
WOLA Briefing Series: Issues in International Drug Policy



Peru Under Scrutiny: Human Rights and U.S. Drug Policy

Issue Brief #5

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WOLA aims to foster thoughtful interchange about significant issues. Our briefing series on Issues in International Drug Policy includes papers from diverse perspectives. The opinions expressed in this brief by Coletta Youngers represent those of the Washington Office on Latin America. Research for this briefing paper was conducted in Lima, Peru, November 19-30, 1991.



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INTRODUCTION

Peru, which produces more than 60 percent of the world's supply of coca leaves used to make cocaine, is the linchpin in the Bush administration's international "war on drugs." As part of that war, the U.S. government plans to embark on the first significant military assistance program for Peru in years and has stepped up U.S. military training programs. But the military package has encountered serious stumbling blocks: the reluctance of the Peruvian security forces to take on antinarcotics activities and their dismal human rights record.

Although the Peruvian armed forces has officially accepted a role for itself in antinarcotics operations, its members continue to thwart those operations, and corruption in drug trafficking zones remains rampant. Frequent incidents of Peruvian soldiers shooting at antinarcotics helicopters provide a glimpse into the extensive corruption and resulting cross-purposes, which stand in stark contrast to the ostensible "coincidence of interests" depicted by administration officials. Upon return from a trip to the region last October, Representative Robert Torricelli (D-NJ) commented:

"There is a policy gridlock with regard to Peru. The administration's entire strategy of using the police and army against the traffickers is flawed because they are totally and completely corrupted."¹

This lack of commitment to antinarcotics efforts by those institutions designated as key allies in the U.S. "war on drugs" points to the larger failure of U.S. drug policy and of a supply-oriented strategy that is fundamentally unsound. This brief does not address the multiple reasons why source country eradication and interdiction can have virtually no impact on U.S. drug problems,² but is concerned with human rights violations and in particular the dismal human rights record of the would-be recipients of U.S. military aid -- Peru's security forces.

The Peruvian government fails to meet the human rights conditions in U.S. law which must be complied with to receive security assistance. On July 30, 1991, the Bush administration determined that Peru did fulfill those requirements and subsequently notified Congress of its intent to obligate the \$94.9 million package allocated for Fiscal Year (FY) 1991. In response, four key congressional committees and subcommittees moved to withhold temporarily the FY1991 security assistance package for Peru. This sparked the first major debate in the U.S. Congress on human rights in Peru. Although the committees eventually released the bulk of the aid package, \$10.05 million in counterinsurgency training, weapons and equipment proposed for the Peruvian army was canceled, and the delivery of the remaining \$24.85 million was

¹ Clifford Krauss, "U.S. Withholding Drug Aid to Peru," The New York Times, 10 November 1991.

² U.S. law governing the provision of U.S. security assistance to the Andes requires respect for human rights and civilian control by recipient governments over their security forces. However, as this brief analyzes in the case of Peru, these goals are in practice subordinated to pursuit of an ill-conceived U.S. anti-drug strategy focused on source country interdiction and eradication. For analysis and documentation of the reasons why this policy has not worked, see past issues of this briefing series, Clear and Present Dangers: The U.S. Military and the War on Drugs in the Andes (WOLA, October 1991), Andreas et al., "Dead-End Drug Wars," Foreign Policy, #85, Winter 1991-1992, and Lane et al., "The Newest War," Newsweek, 6 January 1992.

conditioned on compliance with further human rights requirements. The eleventh-hour compromise between Congress and the administration has not laid the matter to rest. Congressional committee leaders can be expected to retain a skeptical stance, with the disturbing parallels of potential U.S. involvement in Peru to previous protracted U.S. military engagements readily apparent. As correctly noted in a recent Newsweek overview: "Pending marked improvement in that [human rights] record, and clearer answers from the administration about the scope of U.S. involvement in Peru's internal war, Congress does not want to bankroll another Vietnam or El Salvador."³

Even as U.S. attention to human rights in Peru has intensified, political violence by both sides -- rebels and state agents -- has increased. The Shining Path (Sendero Luminoso) guerrillas continue to wage war against the government, peasants and popular leaders throughout the country. Human rights activists, Catholic church workers and foreign development workers emerged as key targets of Sendero attacks last year. For the last several years, Sendero has borne responsibility for half of the political killings reported annually -- 1991 was no exception.

