Were an expanded death penalty article to be included in the forthcoming Constitution, Peru would be adding to an already longstanding pattern of systematic human rights violations. Since 1983, Amnesty International has documented thousands of cases of enforced disappearance, extrajudicial execution and torture. The vast majority of these cases have never been thoroughly investigated, and the perpetrators have not been brought to justice. In addition, following the implementation of new and wide-ranging anti-terrorism decree laws issued in 1992, Amnesty International has learned of at least 4000 prisoners whose cases are subject to detention and trial procedures contained in these decrees. The vast majority of these prisoners are still awaiting trial before civilian or military courts. Others have already been tried and convicted. Amnesty International believes that the detention and trial procedures at present in force flout international fair trial standards enshrined in the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both ratified by Peru in 1978.

BACKGROUND

Peru's emergency government and the death penalty

On 5 April 1992 President Fujimori announced the closure of Congress, the suspension of constitutional rule and the setting up of an emergency government. The President argued that these emergency measures were necessary to combat the armed opposition and corruption, and to carry out a wholesale reform of the Constitution, Congress and the judiciary. The following day the Armed Forces Joint Command issued a

¹The term 'prisoners of conscience' refers to 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.

communiqué fully supporting the measures announced by the President. Many political analysts in Peru and abroad reacted to the measures announced by the President, and the support given to them by the armed forces, as an indication that Peru was to be ruled unofficially by a combined civilian-military government.

In a speech to the nation the following May, President Fujimori was reported to have said that "it was necessary to carefully study the possibility of reestablishing the death penalty". In the wake of the car-bomb detonated in July 1992 in Lima, the capital, by the armed opposition group *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), in which 22 civilians were killed and some 200 injured, the President once again made public reference to the need for an extension of the death penalty.

The Government's proposals took on further saliency after Abimael Guzmán, the leader of the PCP, and other members of the PCP's central committee, were detained and put on trial in October. On this occasion, the President publicly announced that his Government would be taking the necessary steps to withdraw from its obligations to abide by the American Convention on Human Rights, either by renouncing the entire Convention or those parts of it pertaining to the death penalty. The Inter-American Commission on Human Rights, a body of the Organization of American States, stated publicly that such a step would run counter to "the consolidation of democratic regimes which rests on the full force of the civil and political rights enshrined in the Convention".

Amnesty International wrote to President Fujimori in November urging him not to extend the death penalty. The organization pointed out in its letter that Peru, like other Latin American countries, had been at the forefront of the world abolitionist movement, as was evidenced by its ratification of the American Convention on Human Rights; by voting in 1989 with the majority of member states at the UN General Assembly for the adoption of a second optional protocol to the International Covenant on Civil and Political Rights for the abolition of the death penalty; and by participating in the 1990 decision by the Organization of American States to adopt without a vote the protocol to the American Convention on Human Rights relating to the abolition of capital punishment.

In December 1992, during a visit to Peru, Amnesty International's delegates held talks with Ambassador José Urrutia, a Ministry of Foreign Affairs representative. The Ambassador assured the delegates that the Government of Peru had decided that it was not to withdraw from the Convention. However, he went on to indicate that the government would be still looking for a way of legislating for the death penalty through reforms to the Constitution to be proposed by the Congress which had been elected the previous month and was about to commence work.

Peru's Democratic Constituent Congress and the death penalty

Peru's *Congreso Democrático Constituyente* (CCD), Democratic Constituent Congress, was formally opened at the end of December 1992. A congressional commission, the *Comisión de Constitución*, Constitution Commission, was charged with drafting a new Constitution. A majority of the seats in the Congress are held by members of the political party *Nueva Mayoría-Cambio 90*, backed by President Fujimori. Jaime Yoshiyama, former minister in President Fujimori's emergency government, heads this party and is currently president of the CCD. Congressman Yoshiyama has publicly declared that his party will support proposals to widen the death penalty. At least two other parliamentary parties are also known to support extending the death penalty.

Around the time the CCD was formally opened, and in expectation of an early debate on the death penalty, four bills were tabled before the CCD which made provision for the death penalty. In February 1993, a debate on one of these bills was initiated before a full session of Congress. However, the debate was suspended when the Government of Peru, in the context of claims to have re-established constitutional rule, sought to renegotiate agreements with the Government of the United States of America (USA) regarding economic aid to Peru. Following publication of the USA's State Department 1992 report on human rights in Peru, the Government of the USA expressed concern about Peru's eligibility to receive economic aid, given the country's poor human rights record. Proposals to extend the death penalty lay dormant until, on 10 June 1993, Congress' Constitution Commission approved the constitutional article referred to above.

In January 1993 Amnesty International once again appealed to President Fujimori not to extend the penalty. The organization, also in January, wrote to all 80 members of Congress urging them to oppose any proposals seeking to widen capital punishment.

The death penalty and the armed opposition in Peru

Proposals to extend the death penalty have been argued for in Peru against a background of widespread and repeated atrocities by the armed opposition.

Amnesty International has documented widespread atrocities by the clandestine armed opposition groups *Partido Comunista del Perú* (*Sendero Luminoso*), PCP, Communist Party of Peru (Shining Path). These include thousand of cases of deliberate and arbitrary killing of defenceless civilians and of members of the security forces who have laid down their arms, or who, through sickness, wounds, detention, or any other cause, are *hors de combat*. Similar abuses have been perpetrated by the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement. Amnesty International has expressed its unqualified condemnation and opposition to such abuses.

The organization, which has repeatedly condemned such abuses, 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 in its publications, submissions to international human rights organizations and letters to successive Peruvian governments. Amnesty International has also expressed publicly its condemnation of the PCP through interviews broadcast internationally and within Peru, and through letters and extensive interviews published in the Peruvian press.

Amnesty International condemns hostage taking, and the torture and killing of prisoners by anyone, including by political and armed opposition groups, as a matter of principle. It also condemns other deliberate and arbitrary killings, for example killings carried out solely because of the victim's ethnic origin, sex, colour, language, religion, or beliefs.

The organization works within the framework of international law as it concerns the human rights obligations of governments and of principles derived from humanitarian law which all parties involved in internal armed conflict must respect. Amnesty International condemns the abuses of armed opposition groups responsible for the torture or deliberate and arbitrary killing of civilians not involved in the conflict and of members of the security forces who are *hors de combat*.

The organization does not treat opposition groups as if they had the status of governments which are party to international human rights standards. Amnesty International promotes minimum international standards of humane behaviour, such as the principles contained in humanitarian law, by which any armed opposition group and government should abide, and it urges them to endorse and uphold these standards.

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."