Coletta A. Youngers  
Senior Associate,  
The Washington Office on Latin America

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Abstract

The crisis of human rights in Peru has ended, only to be replaced by a crisis of democracy. The massacres, extrajudicial executions and other atrocities that characterized the late 1980s and early 1990s have largely ended, as overall levels of political violence dropped precipitously following the capture of Sendero Luminoso’s messianic leader, Abimael Guzmán. Yet set-backs to democracy and democratic institution building in Peru under the government of Alberto Fujimori mean that the human rights guarantees needed to ensure respect for basic human rights – including an independent judiciary, accountability and transparency for state security and intelligence agencies, and freedom of the press – are more remote than ever. The Peruvian human rights movement, joined together in the Coordinadora Nacional de Derechos Humanos, an umbrella organization of more than sixty groups from around the country, has adeptly moved from focusing on the traditional human rights concerns generated by high levels of state-sponsored violence to expand its agenda to include new issues and challenges.

These new challenges include both issues stemming from a broader conception of human rights – such as economic, social and cultural rights, and the rights of women and children – and issues stemming from the political challenges posed by the present authoritarian government. The Coordinadora has a prominent role in promoting political rights in Peru and in documenting violations of those rights with regards to the upcoming elections, for example denouncing the unconstitutional nature of President Fujimori’s third electoral bid and harassment and intimidation of opposition candidates. Three key issues that fall into the category of democratic institution building and political rights are presented in the paper in detail: the judiciary and setbacks to the rule of law; the growing power and influence of the Peruvian National Intelligence Service (SIN), and restrictions on freedom of the press.

Human Rights and Politics in Peru Today

Shortly after civilian rule was restored in Peru in 1980 – following over a decade of military rule – Sendero Luminoso launched what would become the bloodiest guerrilla movement in Latin American history. Peruvian authorities responded with equal brutality, and Peruvian peasants quickly became caught in the crossfire. Peru became known for the widespread massacres, disappearances and thousands of politically-motivated killings that occurred annually and characterized the conflict until the early 1990s. Human rights groups estimate that over 5,000 Peruvians – mostly poor peasants -- disappeared throughout the course of the war. Car bombs and assassinations became a daily occurrence. On average, by the late 1980s more than 3,000 Peruvians were killed annually as a result of political violence.

It was in this context that Fujimori carried out the April 5, 1992 autogolpe, or presidential coup. Working in concert with the Peruvian military and intelligence services, he closed Congress and the judiciary, suspended the constitution, declared emergency rule and subsequently announced draconian anti-terrorist decrees. These strong-arm tactics were met with widespread popular approval; however, the reaction of the international community, apparently unanticipated by Fujimori and his cohorts, was immediate. Under strong international pressure, Fujimori agreed to convocate a constituent Congress to draft a new constitution. Elections were held in November 1992, followed by a referendum in 1993 on the new constitution, which, according to official election results, squeaked by with a very narrow margin of support. However, from that point on the Fujimori government has undertaken a series of undemocratic measures – many of which violate the very constitution it crafted after the autogolpe – which have reversed the incipient trend toward democratic institution building in the post-military dictatorship period.

Whether or not the autogolpe and the measures adopted via emergency rule were necessary or even the most effective means of curbing guerrilla violence remain a subject of debate. What is not disputable, however, is that such violence decreased dramatically after the capture of Sendero Luminoso's messianic leader, Abimael Guzmán, in September 1992 by a police intelligence unit under the command of now retired police general, Antonio Ketín Vidal. Following the capture of Guzmán and other key leaders, the movement splintered. The country breathed a sigh of relief, and Fujimori's popularity swelled. By the mid-1990s, Sendero no longer presented a major threat to the state. Political violence declined to an all-time low and was largely concentrated in pockets in remote jungle regions.

The drop in Sendero violence led to dramatic decreases in state-sponsored human rights violations. The extrajudicial executions, disappearances and massacres that characterized the 1980s and early 1990s in Peru slowed to a trickle. In 1998, the
The Peruvian Human Rights Movement

Born in the midst of the human rights crisis, the Peruvian human rights movement has flourished – despite the many obstacles and difficulties it has encountered along the way – and has proven adept at adjusting to the changing nature of the Peruvian crisis. It began as a small group of organizations dedicated to denouncing the atrocities taking place in remote regions of the country and bringing international attention to Ayacucho – a region virtually unheard of prior to Sendero’s reign of terror. It then consolidated into an effective coalition of organizations undertaking campaigns to seek truth and justice in
the face of human rights atrocities. It encompasses all of the country’s leading human
rights organizations, which number over fifty at the present time. Finally, the movement
successfully made the transition from focusing on the crisis of human rights to the crisis
of democracy, effectively articulating the link between the two. It has also made the leap
from denuncia to propuesta (from denunciation to making proposals), encouraging
legislative and other reforms to promote human rights and democracy in Peru.

Despite the difficult environment for such work, the impact of Peru’s human
rights movement can be felt at many levels. At the most basic level, it has saved lives
and provided assistance to the victims of civil conflict. At times, it served as a brake on
the excesses of both the military’s counterinsurgency campaign and the setbacks to
democracy, and it has obtained positive change. For example, in recent years it has
sought and obtained legislation making torture a criminal offense in Peru. Likewise, it
has worked in coalition with other organizations to promote a series of legislative
proposals addressing domestic violence and the rights of women, which are also now
codified into law. And perhaps most importantly, it successfully launched a campaign to
force the Peruvian government to recognize the problem of the hundreds of innocent
Peruvians in jail on terrorism charges and to obtain their release.

The Coordinadora’s success lies in part with its ability to mobilize the
international community. From early on, the Coordinadora recognized the importance of
the international forums provided by the United Nations (UN) and Organization of
American States (OAS), and the role of key governments like the United States. It
obtained the backing of key international human rights bodies, providing it much greater
leverage with the Peruvian government. Working with the Washington Office on Latin
America (WOLA), it became the definitive voice in shaping the U.S. government’s
human rights concerns in Peru, serving to hinder U.S. military aid during the height of the
conflict and later in assuring a strong response by the U.S. government to the autogolpe
and other blows to democratic institutions.

The Peruvian human rights movement is unique in several respects, three of
which are very significant in explaining the Coordinadora’s success. First, the nature of
the conflict in Peru, and the unparalleled brutality of Sendero Luminoso, led Peruvian
human rights groups to take a strong stand early on in giving equal weight to
documenting and denouncing guerrilla and state abuses, moving quickly into uncharted
territory for the region’s human rights groups. Second, although Peruvian human rights
groups faced obvious risks, were targeted by both sides in the conflict, and suffered from
the killing of a number of courageous colleagues, in general terms they did not suffer the
same level of repression as human rights activists in El Salvador and Guatemala in the
1980s or Colombia today. That allowed the movement to develop and grow
professionally in ways that were thwarted in other countries. This was a key factor in
allowing Peruvian groups to make the transition from traditional denunciatory human
rights work to the challenges posed by an expanding agenda and a new form of
authoritarian government.
Finally, and most importantly, due to these and other factors, the Peruvian human rights community united in 1985 under the banner of the *Coordinadora Nacional de Derechos Humanos*, the most successful country-based network of human rights organizations in Latin America. The umbrella of unity provided by the *Coordinadora* has greatly enhanced its stature – and hence effectiveness – in Peru and abroad. It has also allowed the *Coordinadora* to link its work at the local, national and international level in a way that few country-based organizations have been able to achieve.

The *Coordinadora’s* reputation within Peru has suffered in past years as a result of consistent attacks by Peruvian government authorities attempting to delegitimate both its member organizations and its cause. Taking his cue from the Peruvian military, President Fujimori has attempted to portray human rights groups as only “supporting terrorists,” and has even run attack ads on national television to that effect. At the height of the war, such accusations found some resonance among the Peruvian population, fed up with the violence wrought by *Sendero Luminoso*. However, over time those accusations have worn thin. As noted, the *Coordinadora* and its member organizations are united in their opposition to *Sendero* and have consistently condemned violence by guerrilla groups. They have also set up programs to provide assistance to victims of guerrilla violence, indeed providing more economic and other resources than the government itself (excluding assistance for the internally displaced).