In response to the congressional action last August, the Peruvian government announced a series of measures designed to improve the country's human rights situation. However, more recently the political context within which human rights violations by state agents are occurring in Peru has deteriorated, calling into question the government's political will to implement meaningful human rights reforms. President Fujimori regularly denounces human rights groups and has attempted to dramatically expand the authority of the Peruvian military at the expense of basic civil rights. His government has presided over a period of growing death squad activity and has failed to investigate and sanction those responsible. Given the ongoing levels of human rights violations in Peru and these disturbing trends, the prospects of Peru meeting the human rights conditions in U.S. law in the near future are quite dim.

HUMAN RIGHTS UNDER THE FUJIMORI GOVERNMENT

Upon taking office in July 1990, President Alberto Fujimori inherited a country ravaged by economic crisis and civil strife. Peru had one of the worst human rights records in the hemisphere. On one side, assassination campaigns by the Sendero Luminoso and Túpac Amaru Revolutionary Movement (MRTA) guerrillas had left thousands of government officials, soldiers, police officers, engineers and others dead. On the other, members of the Peruvian armed forces and police were involved in systematic human rights violations including "disappearance," torture, extrajudicial executions, massacres of civilian populations and arbitrary detentions.

In most respects this dynamic has worsened since Fujimori took office. Over the course of his first year as president, there were 2,259 political killings (including deaths in combat), according to the Peru's National Human Rights Coordinating Committee. Sendero Luminoso bore responsibility for 622 of the 983 extrajudicial executions documented during that period. Sendero stepped up military operations throughout the country, a trend which intensified

³ Charles Lane et al., "The Newest War," Newsweek, 6 January 1992.

throughout 1991. Between January and October of 1991, the Coordinating Committee documented over 2,500 political killings.

Unfortunately, President Fujimori has turned to the military -- rather than to those who elected him -- to confront guerrilla violence. He has depended heavily on the use of presidential decrees and further militarization, rather than constructing a political strategy around the country's civilian, democratic institutions. However attenuated those institutions may be, Peruvians across the political spectrum believe that they offer the best chance of confronting the very complex problem of political violence. There is an emerging consensus in Peru that the lesson of more than a decade of failed counterinsurgency actions is that the threat represented by Sendero Luminoso can ultimately only be met successfully through democratic means and with respect for civil liberties and basic human rights. President Fujimori does not appear to accept that consensus, and his apparent decision to reinforce a failing military strategy threatens to deepen Peru's crisis still further.

a. The Peruvian government's human rights initiatives

In campaign speeches prior to his election, Fujimori promised to combat the guerrillas primarily through political and economic -- not military -- means and with respect for basic human rights. In his inauguration speech he reiterated the need to promote respect for human rights. Shortly thereafter he advocated sweeping prison reforms. However, for over a year no concrete policies or programs were put into place to improve respect for basic human rights by government forces.

Then, immediately after the decision by the U.S. Congress to withhold U.S. security assistance in August 1991, the Fujimori government announced a series of measures designed to improve the human rights situation. Despite many misgivings, Peruvian human rights groups felt that the measures could lead to improvements in the human rights situation -- if implemented within a climate of government support and an end to the impunity which has perpetuated abuses.

The most significant of the Peruvian government's human rights initiatives include:

- **The creation of human rights offices in local prefectures, sub-prefectures and regional government headquarters to receive complaints about human rights violations and to monitor police detention of detainees.**
- **The enactment of presidential decree #665, which guarantees public prosecutors access to police and military installations.⁴ Related presidential decree #685 provides further guarantees to public prosecutors, empowering them to verify the situation of detainees and to investigate reports of disappearances. It also requires them to provide a monthly report on the local human rights situation and requires the Public Ministry to compile the individual reports into an annual publication.**

⁴ Although the Peruvian constitution already provides such guarantees, in the emergency zones military detention centers and often those of the police have usually been off-limits to both prosecutors and human rights groups.

