

The Inter-American Commission on Human Rights and the Process of Democratization in Peru

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translated by Alison A. Hillman**

Introduction

The re-establishment of democracy in Latin America significantly strengthened the foundation of the Inter-American human rights system. Underlying the movement toward democratic development was the recognition that each state be founded on democratic principles, and dedicate itself to implementing and protecting basic human rights. The 1948 American Declaration on the Rights and Duties of Man (American Declaration) highlights this belief and states that “the international protection of the rights of man should be the principal guide of an evolving American law.” In 1969, the American Convention on Human Rights (American Convention) reaffirmed this principle, stating that its goal was “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice, based on respect for the essential rights of man.”

The Inter-American Commission on Human Rights (IACHR) has played a fundamental role in Latin American democracy, especially during periods of military dictatorships. These dictatorial regimes were characterized by a lack of respect for fundamental rights, and were responsible for subjugating the people of Latin America for many decades. During this time, thousands of people were unjustly detained, tortured or simply disappeared for the “crimes” of loving their countries and of exercising their right to freedom of expression.

Since its establishment, the IACHR has followed the advances in democracy throughout the hemisphere, and has expressed concern for deficiencies that continue to obstruct the full observance of human rights. Many of the Latin American countries, as well as the members of the Organization of American States (OAS), recognize the IACHR’s importance in promoting democracy within Latin America. Recently, this fact was highlighted when the Republic of Argentina commemorated twenty years since the IACHR’s first visit to that country. On this occasion, the Argentinean government reiterated its commitment to continue the struggle for the re-establishment of democracy, thus accenting the importance of the IACHR’s continued involvement in Latin America.

Peru and the Inter-American System

The IACHR has had significant involvement in Peru’s struggle for democracy. In 1990, Alberto Fujimori was elected as Peru’s president by popular vote. Two years

later, in a self-coup, he suspended the Court of Constitutional Guarantees and the democratic institutions of the country, gradually extending his stay in power. During his presidency, Fujimori dominated the Parliament, the National Council of the Judiciary, the Public Ministry, and co-opted the media. Under the pretext of combating terrorism and corruption, President Fujimori instituted a regime with clear dictatorial qualities, establishing what could be classified as state terrorism.

President Fujimori’s appointment of a special justice to judge “crimes of treason” against the “fatherland” further eroded his legitimacy. Many of these “crimes of treason,” however, were newly defined by President Fujimori after his self-coup. Innumerable imprisonments, tortures, and massacres followed. This period of Fujimori’s rule was marked by constraints on the judiciary, when more than eighty percent of the judges were provisional and did not have significant independence or authority to act. Additionally, Fujimori severely restricted the Constitutional Court (Court). After the Court found the possibility of a third presidential re-election unconstitutional, Fujimori removed three of its judges, thereby weakening its power.

The Castillo Petrucci et al. Case

The IACHR denounced the deterioration of representative democracy in Peru, not only during its last on-site visit in 1998, but also through the individual cases presented to it in recent years. In *Castillo Petrucci et al.*, the Chilean petitioners claimed that Peru violated their right to nationality under Article 20 of the American Convention by trying and convicting them of the crime of “treason against the Peruvian fatherland,” pursuant to Decree-Law 25,659, although they were not Peruvians. The petitioners also claimed that Peru violated their right to a fair trial because they were not tried by a competent, independent, and impartial judge or court. Instead, they were all tried, convicted, and sentenced to life imprisonment in Peru by a “faceless” tribunal under military jurisdiction.

On May 30, 1999, the Inter-American Court of Human Rights (Inter-American Court) issued its decision in the *Castillo Petrucci et al.* case, holding that the Government of Peru violated numerous articles of the American Convention. The Inter-American Court also declared invalid the process against the petitioners and ordered “that [Peru]



A family in Cuzco, Peru.

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guarantee a new trial in which the guarantees of due process of law are ensured.” Finally, the Inter-American Court ordered the State to adopt the appropriate measures to reform the laws that violated the American Convention, and to pay U.S.\$10,000 to the families of the imprisoned for expenses and costs.

Peru’s reaction was unusual. On July 15, 1999, Peru informed the Inter-American Court that the Plenary Assembly of the Supreme Council of Military Justice found the Court’s sentence in the *Castillo Petruzzi et al.* case “lacked impartiality and violated the national Constitution.” The Peruvian government thus refused to recognize the Inter-American Court’s decision. Both the IACHR and the Court reacted strongly, issuing numerous press releases condemning the Peruvian government. Following the arguments presented by the IACHR, the Inter-American Court declared that in accordance with the basic principle of *pacta sunt servanda* (i.e., the principle that agreements of the parties to a contract must be observed) and in conformity with Article 68(1) of the American Convention, the Peruvian government was obligated to comply promptly with its ruling.

Ivcher Bronstein and the Constitutional Court Cases

With respect to Peru, and in the same year, the IACHR also presented the cases of *Ivcher Bronstein* and the *Constitutional Court* to the Inter-American Court. In the first case, Mr. Baruch Ivcher, a citizen of Peru by naturalization, argued that the Peruvian government violated his human rights when it arbitrarily stripped him of his Peruvian nationality. The Petitioner maintained that the State did this in order to displace him from editorial control of Channel 2 “*Frecuencia Latina*” (“Latin Frequency”). Petitioner also argued that the State took this action in order to hinder his freedom of expression, because he used his position to denounce the grave human rights violations and government corruption occurring in Peru.