A number of other factors have also contributed to the increasing acceptance of human rights work in Peru. The creation of the Human Rights Ombudsman’s office is of particular importance. Since its inception in 1996, it has obtained an unprecedented moral stature and has contributed significantly to legitimizing human rights work. The office has contributed greatly to generating public awareness of human rights issues and, at a practical level, instructing individuals on how to file complaints and seek redress. As a result, people are more willing than before to come forward to make their demands heard.

In addition, human rights education and training has always been a cornerstone of the work of human rights groups in Peru. Most of the major human rights organizations undertake some form of human rights education, grassroots church groups are heavily involved in such activity and there are a range of groups dedicated solely to this purpose which have their own national network. Among these, the Peruvian Institute for Education in Human Rights and Peace (IPEDEHP, or the *Instituto Peruano de Educacion en Derechos Humanos y la Paz*) stands out for its creative and innovative training courses. Likewise, the Institute of Legal Defense (IDL, or the *Instituto de Defensa Legal*) stands out for its media outreach through radio programs across the country and other popular education efforts.

One campaign in particular gained significant local support for the Coordinadora and illustrates its effectiveness. In response to the situation of innocent Peruvians in jail on false terrorism charges, the *Coordinadora Nacional de Derechos Humanos* launched a campaign, “In the Name of the Innocents.” Particular attention was paid to making linkages with other sectors of civil society – such as church leaders, universities and the
media – and to a large public relations effort. The campaign was quite successful in generating public sympathy within Peru regarding the situation of the innocent Peruvians in prison, which ultimately led the Fujimori government to announce the formation of the Ad Hoc Review Commission on imprisoned but innocent civilians (described in greater detail shortly). The human element of the campaign – the personal stories brought to light of those who became the victims of a harshly unjust system – was significant in consolidating popular support for human rights work and for the human rights movement.

In short, while some political and economic elites still tend to equate the human rights movement with “terrorism” and the Peruvian government continues its campaign to discredit such organizations, at the local or more popular level, there is increasing acceptance of both the validity of human rights concerns and the credibility and importance of human rights groups in pressing those concerns. This has further empowered the work, effectiveness and legitimacy of the Peruvian human rights movement.

The Evolving Agenda

The present priorities of the human rights movement are two-fold. On the one hand, there are the “secuelas de la guerra,” or the issues left pending from the years of violence and conflict; on the other are new issues related to an expanding conception of human rights and to the challenges posed by the present authoritarian regime.

Top among the “secuelas de la guerra” are the sweeping 1995 amnesty law and the virtual impunity for all human rights violations committed at the hands of the security forces; the continued “states of emergency” which grant excessive powers to the military throughout significant portions of the country despite the dramatic decline in the levels of violence; and the situation of the internally displaced. The Coordinadora member organizations continue to document cases of extrajudicial execution or other such atrocities when they occur, devote considerable attention to prison conditions and have launched a major campaign against torture, which remains widespread.

Another important pending issue concerns the anti-terrorism decrees issued by President Fujimori shortly after the April 1992 autogolpe. These establish military courts to try civilians accused of “treason” and special civilian courts to try those accused of “terrorism.” The decrees eliminate the most basic due process guarantees, including the right to an adequate legal defense, as has been amply documented by Peruvian and international human rights groups. Trials are held in secret, defendants have no access to the evidence presented against them, cross-examination of witnesses is prohibited and defense lawyers are often notified of trials just hours before they occur. For many years, the military tribunals had a remarkable 97 percent conviction rate; the most common sentences are thirty years in jail or life in prison. Thousands of innocent Peruvians have been caught up in this brutal web of injustice.

Under intense international pressure, the Fujimori government has implemented some modifications to the anti-terrorist courts, including the elimination of the “faceless”
judges in the civilian courts. (In other words, the identity of the judges is now known.) According to Peruvian military authorities, the military has opened these trials to the public, judges no longer conceal their identity by wearing hoods and using voice distorters, and the military is creating a special corps of military lawyers who are specialized and better trained, as opposed to past practice. But even with these improvements, the principal restrictions on legal defense remain in place and the courts fall far short of internationally-accepted due process norms and procedures.

As noted, public outrage over the situation of the innocent Peruvians in jail ultimately led to the formation of an Ad Hoc Review Commission on imprisoned but innocent civilians. It was composed of three individuals: the Minister of Justice, the Human Rights Ombudsman and a special representative of the president. The Commission made recommendations to the president, who granted pardons. Human rights groups have objected to the use of a pardon, given that the individuals are determined to be innocent. The Peruvian Congress finally passed a law in 1998 eliminating the criminal records of those pardoned. It never, however, passed legislation providing reparations to those individuals – many of whom lost jobs or small businesses, spent what few economic resources they had maintaining themselves in jail and even now cannot find employment due to employers’ fears of hiring those once convicted of terrorism, even unjustly.

At the end of 1999, when the Commission’s mandate expired, 481 Peruvians had been granted presidential pardons at the recommendation of the Commission, and hundreds more were released through the courts. However, in early 1999 President Fujimori largely ceased issuing pardons and began attacking the Commission for recommending pardons for “terrorists.” The accusation was unjust, as the cases largely had to do with those coerced into collaborating with guerrilla activity under threat of death.\(^4\) By the end of 1999, Fujimori had not acted on dozens of requests for pardons passed on by the Commission, and claimed that the work of the Ad Hoc Commission was for the most part completed.\(^5\) The reasons for Fujimori’s about-face are unclear and may likely have to do with election-year politics. With the expiration of the Commission’s mandate, the Human Rights Commission of the Ministry of Justice will take over the review process and will also review cases of those accused of common crimes who solicit a pardon. The Coordinadora Nacional de Derechos Humanos estimates that several hundred innocent Peruvians remain in jail on terrorism charges.

Literally thousands of Peruvians are also caught up in this legal nightmare because they are on lists of “requisitoriadas.” These are largely peasants whose names are on military lists of those to be detained on terrorism charges. The Coordinadora estimates that about five-thousand Peruvians run the risk of terrorism proceedings due to false accusations lodged against them or because they are part of entire communities listed as such after being coerced or threatened by Sendero to provide some form of assistance. While the Peruvian government has admitted the problem exists, insufficient action has been taken to address it.
While all of these more traditional issues and concern remain on the Peruvian human rights community’s agenda for action, increasingly, their attention is focused on new issues. The end of extreme violence has led many groups operating at the grassroots level to turn their attention to the pressing problems of domestic violence and economic rights, which are both at the heart of concerns people feel most directly. Political rights are also now at the forefront of the agenda. The Coordinadora and its member organizations have focused on the repeated blows to democratic institutionality and the relationship between these and the present government’s electoral plans. Human rights groups point out that political rights are a fundamental component of respect for human rights, as laid out in international covenants and treaties. These include the right to vote periodically, the right to participate in electoral processes and to campaign freely, and the right to vote in secret.\(^5\)

Many of the setbacks to democratic institution-building in Peru in recent years appear oriented toward ensuring a third electoral period for the present government. The Congress is the vehicle by which constitutional restrictions have been set aside; with no Constitutional Tribunal to provide checks and balances on the Congress, these laws go uncontested. The government’s influence over the judicial branch has also facilitated its ability to influence key electoral agencies. Judicial authorities play a key role in naming top officials to the electoral agencies and in overseeing the process on election day. Both the SIN and the military play a crucial role on the campaign trail and in ensuring government support on election day. Finally, restrictions on freedom of the press have given a tremendous advantage to the incumbent. Taken together, these actions suggest a systematic plan to pave the way for an April 2000 victory for President Fujimori.

As the April elections approach, the Coordinadora has joined other civil society organizations in denouncing the plan that the Fujimori government has set in motion and the unconstitutional nature of Fujimori’s third electoral bid. For example, they have denounced the harassment and intimidation of opposition politicians and the government’s control over the official electoral monitoring agencies. In short, the Coordinadora is playing an important role in revealing the fraudulent nature of the present electoral process in Peru and in advocating changes that would allow for a more level playing field.

Three issues directly related to the present electoral climate are at the top of the human rights movement’s agenda at the national level: the judicial “counter-reform,” the expanding power of the Peruvian intelligence services, and freedom of the press. As it is beyond the scope of this paper to document all issues related to the upcoming elections or of concern to Peru’s diverse community of human rights organizations, these three issues are the focus of the remainder of this paper.