- **The provision of access to the International Committee of the Red Cross (ICRC) to all military and police installations for a six-month period, as of September 1991.**
- **The creation of a central registry of detained; this is presently operational only in the Ministry of Defense.**

Just prior to President Fujimori's visit to Washington last September, the head of the Peruvian cabinet released a detailed document outlining the government's human rights proposals. The document is significant in that it was the first policy proposal by any Peruvian government addressing the human rights question. Its positive impact was undermined, however, by the elimination of elements present in preliminary drafts of the document -- including long-standing suggested reforms by the national and international human rights community. Moreover, the final document was signed by the head of the cabinet rather than President Fujimori, who never officially endorsed the document.

b. Violations by state agents

In just four months it is impossible to evaluate definitively the implementation and impact of these initiatives. It often takes several months or even longer to accurately document human rights violations in remote areas of the country and therefore short-term statistics can be misleading. Nonetheless, it is important to look at emerging trends evident in statistics on political violence since August of this year -- and to put those statistics in the context of the overall human rights situation in Peru since President Fujimori took office. **Sadly, both short-term and longer-term indicators point to a steady deterioration in the respect for human rights in Peru.**

Since Fujimori took office in July 1990, state security forces have continued to systematically violate basic human rights. On July 31, 1991 Pilar Coll, Director of Peru's National Human Rights Coordinating Committee -- a coalition of over 30 human rights groups - - stated, "The Peruvian security forces systematically violate the most fundamental human rights . . . the situation has gotten no better over the past year." The Lima-based Pro-Human Rights Association (APRODEH) reported 244 unresolved cases of disappearance following detention by members of the Peruvian security forces over the course of Fujimori's first year in office. For the fourth year in a row, the Commission on Human Rights of the United Nations received more reports of disappearance from Peru than from any other country in the world in 1990. Mass graves attributed to massacres by the security forces were reported in the villages of Iquicha, Chillcahuaycco, and Challwapampa among others.⁵

These atrocities continue to be committed with impunity. In June, 1991 the Peruvian government claimed that over 50 members of the security forces had been sanctioned for human rights-related crimes; however, no information has ever been provided on those cases by Peruvian officials. To the knowledge of Peruvian and international human rights groups, there has yet to

⁵ For more detailed information on cases of human rights violations see Into the Quagmire: Human Rights and U.S. Policy in Peru (Americas Watch, September 1991) and Peru: Human Rights in a Climate of Terror (Amnesty International, November 1991).

be a member of the Peruvian armed forces sentenced and punished for committing a human rights violation. Such prosecutions have only gone forward in a handful of cases involving the Peruvian police. Investigations are routinely thwarted by military and police officials.

Since last August, human rights trends in Peru have exhibited both positive and negative characteristics. **The most positive development has been a marked decline in disappearances since the temporary suspension of U.S. assistance to Peru last August.** The National Human Rights Coordinating Committee has on record 18 unresolved cases of disappearance following detention by members of the security forces -- military and police -- between August and October (not including cases where the victims have reappeared), a notable reduction for a country where reported disappearances can reach as high as 30 a month. It has, however, documented 206 unresolved cases of disappearance following detention between January and October of this year. Thus, it is likely that for the fifth year in a row, the Human Rights Commission of the United Nations will compile more reports of disappearance from Peru than from any other country in the world in 1991.

On the other hand, the number of extrajudicial executions attributed to the security forces since last August has increased.⁶ According to the Peruvian human rights organization CEAPAZ (Center of Study and Action for Peace), of a total of 88 cases of extrajudicial execution by Peruvian security forces documented between January and October of this year, 45 took place between August and October. Death squad activity appears to be on the rise as well.

The greatest number of on-going human rights violations are being reported in the departments (or states) of Junín, Huánuco and San Martín, which encompass the Upper Huallaga Valley (UHV) and other drug trafficking regions. According to the National Human Rights Coordinating Committee, nearly half of all recorded political killings (including deaths in combat) in the country are occurring in the jungle region of these departments, and the Peruvian armed forces are responsible for approximately 70 percent of those killings. Through October of this year, the committee documented 94 cases of disappearance following detention by security forces and 56 extrajudicial executions in this region. Reports of disappearance from the towns of Tocache and Aucayacu, both in the UHV, are frequent.

It may be that a new pattern is emerging in Peru, whereby the security forces are resorting less to the tactic of disappearance and more to that of execution and death squad activity. Despite the decline in the number of reported disappearances between August and October 1991, there is no indication that the overall level of human rights violations by state agents has decreased; indeed, there are signs that it has increased.

