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Impunity for Human Rights Violators Fails

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The administration of Peruvian President Alan García had to backtrack on its attempt to grant amnesty to police and military personnel who committed human rights violations between 1980 and 2003. Facing the negative reaction from diverse sectors and even the "irrevocable" resignation of writer Mario Vargas Llosa as head of the memorial commission (Comisión Encargada del Lugar de la Memoria), which will erect a memorial to victims of the political violence that ravaged the country between 1980 and 2000 (NotiSur, April 3, 2009), the executive was forced to do an about face.

Using the powers granted by the Congress to legislate regarding various aspects of military and police justice, on Sept. 1, President García issued four legislative decrees (decreto legislative, DL), one of which governs the trials of human rights violators. Had it been applied, it would have allowed many to go free.

The decrees García promulgated on his own covered the new military and police penal code (DL 1094), the use and application of force by the armed forces in dealing with social protests (DL 0195), the new organization and functions law of military and police jurisdiction (DL 1096), and—the most controversial—the application of procedural rules for criminal investigations of human rights crimes (DL 1097).

DL 1097 moved up the date on which the new criminal procedures code (Código Procesal Penal), not yet in force everywhere in the country, would take effect. The code allows judges to close criminal investigations of military and police personnel who have committed human rights violations but whose cases have not proceeded to judgment within the legal time limit (three years).

Under the measure, judges and prosecutors would not be able to argue imprescriptibility (that is, the inapplicability of the statute of limitations) regarding acts that occurred before Nov. 9, 2003, the date on which Peru signed the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Nonetheless, Article 1 of the convention expressly states that those crimes are not subject to statutory limitations regardless of the date when they were committed.

From the beginning, President García defended the decree. "We have studied [the matter] exhaustively with [Justice Minister] Dr. García Toma before and after issuing the decree, and I can guarantee you that for human rights violators, for people who have committed atrocious crimes, this has no effect," the president told the press on Sept. 7. He also said that, according to the Constitution, the judges and the Corte Suprema de Justicia (CSJ) are responsible for interpreting how laws are applied, and he discounted the possibility that judges would erroneously interpret the decree to benefit human right violators.

Some questioned whether the timing of the decree was a mere coincidence, coming exactly two days after the seventh anniversary of the release of the Comisión de la Verdad y Reconciliación (CVR) final report (NotiSur, Sept. 12, 2003). The CVR investigated the violence in Peru between 1980 and 2000 and attributed 31% of the deaths, massacres, and disappearances during that period to the armed forces.
Others suggested that the executive picked the date to take advantage of the public's focus on the Oct. 3 municipal and regional elections when he promulgated the anti-democratic norms.

**Multiple reactions**
Reactions were quick in coming both from those who stood to benefit from DL 1097 and from those who raised their voices to protest against it.

Twenty-one members of the military unit known as Grupo Colina, invoking DL 1097, petitioned for a stay and demanded that the proceedings against them be dropped. Among the crimes they are charged with are the 1991 Barrios Altos massacre, in which 15 persons were killed, including an eight-year-old boy, in a poor neighborhood near Lima (NotiSur, Nov. 27, 1991); the 1992 illegal execution of nine campesinos in the town of Santa, in Ancash department; and the disappearance of journalist Pedro Yauri, who had denounced the participation of paramilitary groups in acts of violence in Huara province, Lima department.

Among those demanding that the decree be applied to them was retired Gen. Juan Rivero Lazo, former head of the Dirección de Inteligencia del Ejército (DINTE), who helped create Grupo Colima, which killed dozens of alleged subversives during the administration of former President Alberto Fujimori (1990-2000). Santiago Martín Rivas and Carlos Pichilingüe, leaders of the group, also petitioned for stays under the decree.

Carlos Rivera, a lawyer with the Instituto de Defensa Legal (IDL), told the daily La Primera on Sept. 3 that the decree would mean the definitive closure of countless investigations such as that of the 1986 massacre at El Frontón (NotiSur, Sept. 12, 2003) and (March 16, 2007), which involved President García and Vice President Luis Giampetri, and the case of the 1992 killings in Castro Castro prison (NotiSur, June 10, 1992), which would directly benefit Fujimori.

If all crimes committed between 1980 and 1990 are excluded from the category of crimes against humanity, Fujimori can question the legality of his sentence by the Tribunal Constitucional, said Rivera.

"I believe that they want to dismiss any processes that have anything to do with Alan García and with Fujimorism. The Fiscalía Superior, after a lengthy legal investigation, issued an opinion in which it found that the ten people tried in the El Frontón case were not the only ones responsible, because there could be intellectual authors, and therefore there should be an additional investigation. Just after the prosecutor announced this, the decrees were issued," Gloria Cano, an Asociación Pro Derechos Humanos (APRODEH) lawyer for victims of the violence, told the press.

Besides human rights organizations, the Defensoría del Pueblo, the Conferencia Episcopal Peruana (CEP), the Inter-American Commission on Human Rights (IACHR), families of victims of human rights violations by military personnel, opposition legislators, and even the governing party (Alianza Popular Revolucionaria Americana, APRA) called for repealing the decree.

The Defensoría del Pueblo, on Sept. 7, reiterated "its institutional position that serious human right crimes are not subject to statutes of limitations, and, therefore, the Peruvian state has the binding obligation to investigate and try such acts with all the guarantees of due process."