**The Judicial Counter-Reform**

The Peruvian judiciary – historically plagued with corruption and inefficiency – was one of the prime targets of the autogolpe. Fujimori shut it down, fired all of the members of the Constitutional Court, and over 80 percent of magistrates. Thus began the
“judicial reform” effort that continues today. However, the reform process is the primary vehicle by which the Fujimori government has increasingly brought the Peruvian judiciary under its control, allowing it to influence the outcome of politically sensitive cases and to use the courts as a tool for maintaining political control. While Peruvian judicial authorities were long subject to political manipulation, this trend has significantly worsened under the present government. The extent to which the Fujimori government is willing to go to exert its control over the judiciary became blatantly evident with the gutting of the Constitutional Tribunal. Likewise, its lack of political will to promote the rule of law was vividly illustrated by the disbanding of the Constitutional Tribunal and then by Peru’s withdrawal from the jurisdiction of the OAS’s Inter-American Court of Human Rights.

The Constitutional Tribunal

The 1993 constitution included the establishment of three bodies designed to further judicial independence and effectiveness: The Constitutional Tribunal, the National Council of Magistrates and the Judicial Academy. All three were slow in getting off the ground, but offered the promise of positive change. As they began to move forward with their duties and began to show signs of independence, all three have been rendered virtually useless or brought under tight executive control.

In June 1996, the Peruvian Congress finally approved the seven members of the Constitutional Tribunal, empowered to review the constitutionality of laws. It was restricted from the start: The implementing legislation weakened its ability to overturn laws by requiring a majority of six of its seven members to rule a law unconstitutional. As noted by Human Rights Watch/Americas, “This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration.” Moreover, Congress passed a subsequent law requiring that petitions be presented to the Tribunal within six months of the initial promulgation of the law in question. For legislation passed during the four years during which no constitutional tribunal existed, petitions had to be presented within six months of the installation of the Tribunal.

The Tribunal had a short life. From the beginning, it received petitions on politically sensitive issues, including laws governing the popular referendum, Fujimori’s ability to run for a third term in office and the requirement of the six-judge majority. Within months, members of the Tribunal began experiencing intimidation and harassment. On November 8, 1996, the Tribunal’s president, Ricardo Nugent, was the victim of a mysterious attempt to either kidnap or kill him while he was driving in Lima. According to witnesses, the attackers appeared to be members of the military.

On January 17, 1997, the Tribunal ruled that the Law of Authentic Interpretation of Article 112 of the Peruvian constitution allowing Fujimori to run
for a third term in office was “inapplicable” to the present government. Three members of the Tribunal abstained from voting; four members determined the decision by reasoning that a decision on the “inapplicability” of a law required only a simple majority vote. Fujimori supporters accused those who had voted for the ruling of exceeding their constitutional mandate. A congressional inquiry followed, culminating in the recommendation to impeach the Tribunal’s president, Dr. Nugent (who had abstained from the vote), and the judges who voted for the ruling: Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur. In June 1997, the three judges were removed; although the impeachment of Nugent was not approved, he resigned as president in support of his colleagues (but remains on the Tribunal). With only three members, the Tribunal has no quorum with which to act on constitutional matters. Thus, while it can still rule on habeas corpus petitions, it cannot rule on the constitutionality of laws.

The congressional action was immediately questioned. Human Rights Watch/Americas reasons:

The mechanism of impeachment is limited in the constitution to ‘breaches of the constitution and for any crime [they] may commit in exercise of their functions or up to five years after ceasing in their functions.’ Since the regulatory law of the Constitutional court does not have any constitutional status and the judges committed no crime, the impeachment appeared to be unjustified and possibly unconstitutional.10

The gutting of the Constitutional Tribunal sparked major protests, and demonstrations of support for the judges spread across the country. Coming on the eve of the annual General Assembly meeting of the OAS which took place in Lima that year, the action was brought to world attention immediately. Ultimately, the OAS’ Inter-American Commission on Human Rights sent the case to the Inter-American Court in Costa Rica. Before the Court could begin proceedings on the case, however, the Peruvian government unilaterally withdrew from the jurisdiction of the Court, as described below. No agreement has ever been reached to re-appoint those dismissed or to name new members to the Constitutional Tribunal. All told, over the more than seven years since the 1992 autogolpe, a constitutional court has functioned with full powers only one year.

The National Council of Magistrates

Initially, the role of the National Council of Magistrates was to select, appoint and dismiss judges and prosecutors at all levels. Judicial reform efforts in Latin America have highlighted the creation of such institutions to improve the quality of magistrates and de-politicize their appointment. In Peru, the first Council was composed of seven individuals named by the Public Ministry, the Bar Association, other professional associations, national universities and public universities – a broad cross-section of civil society that provided greater guarantees for independence. The Council’s first seven
Since then, however, the Council has suffered a steady erosion of its powers. The creation of the Executive Commissions – special commissions appointed by the government to oversee the reform of the judiciary and the Public Ministry – was the first step in limiting its role in the judicial reform effort. By June 1996, its role in dismissing judicial officials for wrongdoing or incompetence had been watered down significantly. A law passed in December 1996 limited its role in appointing judicial personnel by mandating that all of those appointed to permanent positions must first be accredited by the Judicial Academy. This law prevented the Council from moving forward to resolve the provisional nature of most judicial personnel; even those with years of experience now first had to receive training from the Academy. Yet the Academy moved painfully slowly and was not regularly holding training courses. According to the former President of the Council, Roger Rodríguez Iturry: “At the time of our resignation, one year and four months had passed in which we could not convocate even one course or name one single judge or prosecutor.”

Then, in December 1997, the Congress passed an extremely controversial law giving provisional judges and prosecutors the same powers as permanent personnel. This law appeared to be geared toward ensuring a Fujimori majority on the National Electoral Board (JNE), as two of its members are elected by the members of the Supreme Court and by personnel of the Public Ministry. But it also had a devastating impact on the Council. According to Dr. Rodríguez Iturry, “The law…creates a new judicial career path: provisional magistrates…Through this means, official appointment based on merit is postponed and provisionality is perpetuated.”

The last straw for the Council came in March 1998. Congress passed a law limiting the Council’s ability to investigate irregularities committed by Vocales Supremos, or members of the Supreme Court, and Fiscales Supremos, or Supreme Prosecutors, and to dismiss those deemed guilty. These powers were transferred to the Executive Commissions of the Judiciary and the Public Ministry, respectively. The Peruvian Congress passed the law in response to an investigation launched by the National Council of Magistrates of irregularities allegedly committed by six members of the Supreme Court, effectively preventing the investigation from going further. This law also further consolidated the powers of the Executive Commissions, analyzed below.

The law prompted the resignation of all seven members of the Council. The political implications of this action, however, went well beyond Peru. The World Bank suspended a $22.5 million judicial sector loan that had been in the works for several years. A significant portion of it would have gone to the National Council of Magistrates. Bank officials initiated a review of the justice sector loan, and it was debated at the highest levels of the Bank. In an attempt to placate the Bank, substitute magistrates (suplentes) were put into all but one of the seats – all of whom said they would only stay in their positions if the Council’s powers were restored. In September 1998, the Peruvian Congress amended the law, claiming that it restored most of the
Council’s powers. However, while the new legislation laid out criteria for sanctioning judicial personnel, it maintained the changes devolving power from the National Council of Magistrates. In October 1998, as the World Bank was about to announce the cancellation of the loan, the Fujimori government proclaimed that it was no longer interested in receiving it. The World Bank’s unprecedented action marked the end of its efforts to support justice sector reform in Peru. Despite their original promises, the new members of the Council remain in their positions.

The Judicial Academy

The Judicial Academy has suffered a similar fate. The Academy’s purpose is to train judges and prosecutors in order to ensure that judicial personnel meet professional standards and qualifications, thereby enhancing the effective and fair functioning of the judiciary. Initially headed by a widely respected jurist and former Director of the Andean Commission of Jurists, Francisco Eguiguren, the Academy sparked cautious optimism that serious training programs would help raise the quality of Peru’s notoriously under-qualified magistrates. Following the actions taken against the National Council of Magistrates, four of the seven members of the Executive Council of the Academy resigned, partly in solidarity with their colleagues and partly in protest to the steady erosion of their own powers as well.

The new members appointed to fill the posts immediately acted to increase the length of the training program for both judges and prosecutors from six months to two years, thereby preventing the first “graduating” class from moving into permanent positions. (The Academy’s first training course was not convoked until October 1997.) In other words, no permanent judicial personnel could be appointed until the spring of 2000, at the earliest, coinciding with the end of President Fujimori’s second term in office. Government critics and international human rights groups immediately cried foul. Provisionality of judges and prosecutors had become not the exception, but the rule.