⁶ Extrajudicial executions by state agents are extremely hard to document in Peru. Corpses are often hidden, buried and sometimes thrown from helicopters into remote, inaccessible areas. Often when a body is found it is difficult to assign responsibility for the killing. Finally, evidence of the circumstances of many deaths reported by the Peruvian armed forces as "combat" fatalities suggest (although do not prove conclusively) that in fact extrajudicial executions occurred. As is the case with disappearances, the actual figure for extrajudicial executions is thought to be much higher than the number of documented cases.

c. Increased death squad activity

In justifying its human rights determination for Peru issued last July, the Bush administration claimed that the Fujimori government had "virtually eliminated paramilitary activity by the security forces." Through its reorganization of the Peruvian Ministry of the Interior, the Fujimori government did significantly reduce activity by the Rodrigo Franco Command, the main paramilitary organization operating in the country under the previous government. However, according to Lima-based Commission on Human Rights (COMISEDH), **"Paramilitary groups reinitiated their operations in October of 1990, primarily in areas of the country under a state of emergency."**⁷

The "Antiterrorist Liberation Command" bears responsibility for a series of assassinations in Ayacucho. For example, Peruvian journalist **Luis Morales** was killed on July 13, 1991 in circumstances suggesting that this group was responsible. Six days later the family of university professor **Francisco Solier** was massacred by unidentified gunmen. Solier's wife was the sole witness to Morales' murder. **Peruvian human rights groups believe that the "Antiterrorist Liberation Command" acts with the direct support -- or at least enjoys the acquiescence - - of the armed forces.**⁸ Death squad activity has also been prominent in the departments of San Martín and Junín.

A death squad attack of unprecedented scale on November 3, 1991 shocked the nation's capital and may portend a surge in paramilitary activity in Peru. Masked gunmen burst into a "pollada" -- a Sunday afternoon fund-raising party -- in the Barrios Altos neighborhood of Lima and opened fire. **A total of 18 people died as a result of the "Barrios Altos massacre," including an 8-year old boy.** The Peruvian government initially reported that the act was carried out by Sendero Luminoso. That theory was quickly rejected by the Peruvian Congress, which initiated its own investigation. The bulk of the evidence gathered to date by the press and members of the Peruvian Congress indicates that the army intelligence service, which had suspected the locale of being a gathering point for Sendero Luminoso, may have been behind the attack. There are some indications that the Peruvian Security Police may have supported or been responsible for the attack.

The Fujimori government has not initiated a special investigation into the massacre, despite evidence of state involvement. **The government's inaction on this act of paramilitary violence is one of the most disturbing elements in the human rights debate of recent months. Its failure to investigate and sanction those responsible can be interpreted as tacit approval of such tactics and lends support to strong suspicions that members of the Peruvian security forces were directly involved.**

Since the November 3 massacre, a number of killings have taken place in Lima in circumstances indicating that they may have been carried out by death squads. In addition, in recent months three letter bombs have exploded in Lima, leaving two dead. **Human rights**

⁷ "Muertes Por Violencia Política: Primer Año de Gobierno del Presidente Fujimori," COMISEDH, 1991.

⁸ Amnesty International Urgent Action, 19 July 1991.

groups fear that death squad activity may be a new modus operandi of counterinsurgency efforts -- perhaps replacing that of enforced disappearance -- in Lima and in other parts of the country. Such activity continues to be reported in rural areas. On December 9, 1991 Amnesty International reported on a death squad-style massacre in which a family of five and three others were executed in a house located in the Villa de Santa Rosa neighborhood in the city of Ayacucho.

d. Government hostility toward human rights groups

President Fujimori has frequently proclaimed his commitment to protecting human rights, and his government has taken some concrete steps which could improve the country's situation in this regard. However, he has also repeatedly expressed hostility to the efforts of national and international nongovernmental organizations actually investigating and documenting human rights violations in Peru. These contradictions suggest at best a deeply flawed understanding of the purposes of the nongovernmental human rights organizations; at worst, they suggest a lack of fundamental commitment and will on the part of his government to improve the grievous state of human rights in Peru.

"President Fujimori has one human rights discourse for external consumption, and another one for internal consumption," is an oft-repeated phrase amongst political analysts in Peru. Just days after returning from his trip to Washington last September -- where he tried to assure members of the U.S. Congress of his intentions to promote respect for human rights -- President Fujimori referred to human rights groups as the "useful dupes of subversion" and stated that:

"These cover organizations, these so-called professional organizations, are not consistent in their defense of life and liberty and do not denounce the atrocities committed by the Shining Path."⁹

Since that speech before the leadership of the armed forces, Fujimori has frequently made the same accusations. In a letter to the Inter-American Human Rights Commission of the Organization of American States, Fujimori stated that "some human rights commissions do not condemn the Sendero Luminoso's and MRTA's frequent and atrocious crimes and instead such commissions remain unjustifiably silent, in an attitude that verges on complicity."¹⁰ By the end of November 1991, President Fujimori was repeating these accusations against human rights groups on a daily basis -- often citing Amnesty International and Americas Watch by name.

