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## **Peruvian Congress Votes to Withdraw from OAS Human Rights Court**

by LADB Staff

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The Peruvian Congress, controlled by President Alberto Fujimori, voted July 7 to partially withdraw from the Inter-American Human Rights Court (IAHRC), a Costa Rican-based Organization of American States (OAS) institution. Government critics say the unprecedented action has put Fujimori on a collision course with the OAS and could result in Peru's ostracism from the entire inter-American political system.

On May 30, the IAHRC, created in 1978 to apply and interpret the American Convention on Human Rights, ruled that Peru should grant new trials to four Chileans serving life sentences for treason. It found that the military trials before "faceless" judges denied the defendants due process. The Chileans Jaime Castillo Petruzzi, Maria Concepcion Pincheira Saez, Lautaro Mellado Saavedra, and Alejandro Astorga Valdez were captured in October 1993 when police broke into a house in Lima where the Movimiento Revolucionario Tupac Amaru (MRTA) was holding a Peruvian businessman. They were accused of having killed five other hostages whose families had not paid ransom.

In January 1994, a military court found them guilty of treason, arguably a crime that cannot be committed by foreign citizens. Amid the controversy caused by the IAHRC ruling on the case of the Chileans, the Corte Suprema de Justicia (CSJ) said on June 16 that it would not accept another IAHRC ruling ordering Peru to pay indemnization to Maria Elena Loayza Tamayo (see NotiSur, 1997-10-10).

In 1997, the IAHRC found that the Fujimori administration had violated the human rights of Loayza Tamayo, who had been tried twice on the same charge of belonging to Sendero Luminoso. The IAHRC found her innocent and ordered Peru to release her and pay her US\$350,000. Although the CSJ had earlier ordered a Lima criminal court to pay the compensation, the president's refusal to accept the IAHRC ruling regarding the Chileans evidently caused the CSJ to change its position. "The fact that Loayza Tamayo has been released does not mean that the Peruvian government considers her innocent of the charges of terrorism of which she was accused," said the CSJ ruling.

Between 1992 and 1997, under emergency anti-terrorism legislation, Peru jailed approximately 4,000 prisoners accused of terrorism and treason. They were tried in military courts with faceless judges. Human-rights organizations say that at least 1,000 of those in jail on terrorism charges are innocent. Instituto de Defensa Legal (IDL) lawyer Ronald Gamarra said that if Peru were to accept the court decision it could amount to an admission that all trials carried out under the 1992 terrorism laws violated the right to due process.

### ***Peru claims ruling aids terrorism***

President Fujimori said he will never allow foreigners convicted of ties to leftist rebels to leave Peru's prisons. Among foreigners in Peruvian jails is US citizen Lori Berenson, serving a life

sentence for her involvement with the MRTA (see NotiSur, 1996-01-19, 1997-02-14). "This ruling goes against Peru's Constitution, which establishes that once there has been a court case there cannot be a second trial," said Fujimori. "It goes against Peru's sovereignty and jeopardizes the country's internal security."

On July 11, the Consejo Supremo de Justicia Militar (CSJM) said the IAHRIC decision was "impossible to carry out." The CSJM said to comply with the ruling would violate Peru's Constitution and the autonomy of the military justice system. The IAHRIC ruling was soundly criticized by Fujimori's backers. "It causes a natural insubordination, the desire not to respect a decision like this because it goes against our experience in these painful years of fighting terrorism," said Deputy Martha Chavez. "It deserves to be rejected by our people because it offends our conscience, our national dignity."

The head of the Cabinet, Victor Joy Way, said the decision was evidence of "leftists" within the IAHRIC. "I myself have dealt with several of them and there is not the slightest doubt," said Joy Way. Fujimori puts spotlight on Peru's human rights record The president's rejection of the IAHRIC ruling once again underscored Peru's human rights record widely criticized by human rights groups and was likely to further damage the government's image, political analysts said. On July 1, Peru's ambassador to the OAS, Beatriz Ramacciotti, presented to Cesar Gaviria, secretary general of the OAS, Peru's "final position" not to accept the two IAHRIC decisions.