The government changed course again, however, in moving forward with the first graduates in April 1999. In November 1998, David Pezúa, present head of the Executive Commission of the Judiciary, said that they were considering making allowances to the two-year rule for those who already had practical experience. However, as noted by one Peruvian lawyer, “It is not clear how these decisions are made and by whom; it is not even clear what the process is for naming prosecutors and other judicial personnel.” As will be discussed in greater detail below, by the end of 1999, various changes had again been made in the way in which the Academy is to proceed, though significant advances had not been made in naming permanent judicial personnel.
The Executive Commissions

The concerns regarding the provisional status of most judicial personnel are directly related to the commissions established by the Fujimori government to oversee the judicial reform process. The government’s first effort to replace the judicial personnel dismissed after the autogolpe fell to the Jurado de Honor, or Honor Tribunal, a body of five distinguished jurists tasked with selecting permanent judicial personnel, beginning at the level of the Supreme Court. The Tribunal hoped to raise the status of judicial personnel in order to attract more qualified candidates. They were, however, largely unsuccessful. By the end of 1993, 80 percent of judicial authorities remained provisional. Six years later, an estimated 70 percent remain provisional.

In a surprise move on November 20, 1995, the Peruvian government issued Decree Law 26546 creating the Executive Commission of the Judiciary to take charge of judicial reform efforts. Although he had no previous legal experience, retired navy admiral José Dellepiane was appointed its Executive Secretary. Initially to have broader representation from the Supreme Court and other branches of government, the Commission turned all its powers over to Dellepiane shortly after its installation. Then, on June 18, 1996, Law 26623 was promulgated, forming the Executive Commission to oversee the reform of the Public Ministry. Both bodies were initially limited to a two-year period.

These commissions bypass established judicial agencies and report directly to the president. They are not accountable to any other civilian institution, their actions are neither transparent nor scrutinized, and they are one of the principal mechanisms by which tight executive control over the judiciary is maintained. Their power extends wide. Not only do they oversee reform efforts, they also determine budget allocations and oversee changes within judicial personnel. In practice, they determine to which courts cases are assigned. According to press reports and independent analysts, both appear to be heavily influenced by the SIN. As noted by the U.S. State Department, “These commissions serve as the executive’s instrument of control over the judicial system.”

Human rights groups question the constitutionality of both commissions. Nonetheless, the Peruvian Congress has continued to extend the mandate of the commissions, most recently through December 31, 2000.

Promoting judicial independence was never an explicit objective of the Peruvian government’s judicial reform project. However, the way in which the government has undertaken judicial reform efforts and the continued provisional status of most judicial personnel lend credence to claims that thwarting judicial independence is an unstated, but principal, goal of the government. While political intervention and corruption have long been mainstays of the Peruvian judiciary, never before have the mechanisms of control been so overt. As a result, public confidence in the judiciary remains low and international criticism remains high.
Both Dellepiane and his successor, Pezúa, question the use of the term “judicial reform,” preferring to call it a process of “modernization” of the judiciary. Pezúa downplays the importance of government actions to encourage judicial independence or to prevent political intervention and claims that the ability of a magistrate to act independently depends on his or her personal good will: “Independence depends on the person.”

In an interview after leaving his government post, Dellepiane claimed that the biggest threat to judicial autonomy is the National Council of Magistrates and the Judicial Academy – the very institutions designed to ensure judicial integrity and independence.

The Politics of Provisionality

One of the ways in which the Commissions exert their control is through the continued provisional status of judicial authorities; that provisionality is one of the principal mechanisms by which judicial independence is thwarted in Peru. As noted previously, following the closure of the judiciary after the 1992 autogolpe, most independent magistrates lost their posts. Yet even those who later resumed their functions have yet to regain their permanent status. As the judicial reform effort enters its eighth year, more than 70 percent of judges and prosecutors remain provisional. As a result, those individuals can be moved to another jurisdiction, transferred to another city or dismissed with no legal recourse.

Interviews in several cities and towns with judicial personnel – all of whom emphatically insisted that they not be cited by name – reveal a pattern of intimidation and fear that affects judicial decisions. One prosecutor reports, “I can be removed from my position at any time; this creates fear and insecurity…I have to be careful at all times.” Another reflects, “I don’t feel direct political pressure, but I do feel indirect pressure,” also noting the difficulty of dealing with so many unconstitutional laws. A local judge said, “What will I do if tomorrow I am sent to a city far away? My husband has a job here, and we can’t afford to move.” She went on to say, “I have to say yes, yes, yes all the time now because of the instability.” Finally, one judge stated, “My biggest concern in my job is the lack of stability.”

According to the OAS’ Inter-American Commission on Human Rights, which visited Peru in November 1998, “The Commission also received information and testimonies of judges and prosecutors who had been harassed, transferred, removed or even faced criminal charges when they adopted decisions that affected the interests of the political sector of the government.” Such cases occur with sufficient frequency to justify these fears, as described in more detail below.

The intervention in ongoing trials is so pervasive, it has generated a situation of “self-censorship,” according to one Lima-based human rights lawyer. “The judges and prosecutors know that at any time they can be accused, moved, marginalized, overlooked for promotions and the like. So now they do not even
need to intervene as much as before.” The widespread prevalence of SIN infiltration throughout the ministries and courts – ostensibly to stem corruption – further generates distrust and fear among judicial employees. The situation appears to be most pronounced in the Public Ministry, where an estimated 80 percent of prosecutors are provisional. According to the former Fiscal de la Nación, Dr. Aljovín:

They have no security that they will stay in their posts. For whatever reason, they can be moved to a new position or removed all-together…If it is a prosecutor who is more or less independent or who has not complied with the Executive Commission, they simply change him or her to another prosecutor’s office.

Judicial personnel interviewed also complain that they do not have a clear sense of what they must do to obtain a permanent status, and that the rules established for such a process by the Judicial Academy are changing constantly. A number of prosecutors and judges interviewed by WOLA claimed that they have “no idea” or “little sense” of what they have to do to receive their permanent titles. Many also complained that every time the Judicial Academy announces a course, the dates are then changed making attendance impossible or it is cancelled altogether. One judge in a remote city explained how he had passed several tests, always scoring in the top ten, but still had not made any progress in securing his position: “There is no respect for the rules of the game. You take the test, but what for?” He noted that every course he has tried to take in Lima has been suspended.

At the same time, however, some magistrates who fail such tests have moved quickly up the ladder of promotions. For example, Percy Escobar, one of the two Jueces de Derecho Público, or Public Rights judges, in Lima and Callao – the only two judges empowered to hear habeas corpus and amparo petitions in those cities – failed his exam to become a judge. Within the Public Ministry, Dr. Blanca Nelida Colán, head of its Executive Commission, named three provisional Fiscales Supremos who did not meet the minimal requirements laid out in the constitution for such positions.

In early 1999, judicial authorities announced their intentions to proceed more quickly in eliminating the provisional nature of most magistrates and prosecutors, and over the course of the year a series of initiatives were put forward toward that end. In March 1999, the president of the National Council of Magistrates announced that the Council would name shortly its first slate of permanent magistrates. He also proposed that a law be passed naming all of those presently in their posts to a seven-year term. Following criticisms that such an approach would not guarantee the quality of those named, various modifications were then made to the Academy’s procedures to allow it to move more quickly. For example, a written exam is no longer necessary to be accredited by the Academy. In its most controversial move, the Academy is allowing provisional magistrates to participate in courses for promotions. This raises concerns that provisional
personnel appointed by the Fujimori government who do not meet the necessary judicial qualifications are not only likely to be promoted, but also to receive permanent titles.

The confusion between provisional and temporary personnel gives credence to these concerns. While there are presently 221 provisional judges, there are 887 suplentes, or lawyers who do not form part of the regular judicial career track who are named to fill in for judicial personnel temporarily. In other words, “even with the promotion of provisional judges, the issue of the provisional nature of the judiciary will not be resolved.”

In the case of the Public Ministry, provisional and temporary personnel are given the same status, allowing those who have not gone through the proper training to move into a potential career position.