Such allegations by government officials are not new. In a November 26, 1990 statement, Peru's then-Minister of Justice, Augusto Antonoli, asserted the need to "avoid the obstruction of police and military actions by human rights organizations in zones affected by subversion." In an October 1990 meeting with then-Defense Minister, General Jorge Torres Aciego, and his

⁹ Speech by President Fujimori on September 24, 1991 on Armed Forces Day in Peru at Las Palmas Air Force Base in Chorrillos, Lima.

¹⁰ Reported in FBIS, "Fujimori Criticizes Human Rights Groups' Silence," 8 November 1991.

right-hand man, General Alberto Arciniega Hubi, a high-level human rights delegation sponsored by the World Council of Churches was accused of acting as "international missiles of Sendero Luminoso."¹¹

Such denunciations appear to be oriented toward delegitimizing concern within Peru for human rights violations by state agents and casting the blame for such atrocities solely on the guerrillas. In the case of Peru, local and international human rights groups have been careful to document abuses by both sides. In fact, the bimonthly publication of Peru's National Human Rights Coordinating Committee provides detailed information on three specific cases: one attributed to the military or police forces, one to the rebels, and one to paramilitary groups.

President Fujimori's accusations are particularly dangerous in the context of Peru, where human rights activists have been the victim of disappearance and human rights offices have suffered grenade attacks. Last March a widely-respected human rights lawyer, Augusto Zúñiga, lost his left forearm as a result of a letter-bomb. Although a government investigation was never concluded, there is significant evidence pointing to a high-level Peruvian police official as responsible for the attack. Peruvian human rights groups are particularly concerned that the president's verbal attacks against them are intensifying at the same time that death squad activity in Lima appears to be on the rise. In response, Peru's National Human Rights Coordinating Committee has presented a complaint before the Inter-American Commission of Human Rights, asking for adequate protection and pointing out that President Fujimori's denunciations put them at great risk.

e. Expansion of military authority

After Fujimori's first speech denouncing human rights groups, Peruvian analysts speculated that he was attempting to placate the armed forces' discontent with the unprecedented levels of criticism of its human rights performance. President Fujimori himself states that he has a closer relationship with the military than any other Peruvian president since the return to civilian rule in 1980. An alliance of sorts appears to be operating between the presidential palace and army headquarters. **The Peruvian army has thrown its support behind the president and he, in turn, has pushed for a series of measures designed to both expand the official powers granted to the military -- at the expense of civilian institutions -- and assure immunity from civilian scrutiny.**

In December 1990, President Fujimori issued a presidential decree that military and police forces operating in emergency zones were to be considered on duty 24 hours a day. This had the effect of making all their acts automatically in the line of duty and hence subject to military rather than civilian courts. Fujimori essentially granted the military the authority to judge themselves for any human rights violations committed, guaranteeing impunity and eliminating any possibility of public accountability. In a rare move, in February 1991 the Peruvian Congress overturned the presidential decree.

¹¹ "The Killing Fields of Peru," Latin America Update, Washington Office on Latin America, November-December 1990.

Over the course of his first year in office, President Fujimori steadily extended the areas of the country under a state of emergency, and hence under military authority. It is in the country's emergency zones, where basic civil rights are suspended, that the bulk of human rights violations by state agents occur. In a report issued in June 1991, CEAPAZ stated that 56.1 percent of the population and 42.33 percent of the national territory were under a state of emergency. **Thus, at the one-year mark of the Fujimori government, over half of the Peruvian population was living in areas under military authority.**

In Fujimori's second year in office, however, he expanded military authority still further. In mid-November, 1991 a package of 126 presidential decrees was issued. Of those approximately 30 are related to the government's counterinsurgency strategy and the role of the military.

