

AMNESTY INTERNATIONAL

Public Statement

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PERU: No amnesty for military and police personnel responsible for human rights violations

In a letter sent on 21 November to the President of the Justice and Human Rights Commission of the Peruvian Congress, Amnesty International conveyed its grave concern at recent proposals to grant amnesties, pardons, commutations of sentences and similar measures to military and police personnel suspected of being responsible for, and in some instances convicted of, human rights violations in Peru.

In particular, proposals for such measures have been included in Bills 2844 and 2848, introduced before the Congress on 6 November, and currently discussed at the Justice and Human Rights Commission. These Bills aim at granting amnesties to members of the military and police who are under investigation or have been prosecuted or convicted for violations of human rights committed during the operation "Chavín de Huántar" in 1997; and at establishing a commission empowered to propose amnesties, commutations of sentences and pardons for any military or police personnel who are under investigation or have been prosecuted or convicted for human rights violations committed in the framework of the internal armed conflict, which took place in the 1980s and 1990s.

Amnesty International emphasizes that any amnesty for military and police personnel under investigation, prosecution, or trial on charges of human rights violations would breach Peru's obligations under international law.

All crimes which constitute human rights violations should be subject to prompt, independent, impartial, competent, and thorough investigation with a view to prosecution of suspected offenders and fair trial in ordinary civilian courts. Any amnesties or similar measures for such crimes would unduly hamper access to justice by the victims and prevent emergence of the truth, final judicial determination of guilt or innocence, and full reparation for victims and their families.

Amnesty International is equally concerned about proposals to grant pardons, commutations of sentences or similar measures which may result in those responsible for human rights violations not serving sentences proportional or appropriate to the seriousness of the crimes they committed.

In addition, the establishment of any political commission empowered to stop investigations, prosecutions and trials, to re-examine their findings and to reverse judicial decisions, would represent an undue and illegitimate interference in the work of the prosecuting authorities and the judiciary.

The proposed legislation, moreover, falls into the category of state unilateral and self-imposed amnesties ("self-amnesties"), as it aims to protect military and police personnel who allegedly committed human rights violations while performing

counterinsurgency activities against armed opposition groups. Accordingly, the reference to the need to guarantee “social pacification” to the country, as well as the comparison with measures taken to provide remedial measures to individuals condemned for crimes of terrorism after unfair trials, are out of place. On the contrary, self-amnesty laws, as stated by the Inter-American Court of Human Rights, are “manifestly incompatible” with the aims and spirit of the American Convention on Human Rights.

Finally, it should be noted that the Bills introduced before the Congress include ambiguities and lack of clarity about the scope and extent of their provisions. Although they have apparently been motivated by the excessive length of several trials and by the alleged insufficiency of evidence gathered in some cases, in many cases those flaws were caused by obstructionism to the proceedings and lack of cooperation with the investigative and prosecuting authorities by the police and military forces themselves.

Amnesty International calls upon the Justice and Human Rights Commission of the Peruvian Congress to discard proposals to grant amnesties, pardons, commutations of sentences and similar measures to military and police personnel suspected of being responsible for, or convicted of, human rights violations in Peru.

Background

According to the Truth and Reconciliation Commission, set up to establish the circumstances surrounding human rights abuses in the 1980s and 1990s, of the estimated 69,000 people killed or disappeared in the 20 year period, 54 percent of these cases were the responsibility of the armed opposition group, Shining Path, and 46 percent the responsibility of the armed forces. While hundreds of Shining Path members are currently in prison, the first trials against members of the armed forces reportedly responsible for 47 cases started in 2005 under very difficult circumstances. There have been concerns that detention orders against military and police officers accused of human rights violations were not being enforced, that some of the cases continued to be tried in military courts, and that the Ministry of Defence had reportedly not co-operated with the civilian courts. However, in recent years, important steps have been taken by the Peruvian justice system to overcome impunity, including the current trial of former President Alberto Fujimori.

In this context, two new Bills have been introduced in Peruvian Congress on 6 November 2008, proposing measures to grant amnesties, commutation of sentences and pardons to alleged perpetrators of human rights violations. Both Bills enjoy support of a significant number of Members of the Congress from a variety of parties, including the party of the President Alan Garcia.

- The first Bill (Proyecto de Ley N° 2844/2008) includes two main provisions:
 - First, it would grant amnesty to members of the military and police investigated, prosecuted, or convicted for any violations of human rights committed in the case of Chavín de Huántar – the 1997 military operation to end the Japanese embassy hostage crisis.
 - Second, it would create a commission which would be empowered to propose amnesties for any military or police personnel under investigation, prosecution or trial for any military crime or human rights violation.

- The second Bill (Proyecto de Ley N° 2848/2008) would establish a commission empowered to propose amnesties, commutations of sentences and pardons, for any military or police personnel condemned or under trial for any crimes, committed in the framework of the internal armed conflict, which, according to the Bill, do not amount to “serious” human rights violations. The commission would be able to propose those measures whenever, according to its analysis, there has been insufficient evidence in cases where military or police personnel have been convicted or brought to trial.