

Judiciary Firmly Under Control in Fujimori's Peru

by Cathleen Caron*

Ido not fear truth and reality. Those who do not want to talk about referendums . . . fear the will of the people. They fear to lose everything if they allow a referendum; that is why they avoid it and prevent it . . ." (author's translation). The days when Peruvian President Alberto Fujimori could boast confidently about the will of his people are gone. As Fujimori's presidential reign enters its eighth year, he has many reasons to doubt that he would survive a test of the will of the people. But the question is, does he care?

Judging by the recent gutting of one of the only democratic mechanisms left to the Peruvian people, the answer appears to be no. In an unprecedented exercise of power, the pro-Fujimori Congress voted in August 1998 to block a popular referendum that would have determined whether Fujimori may run for a third consecutive presidential term in 2000. Although Fujimori has not yet officially declared his candidacy, Congress' recent decision to block the referendum cleared one of the last remaining legal obstacles.

For the Peruvian people, this bold blow to a basic democratic mechanism rudely exposes President Fujimori's authoritarian leanings, and various sectors of society voicing their indignation. A recent article in the magazine *Caretas* summarized popular sentiment regarding the Congressional vote as "the guillotine applied to the referendum by a deaf, blind, and obstinate majority . . . [which] has shown the authoritarian regime's crude face" (author's translation). The Peruvian Episcopal Conference also condemned the action, criticizing the government for "turn[ing] their backs on the people who elected them" (author's translation). According to the Legal Defense Institute, a Peruvian human rights organization, 78% of the population condemned Congress' refusal to allow the referendum. After almost a decade of Fujimori's political and legal maneuvers, many Peruvians are unhappily realizing how powerful and entrenched he has become.

Background to Current Problems

Until elected as president in 1990, Alberto Fujimori was a virtual unknown on the Peruvian political scene. An agronomist and university professor with little political experience, few thought he could rescue the country from a staggering 7,000% inflation rate and seemingly unstoppable guerrilla violence. Without a political party to support him, Fujimori forged an alliance with the military and Vladimiro Montesinos, a feared public figure. Despite Montesinos' record, which includes a dishonorable military discharge

due to inappropriate alliances with the U.S. Central Intelligence Agency, he became the *de facto* chief of Peru's National Intelligence Service (NIS). The NIS has since been accused of engaging in illegal phone tapping, surveillance, and physical attacks against public figures such as journalists and politicians.

When Fujimori encountered congressional opposition against broad reforms that he considered necessary to launch Peru into the global market economy of the 1990s and control guerrilla movements, Fujimori staged a presidential coup in April 1992 with the support of the military. He dissolved the Congress and declared a new National Government of Emergency and Reconstruction, which vested broad emergency powers in the executive branch. Fujimori claimed that the need to combat terrorism and to reorganize the country's democratic institutions justified these powers.

Days later, a judicial purge began. Within 15 days of the coup, Fujimori effectively neutralized political opposi-

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tion in the judicial system by dismissing all of the members of the Constitutional Tribunal of Guarantees, the National Judicial Council (NJC), the attorney general, and 13 of the then 20 Supreme Court justices. In addition, he issued presidential decrees that authorized executive branch control over all judicial nominations, confirmations, and removals. Fujimori also suspended constitutional guarantees that were critical for judicial independence, like the right of judicial tenure until age 70.

The Peruvian people, tired of an unresponsive government bureaucracy and a corrupt and inefficient judicial system, not only supported, but also applauded Fujimori's systematic shakeup. In only two years, between 1990 and 1992, Fujimori accomplished the impossible: he stabilized the national economy and captured the feared Shining Path guerrilla leader, Abimael Guzmán. Confronted with intense international criticism for ruling the country without any democratic establishments, Fujimori held elections in September 1992. Due to his success in office,

it was little surprise that Fujimori's new political party, *Cambio 90/Nueva Mayoría* won the majority of seats.

Post-1993 Weakening of the Judicial System

Once the Congress and the military were firmly under Fujimori's command, he changed the overtly authoritarian tactics that he had initially employed against the judiciary and initiated a slower, more methodical approach to the consolidation of his power in the legal system. The new approach began in 1993, when the pro-Fujimori Congress approved a new constitution. Although the new constitution guaranteed judicial independence and appeared to reestablish many of the same institutions that existed before the coup, changes in the laws over the following years crippled these protections. A typical example of this legislative assault on the Peruvian judiciary's power can be found in the 1995 general amnesty law, which excused all military and civilian authorities who were accused, investigated, or indicted for anti-terrorism activities. To ensure the amnesty law's success, Congress promptly passed Law 26492, which prohibits judicial interpretation of the amnesty's scope.

Another example of Fujimori's strategy to weaken the judiciary is the changes that Congress has made to the NJC. The constitution formally vests the authority to test, nominate, evaluate, discipline, and dismiss judges and prosecutors in the NJC, but legislation stripped the institution of any meaningful role. For example, the NJC initiated disciplinary proceedings against several members of the Supreme Court as the result of a questionable ruling that released the Central Bank from having to compensate a Peruvian businessman. Congress, however, prohibited the NJC from disciplining Supreme Court judges and high-level

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prosecutors. In protest, the seven NJC members resigned from their posts, which Fujimori provisionally filled with his supporters. The Legal Defense Institute recently decried the gutting of the NJC's independence, stating that it "simply does not exist anymore for the purpose of its creation" (author's translation).