Many of the decrees are worded vaguely, and it is far from clear how or when the government would actually implement them. A detailed analysis of the entire package is beyond the scope of this brief. **It is important to note that some of the decrees enhance the power of the president over the armed forces, and there are a number of others which contain positive aspects. However, on balance the presidential decrees dramatically expand the official powers granted to the military, restricting civilian institutions and democratic controls.** Appendix A provides a summary and brief analysis of the decrees which could be most detrimental to respect for basic human rights. Of particular concern to the human rights community, the decrees:

- **Widen the authority of the political-military commands (the military generals in charge) in existing emergency zones, bringing all of the state's economic resources -- including the education system -- under its control. Elected regional and local governments are further marginalized.**
- **Extend the military's authority to act without civilian authorization from the existing emergency zones to the entire country. The basic civil rights suspended in emergency zones are in effect suspended throughout the country. The military can enter universities, hospitals and prisons without the permission of civilian authorities.**
- **Authorize the military to confiscate any private property in the name of national defense and to draft any citizen to participate in civil defense patrols anywhere in the country.**
- **Greatly enhance the power of the army's intelligence service. Members of the intelligence service are authorized to enter any home or office without a warrant and seize any information or documents on any subject.**
- **Bring police forces under military control throughout the country.**
- **Subordinate the action of all civil defense patrols to the military.**

- **Limit freedom of the press and potentially of human rights work. Anyone who releases information deemed to be "reserved by the national defense system" can be prosecuted and imprisoned.**

In addition, the package includes two "secret" counterinsurgency-related decrees, despite the fact that Peru's constitution does not allow secret decrees. It is widely believed in Peru that the counterinsurgency decrees were drafted by hard-line sectors of the Peruvian military, with little or no input from civilian sectors of society.

Potential restrictions on freedom of the press provoked an immediate outcry. On November 27, the Committee to Protect Journalists sent a letter to President Fujimori expressing concern about decree #762, stating:

"The Committee is deeply disturbed by the content of the decree, which inserts into the penal code Article 331, a provision which establishes prison sentences of between five and ten years for anyone who, ' . . . by any medium reveals, reproduces, shows, disseminates or makes accessible . . . information and/or secret activities of the National Defense System' . . . Since no guidelines are established for what is 'secret,' the decree could easily be used to harass, jail and silence journalists reporting on a wide range of issues."

Human rights groups fear that their work could subject them to persecution as well.

Virtually all of the decrees related to the counterinsurgency strategy have been met with firm opposition. Reflecting the concerns of many Peruvians, The Institute of Socialism and Democracy, headed by former Peruvian Senator Rolando Ames, characterized those decrees as follows:

"In effect, it is not an exaggeration to state that if these decrees are put into practice as they have been conceived, Peru would be transformed from a representative democracy to an authoritarian regime, sustained by a military apparatus with very ample political prerogatives.

In reality, the application of these decrees would convert a political alliance cultivated by President Fujimori over all of the last year with the armed forces into a formal pact of co-government, to the detriment of the instruments of civilian government."¹²

Fifteen parties and movements from across the political spectrum, representing virtually all of the non-violent political opposition in Peru, signed a letter (see Appendix B) opposing the decrees and calling for the counterinsurgency strategy to be carried out within the context of respect for democratic norms and principles. Despite both popular and congressional opposition, President Fujimori has continued to insist that the decrees be implemented without modification.

¹² "Carta del Instituto de Democracia y Socialismo a los Miembros del Parlamento Nacional en Torno a los Decretos Legislativos Expedidos por el Ejecutivo en Materia de Paz, Defensa y Movilización," December 1991.

The Peruvian Congress had granted the president the power to rule by decree, as is common at the beginning of a presidential term. The decrees went into effect in mid-December 1991, thirty days after their publication in the official gazette El Peruano. Although the decrees became law without explicit congressional approval, Congress can still overturn or amend them if both houses act together. At this writing, the Peruvian Senate and Chamber of Deputies are going to begin an extraordinary session to respond to the decrees. Once congressional amendments to the decrees are announced, the executive branch has 15 days to decide if it will accept the revisions and/or repeals. If the congressional response is not approved by the executive, Congress needs at least a two-thirds majority in each chamber for the repeals to go into effect.

The widespread opposition in Peru to these decrees and the efforts by the Peruvian Congress to overturn them are encouraging. The logic behind the Fujimori government's counterinsurgency strategy -- evident in the decrees -- is not. The decrees politicize the Peruvian armed forces and represent a purely military response to the threat of the insurgency. The authority of the military to act without respect for basic civil liberties is expanded and the military is formally granted authority over all civilian elected officials and state resources. These decrees are the most visible manifestation of the deterioration in the political climate in which human rights violations are taking place in Peru.

