

Punishing Terrorists with Terrorism: A look at Peru's War on Terror
By: Justin Luna

As all United States citizens and residents know, the *War on Terrorism* is a daily reminder of the atrocities that occurred on September 11, 2001. These events caused the U.S. government to enact sweeping anti-terrorism laws in an attempt to bring those responsible to justice. These laws netted many arrests and captures. However, many of the captured and accused terrorists are currently treated inhumanely, held without formal charges, which has drawn the attention of many human rights groups. Did we not see this result from our lessons in history class? Where else in history did the treatment of alleged "terrorists" fail under many international human rights guidelines? Did we not learn from the past and current situation in Peru, and how the Peruvian government dealt with terrorists? To be fair, many of us have not. However, the current and immediate past situation on Peru's war on terrorism and its missteps seem to be repeated today in America's own War on Terror. We should learn from the human right violations committed by the Peruvian government in order to prevent history from repeating in the United States.

I. Background Information

Drugs have long been a problem for many South American and Latin American countries.¹ Every year, around 900 tons of Coca is grown in these countries, about 56% coming from Peru alone.² To modern governments in these countries, the most important security related issues deal with drug related crimes.³ This is a direct result from a variety of guerrilla forces emerging in the region, most notably Argentina, Bolivia, Columbia, Venezuela, and Peru. In Peru, there are two prominent guerilla groups that,

¹ Steve Macko, *Security Problems in Latin America*, ENN Daily Report, Vol. 2, No. 237, (1996). Available at www.emergency.com/ltm-scty.htm (last visited on February 23, 2006).

² *Id.*

³ *Id.*

as of recent, combined forces to combat any government attempt to stop the drug trade. These groups are the Revolutionary Armed Forces of Columbia (FARC) and the Maoist “Shining Path” group.⁴ Together these groups were responsible for thousands of murders in the 1980s and 1990s, and are still prevalent forces in the Upper Huallaga Valley in Lima in an effort to protect drug runners⁵.

In response, then Peruvian President Alberto Fujimori passes sweeping “anti-terrorism” laws that would enable the military to capture and torture suspected “terrorists”. In the mid 1990s, thousands of suspected Shining Path members were captured, including then Shining Path leader Abimael Guzman⁶. The limited “success” of Fujimori’s anti-terrorism campaign led to extreme and unconstitutional measures in order to sustain the success of the war on terror. In 1992, Fujimori dissolved the courts and Congress, erased constitutional protections, and instituted military tribunals.⁷ Through these actions to protect the citizens of Peru from terror, Fujimori has destroyed the country’s constitutional democracy.⁸

II. Life in Captivity under Fujimori’s Government

Life in captivity for suspected terrorists under the new anti-terrorism laws implemented by President Fujimori is hell. As of the late 1990’s, there were approximately 22,210 inmates in Peruvian jails, 5,000 of them were accused of treason or terrorism.⁹ This was largely in part to Peru’s loose definition of the term “terrorism” under Fujimori’s anti-terrorism laws.¹⁰ Furthermore, the treatment of these prisoners was even worse. The accused are locked up in a 9 foot by 9 foot cell block, given only

⁴ Dave Kopel & Mike Krause, *Losing the War on Terrorism in Peru*, National Review Online, March 22, 2002. (Available at www.nationalreview.com/kopel/kopel032202.shtml) last visited on February 23, 2006.

⁵ *Id.*

⁶ *Id.*

⁷ *Id. at 3.*

⁸ *Id.*

⁹ Calvin Sims, *New Attention to Harsh Conditions in Peru’s Prisons*, NY Times, Dec. 31, 1996, at A3.

¹⁰ Raneer Panjaba, *Treason and Treatment in Peru*, 16 Dick. J. Int’l L. 1, Fall 1997.

half an hour to stroll around a prison patio, and are given stale bread and one gallon of water a day to bathe, drink, and flush.¹¹ These prisoners are tortured, malnourished, and even raped on a daily basis.¹²

There is no sense of justice for these accused persons. Many times a person is put in jail without formal charges for up to a year. If a person is finally charged of being a terrorist, the accused comes before a faceless military tribunal without council, convicted and sentenced immediately.¹³

A specific example of such mistreatment comes in the form of a convicted “terrorist”, a United States citizen, Lori Berenson. Lori, admitted to have loose ties to the Shining Path group, and was subsequently given a 30 year sentence for terrorism.¹⁴ Human rights advocates that frequently visit her have cited a variety of times that she looked physically beaten, malnourished, and was spiritually defeated.¹⁵

Fujimori was even more brutal to his own citizens that stood against him. In 1997, 14 Shining Path rebels held over 100 hostages at the Japanese Embassy in Peru. After surrendering, all 14 hostage takers were immediately murdered, shot on the spot.¹⁶ These government actions raised serious concerns about Fujimori’s tactics in dealing with terrorists, and how they violated fundamental Human Rights laws.