The *Constitutional Court* case dealt with the removal of three of the seven magistrates of the Constitutional Court of Peru after the Court held inapplicable Law No. 26,657, entitled the Act Stipulating the Authentic Interpretation of Article 112 of the constitution. This law held that “presidential terms of office that began prior to the date on which the new constitution took effect are not to be taken into account retroactively.” Consequently, the law allowed Fujimori to seek a third term in office. By find-

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ing Law No. 26,657 inapplicable, the Court held that any attempts by Fujimori to seek a third term violated Article 112 of the constitution, which limits the presidential term to two consecutive periods of five years each. The removal of the three magistrates left the Constitutional Court disjointed and legally incapable of exercising its principal



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A woman weaving in Pisac, Peru.

function of upholding the State’s constitution. Thus, this restriction on the Constitutional Court instilled a great deal of distrust in the judiciary among Peruvians.

Abuses of Political Rights in Peru

The above cases, among others, demonstrated the deterioration of representative democracy in Peru. The situation worsened with the 2000 general elections during which various electoral observation missions—including the OAS mission—reported serious deficiencies and irregularities. In its report about the human rights situation in Peru, presented to the OAS General Assembly in Windsor, Canada, June 4-6, 2000, the IACHR unequivocally expressed its view that there had been an irregular interruption in the democratic process in Peru.

The OAS report referred to Resolution 1080, adopted in 1991 by the General Assembly of the OAS, and urged the “return to the rule of law in Peru, and to the convocation, in a reasonable time, of free, sovereign, fair, and genuine elections that are up to the respective international standards.” According to the IACHR, Resolution 1080 covered not only *coups d’état*, but also the progressive deterioration of democracy, as witnessed in Peru under former president Fujimori and Vladimiro Montesinos, his head of secret intelligence. Finally, the IACHR reiterated to the Peruvian government that the obstacles and restrictions to the free enjoyment and exercise of political rights constituted a violation of Article 23 of the American Convention.

Conclusion

Here I would like to repeat the words I expressed on February 21, 2001, upon completion of my term as president of the IACHR. I had the opportunity to celebrate the ending of the grave crisis of the state of law in the Republic of Peru, and to congratulate the civil society and those responsible for strengthening the democratic institutions in that country. During my four years as Rapporteur for Peru, I acquired intimate knowledge of the lamentable situation that the country was subjected to by a regime that routinely violated human rights. During this time, the IACHR opportunely pointed out the judiciary’s

lack of independence, the grave limitations on freedom of expression, the acts of harassment and intimidation against the opposition, and the serious electoral irregularities under the Fujimori regime.

After the fraudulent electoral process in Peru in 2000, former president Fujimori and his biggest collaborator, Montecinos, fled from Peru. Fujimori went to Japan, where he claimed Japanese citizenship and is protected from extradition. Montecinos initially sought asylum in Panama. In response, the IACHR issued a press release stating the belief of the OAS Secretary General that sheltering such a criminal as a political asylee was wrong, and that the international rules defining the institution of political asylum were inapplicable to this case. Unsuccessful in his attempts to gain asylee status in Panama, Montecinos returned to Peru, where he is currently on trial for corruption.

After much suffering, democratic order has finally been restored to Peru. Yet many of those now in power were participants in the democratic resistance and may remain obstacles to the development of democracy. Nevertheless, the actions of the new Peruvian government are promising. For example, Peru under Fujimori failed to comply with its international obligations regarding human rights, and attempted to withdraw recognition of the contentious jurisdiction of the Inter-American Court in July 1999. On March 31, 2001, however, Peru's Permanent Representative to the OAS noted the government's intent to regularize the situation in Peru with respect to the Inter-American Court and its intention to respect the sentences and recommendations of the IACHR. In addition, truly free elections with wide participation of democratic forces were accomplished, and due to the efforts of the people and the present-day leaders, Peru now has the opportunity to continue on the road to democracy.

I sincerely hope that current President Alejandro Toledo has the wisdom to lead successfully the process of reconstructing Peru's democracy, already begun by President Paniagua. Therefore, it is my conviction that all progress in the Inter-American human rights system is linked to the Member States faithfully fulfilling their assumed international obligations. As such, the States Parties should respect their obligations by complying in a complete and timely manner with the decisions and orders of the supervisory organs of the Inter-American system.

Today, it is with great satisfaction that I note Peru's return to its democratic calling. The Peruvian government has re-established the legislature as an autonomous power, as well as re-integrated the judges removed from the Constitutional Court, and re-established freedom of expression in the media. The government has also recognized the contentious jurisdiction of the Inter-American Court, and participates in the IACHR. Most significantly, it has established, with free elections, the trust of the people in its leaders. This is the conquest of the Peruvian people—its society, its women, men, and youth who fought for democratic ideals. We are glad, but we should be evermore vigilant, for democracy requires eternal vigilance. ☉

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Credit: Inhab-Sensant

Local men and boys hoping to be hired as porters by tourists preparing to begin the Incan Trail to Machu Pichu.

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