Fujimori's tactics against the independence of Peruvian legal institutions appear to be effective. According to a U.S. Department of State report, only 403 out of 1,473 judges in Peru, including 16 of the now 32 Supreme Court justices, enjoyed permanent positions by the end of 1997. The NJC cannot nominate permanent judges until the next judicial class finishes training courses at the Magistrate Academy in the year 2000. As a result, job security for the majority of judges in temporary positions depends on their willingness to follow Fujimori's dictates.

Attack on the Constitutional Tribunal

Fujimori's most egregious attack on Peru's judicial structures involves the actions he took to undermine the Constitutional Tribunal. According to the 1993 constitution, the Constitutional Tribunal has the power to rule on the constitutionality of presidential decrees and congressional legislation. A holding of unconstitutionality, however, requires a vote of six of the seven justices. This requirement renders the Constitutional Tribunal useless, as two of the justices are pro-Fujimori and consistently vote to defend challenged Presidential actions.

A showdown finally ensued between Fujimori and the Constitutional Tribunal in 1997 over legislation allowing Fujimori to run for a third term. Although the 1993 constitution expressly limits the president to two consecutive terms in office, Congress interpreted the law in August 1996 so that Fujimori would be eligible to run again. This "interpretive law" determined that the constitutional term limit only applied to presidential terms beginning after 1993. Accordingly, Fujimori's candidacy in 2000 would actually be a bid for a second term

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because he was first elected before the enactment of the 1993 constitution.

Unable to muster the six votes necessary to invalidate the measure, several members of the Constitutional Tribunal tried a different approach. The Constitutional Tribunal may rule by simple majority on the applicability of a law to a particular case. In December 1996, therefore, with four magistrates abstaining, three Constitutional Tribunal magistrates ruled that the new law did not apply to President Fujimori and thereby invalidated his ability to run for reelection.

This decision had significant conse-

quences for the Constitutional Tribunal and its members. According to former magistrate Delia Revoredo, one of the three dissenting judges, she was subject to constant surveillance, her office was broken into twice, her van was burned, and her driver was kidnapped. She also claims that assailants fired at the car of Constitutional Tribunal President Ricardo Nugent, who abstained from the vote and did not prevent the three dissenters from issuing their opinion. The attackers killed three of his bodyguards.

In May 1997, Congress voted to remove the three opposition justices from office. The reason given was that the judges exceeded their authority by issuing a minority opinion, with only three votes, as if it were legally binding. In protest against Congress' treatment of his colleagues, and in the face of other impending sanctions by Congress, President Nugent resigned. Fear of mounting reprisals caused former magistrate Revoredo to seek asylum in Costa Rica. Congress has yet to replace the three justices that it

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removed. Due to the resulting lack of a quorum, the Constitutional Tribunal is now incapable of acting and unable to fulfill its constitutional mandate.

Peruvians reacted strongly to these actions by the government. In response to the Congressional decision to remove the three constitutional magistrates, over 3,000 students, labor unions, and political opposition groups took to the streets in June 1997, in the largest street demonstrations to date against the Fujimori regime. At that time, according to a poll by the Peruvian Research and Marketing Company, 40.6% of Lima residents considered President Fujimori a dictator.

Controversy Over Fujimori's Third Presidential Candidacy

Reacting to public frustration, the Democratic Forum, an umbrella organization for opposition groups, mounted a campaign in support of a referendum that would determine whether Fujimori could run for a third presidential term. In July 1998, the Forum presented 1,441,535 signatures requesting a referendum to the National Office of Electoral Processes. Congress, however, halted the process, citing changes in the law that now required two-fifths congressional approval for the convocation of a referendum. Despite an all-night student vigil, international pressure, and a national poll showing 77% support for the referendum, Congress voted against it.

Having weakened the judiciary system and defeated the public referendum, Fujimori's attempt to run for a third term has only one last legal barrier to overcome: the National Board of Elections (NBE). The NBE has the final power to review whether electoral candidates may legally run for office. In December 1997, however, Congress passed a law granting provisional judges authority to appoint the president and several members of the NBE, paving the way for Fujimori to fill the vacant positions with his supporters. As a result, there is little hope that the NBE will conduct an independent evaluation of Fujimori's candidacy. Regardless, the NBE's final ruling is not expected until 1999, which coincides with when presidential candidates must register for the 2000 elections.

Conclusion

With no viable recourse remaining to prevent Fujimori from running in 2000 and to stop his deliberate obliteration of Peru's system of democratic checks and balances, there is a sense of exasperation and helplessness among the populace. For many years, Peruvians were willing to overlook Fujimori's forceful approach and enjoy the short-term benefits of his policies. Now, however, there is a growing realization that the costs are too high. The strong authoritarian tactics that once made Fujimori a revered leader in Peru may be his ultimate downfall. "There is development and growth, but does this success justify a dictatorship?" commented former constitutional magistrate Revoredo (author's translation).

Outspoken Peruvians like former UN secretary general and Peruvian presiden-

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tial candidate Javier Pérez Cuéllar, former constitutional magistrate Revoredo, and moderate *Cambio 90* Congressman Carlos Ferrero Costa point to the lack of a charismatic leader as the principle dilemma facing the opposition. Now may be the time, however, to look beyond the idea of one man and one answer. This political crossroads may have the ability to spark a broad-based popular movement that could bring about true democratic reforms. ☉

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