Although the actions taken over the last year did not significantly alter the number of provisional personnel, they have led to increased skepticism among human rights groups and others that rather than ensure that qualified personnel are named to key judicial posts, the Executive Commissions are seeking to ensure that government loyalists fill these positions. As noted by David Lovatón of the Instituto de Defensa Legal, “Nobody can oppose the end of provisionality in the Judiciary and Public Ministry given the magnitude of the problem…but to go from there to accept the political manipulation of this problem that appears to be in the works is a long stretch.”

Political Interference

As a result of their all-encompassing powers, and facilitated by the provisional status of most judicial personnel, the Executive Commissions are able to make changes in judicial structures and personnel when they choose to do so. These actions have sometimes facilitated improved administration and the dismissal of corrupt personnel. At other times, their actions appear to have a strong political bias. Most independent analysts concur that manipulation of politically sensitive court cases either in the assignment of cases or in transferring cases in mid-process is common. A few examples illustrate the way in which politics and legal rulings intersect in Peru today.

A significant number of cases have been documented in which either judges or prosecutors have been transferred, placed under investigation or dismissed altogether just before or after ruling in cases that are politically sensitive for the government or where it has certain economic interests at stake. In one particularly notorious case in 1997, three judges on the Lima Superior Court – Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays and Juan Cancio Castillo Vásquez – were abruptly removed. Responsible for resolving habeas corpus petitions, they often dealt with controversial cases, such as the kidnapping of retired General Rodolfo Robles, the case against retired army Captain Gustavo Cesti and Peruvian drug trafficker Demetrio Chávez Peñaherrera. As a result, they issued habeas corpus petitions to the military courts, which were routinely ignored. Eventually they were denounced by their superiors for interfering in the military courts, and all three were removed from
their posts and put under investigation for breach of public duty. The Executive Commission then restricted the number of judges who can rule on habeas corpus petitions in Lima and neighboring Callao, limiting it to only two judges, both of whom are viewed as very close to the government (see description of Percy Escobar above).

One judge who has faced constant scrutiny, and transfers, is Greta Minaya. She was first removed from the 37th Criminal Court in Lima after she granted a habeas corpus writ in December 1996 on behalf of retired General Rodolfo Robles, who at the time was in military detention. After an international outcry, she was reinstated. Then, in July 1997, the then-Minister of the Interior, César Saucedo Sánchez, ordered that she be prosecuted for terrorism after she granted a habeas corpus petition on behalf of Carmen Cáceres Hiostrozo, who had been arbitrarily detained by the Peruvian police. The terrorism charges against Minaya were eventually dropped, but a disciplinary complaint against her was lodged with the judiciary’s internal control body. More recently, she and another independent judge, Antonia Saquicuray, were transferred from their posts via “promotions” after ordering the government to ensure the physical integrity of journalists threatened by “Aprodev,” a controversial web site run by Hector Faisal that was the source of death threats against journalists, opposition politicians and others. Faisal, who reportedly is connected closely to the SIN, was then acquitted of all of the charges lodged against him.

President Fujimori has benefited from this situation politically and personally. Following his highly public separation and divorce, his wife sought to obtain payment for a loan she had allegedly made to his presidential campaign. He signed a statement recognizing the loan and his obligation to repay it, later denying it was his signature. In the court case that ensued, the presiding magistrate was changed at the last minute, resulting in a ruling favorable to Fujimori.

By far the most high-profile case of political persecution of a magistrate unpopular with the government is that of Delia Revoredo. After her dismissal from the Constitutional Tribunal, Revoredo went on to become head of the Lima Bar Association and an outspoken government critic. Even prior to her dismissal, her offices were broken into twice, her van was burned, her driver was kidnapped and she and her husband reported that their home was under constant surveillance. Then, the Peruvian judiciary initiated a case against Revoredo and her husband, Jaime Mur, a prominent businessman, for alleged irregularities in the importation and taxes paid on a car and two trucks they had brought into the country. The charges were initially dropped when the judge determined that the fault lay with the shipper, but the case was resurrected three times with three different sets of judges, according to Revoredo. A judge ordered Mur’s arrest for smuggling, a charge that carries an eight-year sentence. Upon learning of the ruling, Mur immediately went to the Costa Rican embassy and requested political asylum. He later blamed the SIN for orchestrating the campaign against him and his wife.
Mur and Revoredo were eventually granted political asylum, only returning to Lima in late 1998. The courts finally ruled in favor of Mur.

Bucking International Obligations

Disturbingly, the lack of legal recourse in Peru has now been extended to the international realm. From the inception of the anti-terrorist courts described above, international bodies had warned the Peruvian government that the courts did not live up to international due process standards codified into treaties which Peru has signed. In June 1999, the OAS’ Inter-American Court of Human Rights ruled that four Chileans sentenced to life imprisonment on treason charges by a faceless military court should be granted a new trial due to the lack of due process guarantees in the original proceeding. In response, the Fujimori government announced that it was withdrawing from the jurisdiction of the Inter-American Court. The Peruvian Congress made the declarations official in July 1999. Congressional leaders and government authorities claimed that the implementation of the court’s decision would result in the release of thousands of terrorists from jail.\footnote{38}

While the case of the four Chileans provided the impetus for the government’s actions, other cases coming before the Court may have provoked even greater concern. In recent years, the Inter-American Commission has received hundreds of cases from Peru of human rights violations committed by government agents during the worst years of the insurgency, more recent actions aimed at silencing the political opposition and the press and other complaints. Of particular significance, the Court is presently taking on two cases of great concern to the government: the dismissal of the members of the Constitutional Tribunal and the Baruch Ivcher case. Another prominent case that is likely to go before the Court in the near future directly implicates both Vladimiro Montesinos and General Hermoza Ríos in the disappearance of nine students and a professor from the La Cantuta university in 1992.\footnote{39}

The Inter-American Court ruled in September 1999 that it would not accept the Peruvian government’s withdrawal from its jurisdiction, stating that it has no juridical basis for doing so having not withdrawn from the Inter-American Convention, and that it would continue with procedures related to Peru. President Fujimori responded by stating his intention to continue ignoring the Court’s proceedings. The controversial move on the part of the Peruvian government had a high cost in terms of international opinion, as it has been widely condemned by international organizations, the European Union and governments such as the United States. The Peruvian government’s action is seen as particularly egregious because international organizations are the only recourse for those who are victims of human rights and civil liberties violations, given the present situation within the Peruvian judiciary. As noted by Human Rights Watch: “The Inter-American Court had, in fact, increasingly become a last bastion of defense for victims of human rights violations in Peru, given persistent government interference in the Peruvian judiciary and amnesty laws that prevented accountability for past human rights violations.”\footnote{40}
The SIN: Peru’s Political Police

Allegedly behind the machinations to thwart judicial independence is the National Intelligence Service (SIN). Moreover, the imbalance of power between the executive and legislative branches of government and the judiciary is further exacerbated by the relationship between President Fujimori, the SIN and the military high command. President Fujimori’s power depends heavily on the penetrating power and influence that these forces have amassed and on the use of the SIN in particular as an instrument of repression. The SIN, to a large degree, has become Peru’s political police, charged with stifling political opposition, independent reporting and other perceived threats to the present government. The means by which it does so – harassment and intimidation, death threats, the manipulation of court cases and blackmail – resemble the worst features of a totalitarian government. Comparatively insignificant prior to 1990, the SIN has grown enormously under the present government with regards to both its power and resources.

The SIN and its de facto head, Vladimiro Montesinos, represent what the Instituto de Defensa Legal calls el lado oscuro, or the dark side, of the Fujimori government. In addition to its regular intelligence responsibilities, the SIN functions largely as a political police. The lado oscuro of the present government is characterized by systematic intimidation, harassment and blackmail in order to maintain political control and eliminate or discredit those who threaten it. The most common targets are political opposition leaders and journalists, but others are also at risk, such as those active in civil society organizations, development groups or universities. The lado oscuro is also characterized by efforts to manipulate the courts and electoral apparatus.

It is beyond the scope of this paper to document all of the cases implicating the SIN, or the army intelligence unit, the SIE, in violations of civil liberties and human rights; moreover, the nature of these cases often makes definitive confirmation of SIN involvement difficult. However, the cases that have been fully documented – such as the widely-denounced persecution suffered by Jaime Mur and Baruch Ivcher – leave little doubt as to the role of the SIN, the SIE and other sectors of the armed forces. Moreover, these cases are sufficiently prominent to serve as an effective warning to others, generating widespread fear within certain sectors of society.