HUMAN RIGHTS ATROCITIES COMMITTED BY REBEL FORCES

The government of Peru today is fighting a vicious guerrilla insurgency which is directed against both state agents (military, police, elected and appointed officials) and against the country's civilian population. The Fujimori government has both a legitimate right of self-defense of the state and a legitimate concern for guerrilla violence against civilians, whose human rights it bears a responsibility to protect under national and international law. It is this latter responsibility that is recognized by U.S. law governing assistance to the Peruvian government.

Although the Fujimori government has repeatedly accused human rights organizations of ignoring atrocities committed by the guerrillas, this is not true. What WOLA and other human rights organizations are not willing to do, in the face of guerrilla atrocities, is ignore the massive abuses committed by Peruvian state agents. WOLA and other human rights organizations strongly condemn human rights abuses committed by both of Peru's main rebel forces -- Sendero Luminoso and the Túpac Amaru Revolutionary Movement (MRTA). **Sendero Luminoso in particular is responsible for systematic, widespread human rights atrocities. Moreover, its terrorist tactics are often oriented toward provoking repressive actions on the part of the Peruvian armed forces and police.**

a. Political killings by Sendero Luminoso

The statistics on assassination-style killings by Sendero Luminoso are staggering. Of 916 political killings (not including deaths in combat) documented by CEAPAZ between

January and October of 1991, Sendero is responsible for 619.¹³ While over 80 percent of Sendero's victims are poor peasants or urban dwellers, Sendero receives more publicity for assassinations of public figures. A few recent examples include:

- On October 26 Peruvian **journalist Cirilo Oré Enríquez** was shot and stabbed to death in Ayacucho. Enríquez worked for a Lima daily newspaper, Expreso. Sendero claimed responsibility for the killing in a flyer distributed in the city of Ayacucho in November.
- The Peruvian press reported Sendero killings of **navy Admiral Jorge Novoa Altamirano** on September 1; **army Commander Artemio Collado Gómez** on October 4; **General Julio Nino Ríos** of the Security Police on October 17.; and **Major Carlos Landauro Suárez** of the National Police on November 14.
- According to press reports, on November 17 Sendero Luminoso killed two mayors in the presence of their families -- **Gregorio Julián Sinchi**, a district mayor in Huancayo, and **Erminio Artales Vivanco**, a district mayor in Jauja. Both cities are in the Junín department.

Many of those killed by Sendero are brutally tortured beforehand -- a clear attempt to evoke terror in the local population.

In recent months, Sendero's presence in Lima has intensified. Sendero is openly organizing in some neighborhoods on the outskirts of Lima and has threatened local community leaders, church workers, and others working for peaceful change. In September, Sendero assassinated **Juana López**, organizer of a "Glass of Milk" program in Callao, who was accused of being an "informer." Two other community organizers in Lima, **Fortunato Collazos and Alfredo Aguirre**, were killed under similar circumstances, and a local food warehouse for community-run feeding centers was blown up in the Villa El Salvador district of Lima. Many community leaders in Lima have received death threats from Sendero, and some have gone into hiding. The city was scandalized last October when a 9-year old boy was blown up after being paid by a suspected Sendero member to place a package in a mined field around a high tension tower.

Most recently, an attack on **Emma Hilario** and two family members on December 21, 1991 was attributed to Sendero Luminoso. Hilario, a community leader from the Pamplona Alta district of Lima, was head of the national organization of community feeding centers. Reportedly, she had resigned one week earlier because of death threats from Sendero. All three were injured in the attack but miraculously survived.

In addition to the community leaders noted above, in recent months a number of foreign religious workers have been killed by Sendero, including: **Sister Irene McCormack**, an Australian nun working in Huasi-huasi in the department of Junín; two Polish priests, the **Rev. Zbigniew Strazkowski** and the **Rev. Micael Tomaszek**, working in the Chimbote diocese; and

¹³ It is important to note that it is easier to document such killings by Sendero than by members of the security forces because Sendero usually claims responsibility for its actions, whereas those of the armed forces are often obfuscated as explained in footnote #6.

