



# Peru: Constitutional Power of the President to Grant Pardons

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**PERU**

**CONSTITUTIONAL POWER OF THE PRESIDENT TO GRANT PARDONS**

Under the National Constitution of Peru,<sup>1</sup> the President may “grant pardons and commute sanctions and grant pardons to an accused in cases when the investigation phase of the criminal proceeding has exceeded its deadline and its extension.”<sup>2</sup>

The President’s the power to grant a pardon is discretionary. He is not obliged to grant it, but he is obliged to accept the petition for a pardon and respond to it.<sup>3</sup> The President is also entitled to commute sanctions, which means that he may change a more serious punishment into a less serious one. In this case the President also has the discretion to grant a pardon, but he is required at a minimum to process the request. There is also an additional power given to the President to grant pardons to accused individuals when the procedural deadlines in the criminal process have been exceeded. This pardon is allowed under the principle that any individual is considered innocent until proven otherwise before a court of law.<sup>4</sup>

In addition to the above-mentioned constitutional provisions on pardons, Law No. 26655 passed on August 16, 1996, created a Special Commission to advise the President on the granting of pardons to individuals who have been sentenced for the crime of terrorism or treason. This Law was mainly intended to repair any injustice that occurred during the years when these crimes were prosecuted before military tribunals. There was a great deal of political pressure to amend such deficiencies and to free innocent individuals deprived of the full due process of law.<sup>5</sup> The Commission is an advisory entity and the President is not obliged to follow its recommendation.<sup>6</sup>

The main provisions of Law No. 26655/96 require the Commission to evaluate and propose to the President the granting of pardons for those who might have been sentenced or even accused of the crimes of terrorism or treason without sufficient evidence which would allow the Commission to reach the conclusion that they were innocent.<sup>7</sup>

The Commission can also recommend an extraordinary proceeding to review the sentences

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<sup>1</sup> CONSTITUCION POLITICA DEL PERU, Grijley, Lima, 1999.

<sup>2</sup> *Id.* art. 118 para 21.

<sup>3</sup> M. Rubio Correa, 4 ESTUDIO DE LA CONSTITUCION POLITICA DE 1993, Pontificia Universidad Catolica del Peru, Fondo Editorial 1999.

<sup>4</sup> *Id.* at 372.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Law No. 26655 of August 16, 1996, arts. 1 and 2.

condemning individuals of these crimes, when--according to the Commission-- there are doubts about linkages between the convicted and terrorist activities or organizations.<sup>8</sup>

Several individuals have been freed under proposals made by the Commission.

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<sup>8</sup> *Id.* art. 7.