In addition, the agency called on judges of the Ministerio Público and the judiciary "to consider the existing constitutional framework, the Peruvian state's international obligations, and the Sistema
Interamericano de Protección de Derechos Humanos jurisprudence when they rule on any petitions filed involving application of DL 1097."

The following day, the CEP released a statement that said, "While it is true that the life of the aggressor deserves respect, this must not result in, nor be understood as, acts or situations that bring impunity for crimes, especially crimes against life itself and with the seriousness that pertains to crimes against humanity."

"Special care must be taken not to equate crimes against humanity with other, less serious crimes because that would diminish the value judgment regarding attempts against life, which, because of their special seriousness, must always be treated with painstaking attention," added the bishops, whose statement went on to refer to the proscription, recognized in Peru, of the statute of limitation for crimes against humanity.

The IACHR expressed its concern at the issuance of DL 1097 in considering that "it could entail serious obstacles for prosecuting cases involving crimes against humanity, war crimes, and serious human rights violations." The commission called on Peruvian authorities to adopt measures to ensure that impunity does not protect human rights violations.

"These new impunity laws try once again to guarantee amnesty, oblivion, and pardon in the name of the state for those who took the lives of our relatives," Gisela Ortiz told the press. Ortiz is the sister of one of the nine students who, along with a professor, were assassinated in 1992 by Grupo Colina at the Universidad Nacional de Educación Enrique Guzmán y Valle, known as La Cantuta (NotiSur, July 7, 1995).

Meanwhile, the main backer of DL 1097, Defense Minister Rafael Rey, said, "The intention is not to provide impunity but rather to close cases when there is no proof," and he said that his only aim was to move up the application of some articles of the Código Procesal Penal, which was already in effect in 16 judicial districts in the country.

In statements to the press on Sept. 10, Rey went so far as to say that, in drafting the decree, he had consulted with César Nakasaki, Fujimori's lawyer, and Sergio Tapia, defense lawyer for Giampetri, who is under investigation in connection with the El Frontón massacre.

Rey also said that he had consulted IDL lawyers, which the institute denied.

On Sept. 13, Vargas Llosa wrote President García that the reason he was resigning as head of the Comisión Encargada del Lugar de la Memoria was DL 1097, which "was a barely disguised amnesty that will benefit numerous persons linked to the dictatorship and convicted of or tried for human right crimes—murders, torture, and disappearances—among them, the former dictator [Fujimori] and his right-hand man."

"There is, in my opinion, an essential incompatibility between, on the one hand, promoting the construction of a monument to pay homage to victims of the violence that Sendero Luminoso's terrorism unleashed beginning in 1980 and, on the other, resorting to a judicial ruse to open the side door of the prisons for those who, within the framework of that disastrous rebellion of fanatics, also committed horrendous crimes and contributed to sowing hatred, blood, and suffering in Peruvian society," said Vargas Llosa.
Only after Vargas Llosa’s resignation, on Sept. 14, did the executive send Congress a bill to repeal DL 1097.

While agents of Grupo Colina continued filing appeals based on the decree until the last moment, on Sept. 15, the first Sala Penal Especial declared it unconstitutional and inapplicable, ruling that it violates the Constitution, international treaties, rulings of the Inter-American Court of Human Rights (IACHR), and the Tribunal Constitucional.

**Cabinet changes**

Amid the turbulence created by the issuance of DL 1097, on Sept. 14, President García swore in the new Cabinet that will accompany him in the last phase of his term.

As was expected, among the nine ministers who left was Defense Minister Rey, principal author and cheerleader for the decrees, who did not attend the swearing-in ceremony. Also among those leaving was Vice President Giampetri, who expressed reservations regarding Rey’s departure from the Ministerio de Defensa and Rey’s replacement, lawyer Jaime Thorne, former director of the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI). Giampetri questioned whether Thorne was qualified to hold the position.

Nine ministers were ratified to stay on, and eight new ones were added, some of whom had already been part of the executive in this second administration of García. García was said to be looking for a "Alanista" Cabinet. He named friend and APRA insider José Antonio Chang as prime minister. Chang will also continue as minister of education.

Confederación General de Trabajadores del Perú (CGTP) secretary-general Mario Huamán objected to the new Cabinet because, he said, it represents the business sector and aims to implement repressive, authoritarian measures.

"This Cabinet will put into practice DLs 1094, 1095, and 1096, which authorize the indiscriminate use of weapons, without putting any responsibility on the one who fires," warned Huamán, who also pointed out that this was why the government named Fernando Barrios Ipenza (former head of Seguro Social del Perú, Essalud) as interior minister.

Javier La Rosa Calle of the IDL told the press that DL 1095 "gives excessive power to the armed forces to confront civilians and also allows [authorities] to consider demonstrators organizing for a protest a hostile group." He called for the decree to be rescinded.

DLs 1094 and 1096 attempt to classify common crimes committed by military personnel as actions that were part of their duties and thus allow them to be tried by military rather than civilian courts as should be the case.

Human rights and social organizations and other sectors are now warning that unless the other legislative decrees are repealed, they will take legal action to have them annulled.

Parliamentarian Marisol Espinoza asked that the other decrees be repealed "because they are the basis for more human rights violations."

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