While cases of politically motivated killing or attempted killing by state agents are rare in Peru today, intimidation and harassment of those viewed as opposing the present government is commonplace, and threats of violence are taken quite seriously by those targeted. Death threats and threats against family members are common. One politically active individual notes, “When I used to get death threats in the 1980s, the person calling had a lot of emotion in his voice and sounded like they really meant it. Now I get calls and the person on the other end of the line just reads a standard script.” Human rights activists report regular death threats. But unlike in the past, these are not necessarily related directly to confrontations with the military, but tend to be most common following public statements against government actions. For example, after the Director of the Coordinadora Nacional de Derechos Humanos, Sofía Macher, spoke out in the press in favor of the referendum disputing the legality of Fujimori’s intention to run for a third term in office, she received threats and was told to “ shut up.”
Particularly effective tactics are the initiation of apparently false judicial proceedings and blackmail. While it is impossible to determine how extensive these practices are, anecdotal reports point to a widespread phenomenon. One of the most widely publicized case of the former is that of Jaime Mur and Delia Revoredo, described previously. Before going into temporary exile abroad, Revoredo declared:

> Through its irregular influence, the SIN has promoted unconstitutional laws, such as… the firing of the members of the Constitutional Tribunal opposed to Fujimori’s re-election and the reduction of powers of the National Council of Magistrates. With these mechanisms and other dispositions adopted under the cover of reform of the judicial system, the SIN has under its control judges that become part of the regime’s repressive apparatus.\(^{44}\)

In another incident, when the Peruvian Congress voted to kill the popular referendum regarding Fujimori’s candidacy for the April 2000 elections, three members of Congress – Luis Chu Rubio, Miguel Ciccia and Susana Díaz Díaz – failed to show up for the vote because of “strong pressure.”\(^{45}\) When asked about how he would vote, Miguel Ciccia said: “I have felt pressured for some time and now more than ever.” Ciccia was under judicial investigation for a claim filed against his transportation business. Chu Rubio, also threatened with a judicial suit regarding past business deals, went into hiding throughout the entire process. Finally, Susana Díaz, also threatened with a judicial proceeding, announced that she would abstain from voting.\(^{46}\) Both Ciccia and Díaz are independents, while Chu Rubio belongs to the *Frente Independiente Moralizador*. Notably, the opposition fell just three votes short of what it needed to prevent the Congress from stopping the referendum.

Along with opposition politicians, journalists have been singled out for intimidation, and there is overwhelming evidence of the government’s ability to control key media. In December 1996, *La República* released information regarding three alleged intelligence plans – *Bermuda*, *Narval* and *El Pino* – to intimidate opposition journalists and the lawyer of retired army General Rodolfo Robles, who has provided much inside information on the *lado oscuro* of the Fujimori regime. Virtually all prominent journalists who report on violations of human rights and civil liberties by the government receive regular death threats.\(^{47}\) Sometimes they are threatened with judicial proceedings. For example, journalist José Arrieta, who had worked for Baruch Ivcher at the Channel 2 television station, was charged with inducing an intelligence agent to make false charges regarding army involvement in the 1991 bombing of the home of opposition politician Javier Diez Canseco. Although eventually acquitted, Arrieta ultimately fled the country due to the repeated harassment of his family members.\(^{48}\)

Another form of intimidation is via SUNAT, the tax collection agency, as editor Enrique Zileri knows all too well. His magazine, *Caretas*, has been singled out for owing back taxes to the government because of its opposition to the regime. While SUNAT’s actions often are legally sound, it is the selective nature of who is targeted that is
problematic. As a result of SUNAT’s investigations of tax evasion targeting opposition political leaders and other opponents of the regime, it is increasingly perceived as yet another tool for political persecution. SUNAT is also used to stifle the press; a disturbing pattern is emerging of SUNAT audits of newspapers or other media that are outspokenly critical of the government. As noted by The Wall Street Journal:

> Allegations of abuse of power by the government’s internal revenue service, known by the Spanish acronym SUNAT, are also disturbing…In August, Fernando Viana, director of the opposition daily paper Referendum, reported that the paper had to shut down temporarily because its printing firm was being harassed by SUNAT, which refused to refinance its tax debt if it continued its Referendum relationship.⁴⁹

Viana is an associate of Baruch Ivcher and his paper had taken up Ivcher’s cause. As succinctly put by former U.N. Secretary General, Javier Pérez del Cúellar, “We live under blackmail…SUNAT is a dreaded phantom.”⁵⁰

Pérez de Cúellar was one of literally hundreds of Peruvians singled out in a massive wire-tapping scandal that came to light in the spring of 1998. While wire-tapping is hardly new in Peru, the extent of this case and the manner in which it was handled provoked a public outcry. Detailed information provided by a SIE agent revealed a sophisticated operation in which the phones of hundreds of Peruvians – including opposition politicians, journalists, members of the armed forces and cabinet members – were tapped and systematically monitored, with daily reports delivered to Vladimiro Montesinos. Equipment purchased from Israel in 1994 facilitated wire-tapping of opposition leaders involved in the 1995 electoral campaign, including Pérez del Cúellar.⁵¹ In response to the public outcry, and objections from disgruntled members of Fujimori’s own coalition targeted by the operation, the Congress launched an investigation. As noted above, the final report not only absolved the SIN, armed forces and other government ministries of any wrongdoing, but accused journalists who reported on the case of manufacturing evidence.⁵²

The widespread wire-tapping scandal provides just one example of the extent to which the SIN has expanded its reach and the wide net it casts in monitoring individuals and organizations. An alleged SIN document obtained by a La República reporter lays out another plan to carry out “intelligence operations” against those linked to Pérez del Cúellar’s political movement, Union for Peru (UPP). Among those targeted was La República owner, Gustavo Mohme. He in turn led the SIN to begin investigating 120 others – chosen because they attended his birthday party.⁵³ A wide range of individuals working in different government agencies have reported to WOLA that the SIN has infiltrated most government offices, including the judiciary, police and the military. These “undercover agents,” as they are called, generate fear and distrust, as it is never clear who may be reporting on whom.

The wire-tapping scandal was brought to light by Luisa Zanatta, a SIE agent who fled Peru in the spring of 1998 after learning that she was to be charged with
insubordination. Much of the information that has come to light about the SIN’s responsibility for these actions has been revealed by disgruntled SIN or SIE agents or military personnel. When these have become known to their superiors, the consequences have been harsh. In February 1997, the dismembered body of SIE agent Mariela Barreto was found in a garbage dump on the outskirts of Lima. A former member of the Grupo Colina death squad, Barreto appears to have been the source of the information which allowed Peruvian journalists to reconstruct the La Cantuta disappearances and to find the bodies of those killed by the Grupo Colina. According to Baruch Ivcher, she also alerted him as to the operation being mounted to take away his ownership of Channel 2 television. Although the investigation into Barreto’s brutal killing was officially closed, all indications are that it was carried out by intelligence agents in retaliation.

Another friend of Luisa Zanetta and fellow SIE agent, Leonor La Rosa Bustamante, was accused by her superiors of leaking information to the press regarding intelligence operations against journalists. Brutally beaten and left partially disabled, La Rosa was able to by-pass security at the Military Hospital and publicly denounce what had happened. Her case quickly evolved into a national scandal and, with little alternative, the army tried to distance itself from what it portrayed as actions taken by soldiers on their own initiative. A Peruvian military court convicted four people, including the SIE’s administrator, to four years in prison. However, the top-ranking officer was released just months later. La Rosa fled the country, going to Mexico for medical treatment and then seeking exile in Sweden. Zanetta maintains that such treatment of potentially dissident members of the intelligence services is frequent, including rape and sexual harassment of women officers.

Not only have the SIN’s unofficial powers expanded; its official duties have as well. In response to increasing citizen insecurity due to common crime and the spread of violent criminal gangs in Peru, the Congress granted the president the power to legislate by decree in “national security” matters. Interpreting violent crime as a national security threat, the subsequent decrees essentially adopt the model of the anti-terrorist decrees emitted following the April 1992 autogolpe, creating the crime of aggravated terrorism applicable to gang members who utilize sophisticated weapons. The executive decrees transfer significant power from the police and judiciary to the SIN and the military. The SIN is in charge of the “National Directorate of Intelligence for Social Protection and Tranquility,” which coordinates and directs police intelligence gathering and analysis, while those accused of aggravated terrorism were tried in military courts until the end of 1999. As with Peru’s anti-terrorism decrees, this legislation seriously erodes the due process guarantees of criminal suspects.

