

PUBLIC

AI Index: AMR 46/024/2006

21 September 2006

UA 250/06 Death Penalty

PERU **Proposed extension of death penalty laws**

Peru's Congress is considering three pieces of legislation which would broaden the scope of the death penalty. One draft bill also suggests the withdrawal of Peru from the American Convention on Human Rights (ACHR), which prohibits the extension of its state parties' death penalty laws.

Article 140 of Peru's Constitution, drawn up in 1993, provides for the use of the death penalty for those convicted of treason in case of war and terrorism. In recent years nobody has been sentenced to death for such crimes. The first of the draft bills, introduced on 11 September by the National Unity, *Unidad Nacional*, party, proposes a reform of Article 140 to extend the use of the death penalty for those convicted of the rape of children under the age of nine, the rape of mentally or physically disabled people, or of children between nine and 18 years old, where the perpetrator of the rape goes on to kill the victim. Two other draft bills, introduced on 19 September by the Executive and the ruling *APRA* party, propose a reform of Article 140 to extend the use of the death penalty for those convicted of the rape of children under the age of seven, when the perpetrator goes on to kill the victim. The draft bills will now be discussed by the Constitution and Congress Regulations Commission, *Comisión de Constitución y Reglamento del Congreso*, which has the power either to reject them or pass them on to other legal commissions for comment, before the bills are voted on in Congress.

Amnesty International acknowledges the serious nature of the crimes that are the subject of these three pieces of legislation, but is concerned that they run counter to international standards seeking to narrow the scope of the death penalty, and that they contradict the global trend towards eradication of capital punishment. While children must be protected from violence, the death penalty has not been shown to have a special deterrent effect.

To oppose capital punishment is not to excuse or minimize the consequences of violent crime. Instead, to end the death penalty is to recognize that it is a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly – to the public purse, as well as in social and psychological terms. It tends to be applied discriminatorily on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

International human rights law has also an abolitionist outlook. The Human Rights Committee, the expert body established to oversee implementation of the International Covenant on Civil and Political Rights (ICCPR), notes that Article 6 is abolitionist in outlook, and therefore "all measures of abolition should be considered as progress in the enjoyment of the right to life". Writing in 1982, the Committee expressed its concern at the inadequate progress towards abolition or limitation of the death penalty among member states. Since then, some 60 more countries have abolished the death penalty. At present, 129 countries - over half the countries in the world - have now abolished the death penalty in law or practice. Among the retentionist countries are Afghanistan, Burundi, China, Iran, Indonesia, Libya, Rwanda, Saudi Arabia, Sierra Leone, Sudan, Trinidad and Tobago, USA, Uzbekistan and Yemen.

Article 4(2) of the ACHR states that "the application of ... [the death penalty] should not be extended to crimes to which it does not presently apply." In 1983, the Inter-American Court of Human Rights issued an advisory opinion stating that the ACHR absolutely prohibits state parties from extending the death penalty to any crime that was not already a capital offence at the time the state became bound by the Convention.

Amnesty International is seriously concerned that the possible withdrawal of Peru from the ACHR would constitute a serious setback for the protection of human rights in Peru, and would leave the inhabitants of Peru without recourse to the Inter-American System when domestic courts do not provide effective remedies for individual human rights violations.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Spanish or your own language:

- expressing sympathy for the victims of the crime of rape and killing of children, and their families;
- expressing deep concern, however, that Peru is considering broadening the scope of the death penalty
- urging them to vote against these draft bills for the following reasons: the death penalty is the ultimate form of cruel, inhuman or degrading treatment or punishment; the draft bills run counter to international standards seeking to narrow the scope of the death penalty, and contradict the global trend towards eradication of capital punishment, with an average of two to three countries per year abolishing capital punishment in the last two decades; it has not been shown to have a special deterrent effect, and to end the death penalty is to recognize that it is a destructive, diversionary and a divisive public policy that is not consistent with widely held values; courts in Peru can protect society from violent offenders by ensuring that the perpetrators of such violent crimes are brought to justice and punished according to the severity of their crimes.
- expressing serious concern that the withdrawal from the American Convention on Human Rights will be denying the inhabitants of Peru ways to obtain meaningful remedies from the Inter-American System when domestic courts do not provide effective remedies for human rights violations.

APPEALS TO:

President of the Congress

Sra. Mercedes Cabanillas Bustamente

Presidenta del Congreso

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Salutation: Dear President/Sra. Presidenta

President of the Congressional Justice and Human Rights Commission

Dr. Raul Castro Spagnaro

Presidente de la Comisión de Justicia y Derechos Humanos

Congreso de la República, Plaza Bolívar s/n – 2º Piso – Of. 213, Lima 1, PERÚ

Fax: + 51 1 311 7797

Salutation: Dear President/Sr. Presidente

President of the Constitution and Congress Regulations Commission

Dr. Aurelio Pastor Valdivieso

Presidente de la Comisión de Constitución y Reglamento del Congreso

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Salutation: Dear President/Sr Presidente

COPIES TO:

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Sr. José Antonio García Belaunde

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Human Rights Organization

Coordinadora Nacional de Derechos Humanos

Calle Pezet y Monel (ex Tupac Amaru) 2467, Lince, Lima 14, PERÚ

Fax: + 51 1 702 2500 (Dial '122' to get fax tone)

and to diplomatic representatives of Peru accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 2 November 2006.