Fujimori said it was necessary to "unmask" the actions of international terrorists who appeal to certain international courts with the support of nongovernmental organizations to obtain favorable judgements. Several controversial cases are awaiting an IAHRIC decision. One of the most controversial cases concerns Israeli-born television-station owner Baruch Ivcher. After the station denounced government corruption in 1997, Ivcher was stripped of his Peruvian citizenship, lost his license to own the station, and went into exile (see NotiSur, 1997-07-25). The court is also expected to rule on the case of three former judges from Peru's Tribunal Constitucional who were fired by Congress after ruling in 1997 that Fujimori could not run for a third term in 2000 (see NotiSur, 1997-06-06).

### *Congress backs Fujimori against IAHRIC*

In the 66-33 vote, with one abstention, Peru rescinded its recognition of the IAHRIC's authority in the two recent rulings. Its main arguments were that the rulings violate Peru's sovereignty and threaten internal security, and that adherence would open the floodgates for all others found guilty of terrorism to demand new trials.

Specifically rejecting the court ruling to retry the Chileans, Congress said Peru will recognize the IAHRIC'S consultative role, but will not be bound to follow its decisions. It said Peru is not withdrawing support for the American Convention on Human Rights, known as the San Jose Pact, nor refusing to recognize the Inter-American Commission on Human Rights.

Ten opposition parties issued a statement accusing Fujimori of "trying to frighten" Peruvians with a possible "resurgence of terrorism" to encourage public support for the decision to disregard the court's ruling and to further his re-election ambitions. The statement warned Peruvians that the

actions of the president and the majority in Congress leave citizens "with the right to appeal to the Inter-American Court when their human rights are violated."

Former senator and now UN special relator for human rights Enrique Bernales said the decision is a "typical questionable legal maneuver by an authoritarian government that resorts to arguments that appear solid on the surface, but are absolutely inconsistent." Bernales said the government's action is a pre-emptive strike to avoid future IAHRC decisions, which could order the reinstatement of the three Tribunal Constitutional judges or demand that Ivcher's television station be returned to him and his Peruvian citizenship restored.

Many critics, including IAHRC president Ecuadoran Hernan Salgado Pesantes, pointed out that the court ruling did not call for the release of the Chileans, but rather a new trial under conditions that guarantee their rights. Salgado also said a decision to abrogate an international agreement cannot take effect immediately. "Peru would have to wait a year to totally disassociate itself from the court," said Salgado, professor of constitutional law at the Catholic University in Quito. Peru has accepted and signed the San Jose Pact, said international law expert Juan Mariategui. "It cannot accept what it finds convenient and reject what it doesn't. The law is hard, but it is the law."

### *Court has no enforcement powers*

"The court does not have any legal mechanisms to force a country to accept its decisions, and there are no sanctions that can be applied," said Susana Villaran of IDL. "But if the government chooses to disregard a decision, it looks bad in the eyes of the world." Peruvian jurist Fernando Vidal Ramirez, who participated in the IAHRC deliberations, said Peru's refusal to accept the ruling would put it in conflict with the OAS.

"It is necessary to examine whether the Peruvian decision is juridically possible," said Ramirez. He said the OAS must rule on whether a country can refuse to accept the ruling of the court but maintain its membership in the San Jose Pact. "This is without precedent in the region," Jose Miguel Vivanco, executive director of Human Rights Watch/Americas, said. "Here is a government that, after having participated in a trial, refuses to accept the verdict, flagrantly violating a fundamental principle of law such as the fulfillment of freely signed treaties."

Vivanco was one of the signatories of a letter to Cesar Gaviria, secretary general of the OAS, asking him to intervene to preserve the integrity of the inter-American system for the protection of human rights. [Sources: Inter Press Service, 06/10/99; El Nuevo Herald (Miami), 06/07/99, 06/13/99; Latinamerica Press (Lima), 06/21/99; Associated Press, 06/02/99, 06/13/99, 06/24/99; Notimex, 06/16/99, 06/18/99, 06/30/99, 07/03/99; Reuters, 06/03/99, 07/07/99; Spanish news service EFE, 06/03/99, 06/07/99, 07/01/99, 07/07/99; Coordinadora Nacional de Derechos Humanos (CNDDHH), 07/07/99; CNN, 06/03/99, 07/08/99; El Comercio (Peru), The Washington Post, 07/08/99]

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