Legalizing the SIN’s lead role in combating crime jeopardizes civil liberties and provides it with even more opportunities for abuse. Moreover, Diez Canseco notes, “This is like giving powers to Al Capone to fight crime, when he is the one who heads up the mafia.” High-level police officials downplay the significance of the transfer of power, noting that “the fight against drug trafficking and terrorism have always been controlled by the SIN, so nothing has really changed.” But it has further demoralized the rank-and-file in what is already among the lowest paid police force in Latin America, and those
stationed outside of Lima are quick to complain. One police major interviewed by WOLA complained that others take credit for the successes obtained by the investigative police, adding: “We know that the armed forces and the SIN are absorbing and occupying police functions. We are governed by them, but what are we going to do? These are orders that come from above and we have to obey the law.”

Following highly public accusations of corruption within the Peruvian customs agency in early 1999, the SIN was tasked also with leading government efforts against contraband, again taking authority away from the police and the customs service itself. The independent press pointed to the problem of tasking the SIN, which is accountable to no one beyond the president and operates with no transparency, to undertake operations which could expose its own members to corruption without any possibility for meaningful oversight. The move prompted the U.S. Ambassador to Peru at the time, Dennis Jett, to call for increased oversight of the SIN: “Given that the modus operandi of the Intelligence Service is to operate in secret, then there exists the need for a level of oversight on the part of the government, the Congress and the press.”

The SIN has also effectively extended its reach over the Peruvian armed forces. Historically, the different branches of the armed forces (and the police) have maintained their own independent intelligence services, while the less powerful SIN served at the behest of the president. Under the Fujimori government, each branch of the armed forces maintains its own intelligence unit, but information is reportedly centralized in the SIN, which reports directly to the president. While its budget and number of agents are not made public, it is widely assumed that the SIN’s budget and personnel roster have grown enormously over the last decade.

Since 1990, de facto SIN chief Vladimiro Montesinos is “the single most important player in defining the relationship between the armed forces and the administration,” according to Dr. Philip Mauceri, a leading expert on the Peruvian military. New appointments within the military high command, for example, are reportedly determined directly by Montesinos. In 1991, Montesinos loyalist Nicolás de Bari Hermoza Ríos was named Commander-in-Chief of the Armed Forces. Hermoza ultimately amassed his own power base, surviving several attempts by Fujimori to remove him. In August 1998, Hermoza was quickly and unceremoniously removed from office. Since then, Montesinos has effectively consolidated his control over the military high command.

“They’ve arrived! The ‘Montesinos promotion’ is firing with all its power. Principal army commands are in its hands,” headlined an article in the Lima weekly, Caretas. Following the removal of Hermoza and the purge of those viewed as Hermoza loyalists in mid-1998, colleagues from Montesinos’ 1966 graduating class of army cadets took control of five of the seven military regions in the country and two other strategic commands. All had ascended rapidly through the ranks in recent years. General Hermoza’s initial replacement, General César Saucedo Sánchez, was also considered a Montesinos loyalist, as were the Ministers of Defense and Interior named at the time. Subsequent changes in these key positions have continued to follow this general pattern,
and Montesinos’ influence was further consolidated with the annual military promotions that took place at the end of 1999, when his brother-in-law, Luis Alberto Cubas Portal, was promoted to general and named to head the second military region. Because it encompasses Lima, that region is considered to be the most powerful of all of the military divisions throughout the country.67

**Restrictions on Freedom of the Press**

As noted, the SIN is behind the increasing restrictions on freedom of the press in Peru, which has become an issue of widespread international concern and is at the center of the criticisms of the lack of a level playing field in the present electoral process. In its most recent annual report, the Coordinadora notes: “All indicators reveal that during 1999 grave problems regarding freedom of the press have persisted. The government has used the communications media, principally television, to promote propaganda in favor of the present regime and against all that could signify opposition or dissent.”68 The report goes on to describe the situation in detail.

Restrictions on freedom of the press in Peru were largely brought to light in the United States through widespread press coverage of the case of Baruch Ivcher, who lost both his citizenship and ownership of the Channel 2 television station as a result of political persecution apparently orchestrated by the SIN following stories that aired on the station documenting human rights violations and official corruption. The consistent blows against freedom of the press in Peru are amply documented by Peruvian and U.S. organizations such as the Peruvian Institute for Society and Media (IPYS), the OAS’ Special Rapporteur on Freedom of the Press and U.S. NGOs such as the Committee to Protect Journalists and Freedom House. Indeed, Freedom House lists Peru along with Ghana and Jordan as the countries where attacks on freedom of the press are most frequent.69 These and other organizations have produced numerous detailed statements and reports documenting problems related to press freedom in Peru. Among those monitoring freedom of the press in Peru, a consensus exists that the country has a vigorous cadre of journalists whose investigative reporting remains extremely significant and that overt censorship of the press remains rare. However, the government has developed a range of coercive tactics to control at the national level all but a limited sector of the print media, thereby limiting what most Peruvians see, read and hear via the media.

Dr. Catherine M. Conaghan, a leading expert on the Peruvian press, points out that press-state relations in Peru present “a more complicated reality than a quick look at Lima’s kiosks could reveal…public officials engage in a broad repertoire of practices aimed at subverting press autonomy and undercutting the press’ ‘watchdog’ capabilities.”70 Among the main ways in which the government exerts its control are the following:

A pattern of discrimination, harassment and intimidation, including death threats against virtually all journalists investigating cases of government corruption or abuses.
The cases of killings, often under unusual circumstances, of journalists in the provinces occur with sufficient frequency to have a chilling effect on their colleagues.

- The use of the *prensa chicha*, or yellow tabloids, largely believed to be controlled by the intelligence services with military support, to slander and discredit prominent journalists.

- The prosecution of prominent journalists or owners of major media to thwart their investigations, as in the case of Baruch Ivcher.

- The use of back taxes owed to the government to exert political pressure on the media; efforts to dissuade companies and businesses from advertising in print media viewed to be opposed to the government; and the use of government advertising funds – which comprise 23.18 percent of all advertising revenue – for pro-government media only.\(^{71}\)

- Wire-tapping and other forms of monitoring independent journalists. Sixty percent of those targeted in the wire-tapping scandal described above, for example, were journalists.\(^{72}\)

- Withholding information from journalists viewed as unsympathetic to the government.

As noted by Conaghan:

> Instead of seeking to influence press coverage by shaping information, Peruvian officials have taken the opposite approach by denying the public’s right to know altogether and shutting down attempts by the press and the opposition in Congress to pierce the veil of governmental secrecy, especially in regard to the conduct of the military and the intelligence apparatus. Denial and secrecy have become, effectively, a permanent public policy sanctioned by the president and practiced by the military intelligence apparatus but also the congressional majority and the judicial system.\(^{73}\)

The combination of the above tactics has led to a situation where self-censorship is the norm.

Through these tactics the government has brought under its control at the national level the bulk of the print media, many of the major radio channels and television news programs. A number of print media stand out for having resisted the government onslaught: the Lima daily papers, *Gestión, La República* and *El Comercio*; and the weekly magazine, *Caretas*. (*Gestión* also owns an important independent radio station, *Cadena Peruana de Noticias*, or CPN.) However, their cost makes readership by the average Peruvian prohibitive. What most poor Peruvians will read, if anything, are the tabloids such as *El Tío, El Chino*, or *La Chuchi* which, as noted, are widely believed to be
subsidized and heavily influenced by the intelligence services. These not only maintain a solidly pro-government line but are mostly used to discredit opposition politicians, journalists and others.

The situation is less bleak, however, in the provinces. There, independent press – including local television stations, radio and newspapers – are often able to continue without government or SIN intervention. However, they are also more vulnerable to intervention when it does occur. Numerous investigative journalists have been killed in provincial cities and towns in murky circumstances. A recent incident in Trujillo illustrates the difficulties that can be faced by local media. According to the International Federation of Journalists, on December 9, 1999, the Ministry of Transportation and Communication ordered Radio Libertad, known for its independent reporting, to shut down, claiming that it did not have official authorization for its operation. However, according to the station’s owners, it has operated legally for more than 50 years and has all of the necessary licenses; those dating back to 1951 were made public. Just days before the radio station was ordered to cease its broadcasts, SIN agents came to the station and demanded that the station take a more pro-government position.