Today, over half the country of Peru lives in poverty, and many of the accused still remain locked up. In fact, many citizens that live in low income areas associated with the Shining Path are seen as sympathizers and may be arrested without merit.¹⁷ Family members say nothing to defend them in order to prevent government officials

¹¹ Reuters, *Hundreds unjustly jailed for terrorism in Peru*, Committee to Free Lori Berenson, Jan. 23, 1996.

¹² *Id.*

¹³ *Id.*

¹⁴ Anonymous, *Terrorism in Peru*, Eat the State, April 27, 1999. Available at www.eatthestate.org/01-34/TerrorismPeru.htm (last visited on February 23, 2006).

¹⁵ Rhoda and Mark Berenson, *Freeing Lori: Update*, August 30, 2000. Available at theword.hunter.cuny.edu/archive/vol37/byting_words/bnews2.html. (Last visited on February 23, 2006).

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 11.

from arresting them as well.¹⁸ This citizen targeting comes as a result of the continued mandate to complete and continue the war on terror. In doing so, innocent citizens and non-citizens in Peru are being denied their fundamental human rights, and Peru is breaching their mandate under Conventions and customary law to prevent such targeting and mistreatment.

III. The World's Voice and Peru's Violations

The U.S. State Department states that only a couple of rogue governments practice "terrorism".¹⁹ These states are North Korea and Iran. The United States has remained silent on Peru's practice, and has not commented on the Lori Berenson situation. However, many other world bodies have spoken out against these atrocities. A UN Special Rapporteur on the Sub-Commission on Prevention of Discrimination and Protection of Minorities stated that Peru has no legal safeguards in the court system that would rebuff violations of human rights.²⁰ The OAS, United Nations, Amnesty International and Human Rights Watch have also declared that Yanamayo and Huacariz prisons that housed accused terrorist should be closed down as a result of such human rights violations.²¹ Furthermore, the Inter-American Commission has recognized a long established determination that Peru's authoritarian laws instituted by the now disgraced former President Alberto Fujimori are illegal and violate fundamental human rights.²² However, the government of Peru has appealed the decision of the Inter-American Commission to the Inter-American Court of Human Rights.

Peru has violated many of its treaty obligations by denying due process of law, and by engaging in torture, rape, and mistreatment of prisoners accused of terrorism. Peru has violated articles (2), (5), and (8) of the American Convention on Human

¹⁸ Could be seen as a modern day Salem Witch Hunt, or even McCarthy era scare tactics.

¹⁹ *Supra* note 15.

²⁰ Special Rapporteur Report, 21 U. Dayton L. Rev. 585, 665, (2003).

²¹ Huacariz Prison is where Lori Benrenson is being held. *See* Freeing Lori: Update

²² *Supra* note 15.

Rights²³, articles (2), (7) and (9) of the International Covenant on Civil and Political Rights²⁴, as well as article (3) of the San Salvador Protocol²⁵ to name a few. By signing these treaties, Peru has bound itself to follow these international laws of humane treatment and dignity. By engaging in this conduct, the government has violated its treaty obligations and should be held accountable by the international community.

IV. Recommendations and Conclusions

Peru's current government must accept responsibility for violating international law and fundamental human rights. Targeting citizens that may potentially be associated with rebel or guerilla groups without cause is one such violation. The international community must respond by imposing economic, political, or diplomatic sanctions on Peru until the situation has become rectified. It may be difficult to exact criminal justice on individual members of the government for the acts of the domestic sovereign, but different justice system reforms may ensure that it does not occur again. Transparency in the court systems; frequent reviews of prison conditions and prisoners, as well as domestically adopting criminal penalties for such repeat violations may deter this atrocious behavior from occurring again.

²³ Henry Steiner, *International Human Rights in Context*, p. 1436, 1439 (2000). Referring to violations of due process, right to humane treatment, and lack of domestic legal effect.

²⁴ International Covenant on Civil and Political Rights, Art. 24, U.N. Doc. A/6316 (1966). Referring to violations of due process, torture, and discrimination respectively.

²⁵ Additional Protocol to the American Convention on Human Rights, Art. 3, (1999). Referring to the violation of obligation of nondiscrimination.