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Criticism of Anti-Terrorism Bill in Peru

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Category/Department: Peru
Published: 2013-01-18

The possible approval of a bill to criminalize denying terrorist acts or inciting others to commit such acts has received significant criticism from those who consider it ineffective as well as from those who see it as violating freedom of speech.

The executive sent the proposed Ley del Negacionismo, which would incorporate this concept into the Penal Code, to Congress in late August. On Dec. 11, a broad majority of a joint session of the congressional justice and constitution committees approved the bill.

The law would set a prison sentence of 6 to 12 years for anyone who "publicly approves of, justifies, denies, or minimizes the acts of terrorist organizations" that have received a final court judgment as well as anyone who incites others to commit terrorist acts. This second element was not included in the bill sent by the executive. If the denial is made through the media or by using information technology, the penalty would be between 8 and 15 years.

The full Congress must debate the bill, but the last plenary session ended on Dec. 14 without a debate and legislators are now in recess until March. The law will be taken up by the Comisión Permanente, which the full Congress authorized to legislate until Feb. 28.

An ineffective instrument?
The bill aims to stop groups such as the Movimiento por la Amnistía y los Derechos Fundamentales (MOVADeF), created three years ago (NotiSur, March 23, 2012), which calls for amnesty for Sendero Luminoso (SL) founder Abimael Guzmán, serving a life sentence for terrorism (NotiSur, Oct. 13, 1992); and the Comité Nacional de Reorientación y Reconstitución (CONARE)-Sindicato Unitario de Trabajadores en la Educación del Perú (SUTEP), which considers members of SL and the Movimiento Revolucionario Túpac Amaru (MRTA) victims of political persecution.

On Jan. 20, 2012, the Registro de Organizaciones Políticas (ROP) of the Jurado Nacional de Elecciones (JNE) denied MOVADeF's application to register as a political party. And the issue of the organization's registration as a party was the topic of a letter that MOVADeF gave to Peruvian Ambassador to Argentina Nicolás Lynch Gamero, precipitating his resignation in early November (NotiSur, Nov. 30, 2012).

"We need a legal instrument like this so that democracy and the rule of law can defend itself from these kinds of movements," José Ávila, vice minister of human rights, told a local radio station. He said the Ministerio de Justicia "is preparing a legislative framework with new strategies to fight movements that do so much harm to democracy."

Anti-terrorism prosecutor Julio Galindo told RPP Noticias, "The effectiveness of a statute like this is absolutely indisputable because we use it to formalize complaints against those who want to distort the history of the country regarding terrorist acts."

Nevertheless, Galindo indicated that the text could be improved, since it could be confusing in its present form. He pointed, for example, to one of the bill's articles that mentions being an apologist...
for terrorism, which could be confusing when judges have to hear such a case. "One issue is denial and another is being an apologist," Galindo said. "It's necessary to focus on the first because the second is already provided for legally."

A Dec. 18 editorial on the issue in the daily El Comercio said that the law would not be effective. "The bill aims to identify the sanctioned actions, establishing that one requirement for the existence of criminal denial is that the accused denies that a terrorist act occurred, despite a court ruling on the matter," read the editorial. "The bill's authors, however, seem to have overlooked that such rulings are not made public and citizens have no legal obligation to know about them. Thus, the only 'deniers' who can be punished are those who it can be proved knew the content of the legal finding regarding the terrorist act that they were denying. And, as that will be very difficult to prove, what is likely is that this legal statute will have little practical use." The editorial's title was "Better Weapons," and said that the government should choose better weapons to "stop MOVADERF and similar movements that champion whatever murderous ideology."

"The law has some risk in that the line between committing a crime and affecting freedom of speech is very thin. Thus an irresponsible judge can act irregularly and threaten freedom of the press or the right to express an opinion," said Deputy Víctor Andrés García Belaunde of the congressional alliance Acción Popular-Frente Amplio.

César Hildebrandt, a journalist and director of the weekly Web publication Hildebrandt en sus Trece, said on the Ideeleradio program No Hay Derecho, "I don't agree with any law regarding any denial because the right to express an opinion has to be an inalienable right."

"I do believe that MOVADERF is a pseudonym for Sendero Luminoso and has to be treated as such, and that does not mean that we have to repress them but rather that we should guard against that expression," added Hildebradt. "In general, I believe that it was a mistake to not allow MOVADERF to register with the JNE because it is much better to have them within the fold of formality than to have them as [MOVADERF founder and leader] Mr. Alfredo Crespo wants, persecuted, trapped by the system, disdained by formal democracy that is so small that they cannot fit in."

Former prime minister Salomón Lerner made similar remarks in November and was harshly criticized by most on the political spectrum. "If these persons are forming a movement, they want to participate in political life respecting the rule of law, respecting constitutional norms, I believe that they should be given the opportunity," said Lerner.

On Dec. 28, the Ministerio del Interior filed charges against Crespo, before the Ministerio Público, alleging that he belongs to the terrorist organization Sendero Luminoso. In making the announcement on Jan. 2, Interior Minister Wilfredo Pedraza said that the charges are based on the ideology and bylaws laid out in documents MOVADERF presented to the JNE in its effort to register as a political party. If convicted, Crespo could be sentenced to 20 years in prison. The Fiscalía and the police are investigating 15 other MOVADERF leaders.

In general, there are two well-defined positions on this issue. One is held by those who contend that groups that support violence cannot be allowed to participate in politics and that they should be repressed. The other position is that of a minority who say that, if these groups ask Peruvian society for forgiveness for the crimes they committed, they should be given the option of participating in formal national politics and fought through ideological debate.