Control of Television

While President Fujimori may have less capacity to intimidate local press to benefit his campaign, it is the government’s influence over the major national television stations – from which nearly 80 percent of Peruvians obtain the daily news -- that allows the government to dictate what news is reported, as a result, will most skew the upcoming elections. Over the course of 1999, all of the major political news shows critical of the government were taken off the air, including César Hildebrant’s highly popular – and extremely critical – news program. The process was completed with the resignation of Nicolás Lucar, who hosted a show called Revista Dominical. Although generally pro-Fujimori in his coverage, Lucar resigned after an interview with Montesinos and Fujimori was run on the show without his prior knowledge or consent.

Apart from two cable stations, Canal N and Canal Noticias, Peruvian television in Lima is now completely void of independent reporting and critical press coverage, and offers little basic news. Talk shows and novelas, or soap operas, dominate television in Peru today.

The primary means by which the government influences television are through the threat of demanding back taxes (all are heavily indebted to the state), the threat of lodging legal charges against the stations and their owners (as so vividly illustrated in the Baruch Ivcher case and more recently in the case of Delgado Parker) and the purchasing of advertising. Over the course of 1999, as elections neared, the Fujimori government steadily increased the amount of government resources used for paid advertising. It is the most important source of advertising revenue, spending nearly double the Cristal beer company, which was ranked second. Self-censorship by the major television stations has reached the point where even paid ads by the opposition are prevented from airing. When Lima mayor Alberto Andrade officially launched his presidential bid last November, all three major television stations in Lima refused to accept paid advertisements by the candidate.
As a result, Fujimori is dominating what little political coverage takes place as the elections approach, and airtime given to opposition candidates is overwhelmingly negative. Opposition politicians for both the presidential and congressional races face the prospect of little or no positive coverage by television, which is the most significant form of political advertising in the country. One study carried out by *Transparencia* showed that in November 1999, Fujimori appeared on television for a total of nearly 26 and a half hours; the two main opposition candidates at the time, Andrade and former Social Security chief Castañeda Lossio, appeared only 4 hours and 10 minutes combined. As noted by a pre-election monitoring mission by the Carter Center and the National Democratic Institute:

> It is typical that incumbents enjoy an advantage in media coverage. The hugely disproportionate coverage in favor of President Fujimori was recently substantiated by media monitoring reports released by *Transparencia*. The reports showed that between October 1 and 31, President Fujimori received 78 percent of the broadcast coverage, as compared to other declared or likely presidential candidates. In the period ahead, much will need to be done to level the playing field in the media so that all political contestants can get their messages to the electorate and citizens receive sufficient accurate information to make informed choices at the ballot box.

Despite strong international condemnation regarding the way in which lack of access to the media is jeopardizing the legitimacy of the present electoral process, the Fujimori government has taken no significant steps to address the issue. On the contrary, recent attacks against *El Comercio* indicate an intention to further tighten the reins on the press as the elections rapidly near.

**Conclusion: Challenges for the Future**

The issue of freedom of the press is just one of many that must be addressed to put Peru back on a democratic path. No matter who wins the April 2000 elections, Peru faces a difficult and uncertain period ahead. If Fujimori wins, he will likely enjoy a short honeymoon period, having already been in office for a decade, that could easily evolve into a period of instability and political divisiveness. Yet even if an alternative candidate wins – highly unlikely at this point -- Peru will still face a difficult transition period as the new president and Congress seek to contend with the overarching power of the SIN and the military, the imbalance of powers and the setbacks to the rule of law. The best case scenario for Peru is thus one of a long and arduous transition, with the hopes that relatively free and fair elections will take place in the year 2005. In either case, the Peruvian human rights movement will continue to voice the concerns of many on the need for democratic change and respect for the basic human rights of all Peruvians.
ENDNOTES

1 By this time, the MRTA was already reduced substantially, and did not represent a threat to the state.


4 Although he did, unexpectedly, issue 12 more pardons over the Christmas holidays, just as the Commission’s mandate was expiring.


9 Shortly after the vote, Nugent was the victim of an assault, which he believes was carried out by members of the security forces. Assailants fired at his car, killing three of his bodyguards in the shoot-out.


13 Ibid., pp. 10 – 11.

14 The National Council of Magistrates was investigating a judicial case involving the Central Bank and Novatec, a private company. Originally, the Supreme Court ordered the Central Bank to pay millions of dollars in reparations to Novatec. Following strong government objections to the payment, the Court then reversed its decision. One of the
members of the Supreme Court then publicly admitted that he had not read the ruling prior to signing it, resulting in the investigation.

15 Pezúa, David. WOLA Interview. 9 November 1998.

16 WOLA Interview. 27 July 1999. (Name withheld.)


18 No official statistics are publicly available on the percentage of the judicial personnel which are permanently named to their posts; however, the most reliable estimates range from 70 to 80 percent.

19 Also in June 1996, the Congress created the Judicial Coordination Council, another effort to create a “super power” over all judicial bodies. While the overall thrust of the law addressed the very real need for improved coordination among judicial bodies, its over-arching power raised serious concerns. Ultimately, it never achieved the role envisioned for it and power remains concentrated with the Executive Commission of the Judiciary.


21 Pezúa, David. WOLA Interview. 9 November 1998.

22 Dellepiane, José. WOLA Interview. 10 November 1998.

23 WOLA Interviews. November 1998. (Names withheld.)


25 WOLA Interview. 27 July 1999. (Name withheld.)


27 WOLA Interviews. November 1998. (Names withheld.)

28 Like habeas corpus, acción de amparo, which literally means “protection suit” and is often translated as “writ,” is a mechanism whereby individuals can vindicate constitutionally protected rights.

29 Human rights groups widely denounced the action taken by the government to limit to only two judges those who could hear these cases, which are often sensitive for the government.
31 Ibid.
32 Ibid.
34 Delito de prevaricato. Information provided in communication from the Asociación Pro-Derechos Humanos (APRODEH), 5 September 1997.
36 Saquicuray also earned the government’s wrath by attempting to continue the trial against the members of the security forces implicated in the Barrios Altos massacre after the 1995 amnesty law was passed.
39 Ibid.
40 Ibid., p. 148.
42 WOLA Interview. 19 November 1998 (Name withheld.)
45 Chirito, José. “Oficialismo mandó al archivo iniciativa del referendum contra la reelección.” La República. 28 August 1998.
46 “Ciccia habría reconocido que se siente presionado más que nunca.” La República. 27 August 1998.
47 These include Cecilia Valenzuela, César Hildebrandt, Fernando Rospigliosi, Angel Paez, Edmundo Cruz and many others.
On July 18, 1992, nine students and a professor were abducted from Lima’s La Cantuta University, which was under military control at the time. Eventually, journalists were led to the bodies. The widely publicized case led to convictions in a military court of members of the Grupo Colina, who were later freed through the Amnesty Law.

According to Peru’s Human Rights Ombudsman, the Congress does not have the power to delegate legislative faculties for organic laws and hence two of the most important decrees, including the one creating the crime of “aggravated terrorism” are unconstitutional. See: “Posición de la Defensoría del Pueblo.” Ideele. No. 109 (June 1998): 9.

These are described as: “combat weapons, grenades, or explosives to carry out a robbery, kidnapping, extortion or other crime…”

For example, the police can detain suspects for up to fifteen days without charge, no pre-trial release is permitted, the police report can be used as evidence (with no mechanisms for verifying how information or confessions are obtained) and police cannot be called as witnesses. Definitions of crimes are often broad or vague, sanctions are harsh and juveniles ages 12 to 18 can be tried as adults in military courts. The military courts have already received widespread international condemnation for the lack of due process guarantees and the inadequacy of military judges in terrorism cases. For more detailed analysis, see: La Legislación de “Seguridad Nacional”. Coordinadora Nacional de Derechos Humanos: Lima, Peru, July 1998.

WOLA Interview. 13 November 1998. (Name withheld.)

“Jett Opina que todo Servicio de Inteligencia Debe Contar con un Nivel de Fiscalización.” Gestión. 21 April 1999.


Comando de Instrucción y Doctrina del Ejército (COINDE) and the Comando de Logística del Ejército (COLOGE).


For a weekly report on the Peruvian tabloids see “Peru Election 2000,” a public education website run out of Queens University in Canada: http://csd.queensu.ca/peru2000/ .


“Tres canales de TV se niegan a difundir lanzamiento de candidatura de Andrade.” La República. 12 November 1999.