Father Alessandro Dordi Negroni, an Italian priest also working in the Chimbote diocese. A Spanish priest from the same diocese survived a Sendero attack. Many other foreign religious have received death threats.

b. Massacres in rural communities

In rural areas, Sendero is increasingly targeting peasants organized into civil defense patrols. Over the last year there has been a dramatic increase in the number of civil defense patrols, partly as a result of the government's policy to enhance the role of the patrols in combatting the guerrillas. The Peruvian army claims that there are over 600 civil defense patrols in the Ayacucho department alone. In some areas, these patrols are organized, armed and controlled by the army; in others, they are organized at the initiative of the community for protection against the rebels and operate autonomously. Both forms of organization have come under attack by Sendero, leading to an increase in Sendero massacres of rural communities.

On November 2, 1991 Sendero entered the town of **Santo Tomás de Pata** in the Huancavelica department. A festival was underway, as the community was celebrating All Souls' Day. The town had suffered a Sendero attack the previous February in retaliation for the organization of civil defense patrols in which two peasants were killed and 25 homes were burned. This time, the community was even less fortunate: 37 peasants were killed and 4 were wounded. The homes of the victims were destroyed, as was the town chapel.¹⁴ Subsequently, Sendero claimed responsibility for the attack. This is just one of many examples in recent months.

According to press reports, on August 11, 1991 members of Sendero Luminoso massacred 50 miners and their families in the Huachocolpa mine in the department of Huancavelica. **Miners are yet another sector of society under constant Sendero attack.**

c. Intimidation of human rights groups and journalists

In August, the Sendero newspaper, El Diario, ran an editorial attacking human rights work. It said:

"Human rights is based on a bourgeois concept of the world, that focuses on the individual and conceives of humanity as a family, negating the class struggle . . . those who fill their mouths with human rights seek to undermine the revolution and create an escape valve."¹⁵

Some human rights groups have received direct threats from Sendero, which are lent weight by the fact that some such threats have been carried out in the past. Last May Sendero Luminoso murdered **Porfirio Suni Quispe**, a peasant leader, delegate to the regional government of Puno, and head of the regional government's Commission on Human Rights. The work of human

¹⁴ "Senderistas asesinan a 37 campesinos," Signos, 15 November 1991, p. 2.

¹⁵ "El Siniestro Plan de Hambre y Genocidio," El Diario, August 1991.

rights groups in rural areas has been particularly affected by threats and intimidation from both sides.

Peruvian journalists are also caught in the crossfire of political violence. In addition to the killing of Cirilo Oré described above, at least five other journalists in Ayacucho have received death threats, presumably from Sendero Luminoso, including:

Hugo Ned Alarcón, El Comercio

Abilio Arroyo, Caretas

Alberto López, El Nacional

Ramiro Rivas, Radio "Cora"

Odilón Farfán, Radio "La Voz"

Well-known television correspondent **Mónica Chang** was forced to flee the country following death threats by Sendero, which accused her of responsibility for the death of one of its members.¹⁶

d. Forced recruitment

Although this phenomenon has been extremely hard to document, personal testimonies reveal that Sendero Luminoso frequently forces peasants in rural communities to join its ranks or to serve as guides, leading guerrilla columns through territories unknown to the rebels. Youth are forced to participate in training exercises in remote guerrilla camps, where they receive heavy "indoctrination" in Sendero theory. Sometimes these forced recruits escape. Relief workers in Peru report that recently they have received many requests from those who have escaped and, fearing for their lives, want to leave the country.

The Peruvian military's frequent claim is that cases of disappearance reported by human rights groups are in fact the result of forced recruitment by Sendero. This claim is simply false. The statistics on the disappeared are based on those reported cases in which Peruvian human rights groups have enough evidence to conclude that the disappearance occurred following detention by members of the Peruvian armed forces or police. No statistics are available on forced recruitment.

e. The Túpac Amaru Revolutionary Movement (MRTA)

The MRTA continues to be active throughout the country, but its violent actions pale beside those of Sendero. Unlike Sendero, the MRTA does not target popular leaders, although it has been responsible for assassinations of high-level armed forces personnel and other public figures. The MRTA is strongest in Peru's jungle region, particularly in the department of San Martín. Last April, the MRTA attacked Petro-Peru's oil operations in the UHV. On May 10, the MRTA carried out simultaneous military actions in the cities of Rioja, Moyobamba, Tarapoto and Saposoa, provincial capitals in San Martín. In an action which received a great deal of publicity,

¹⁶ "El terror amenaza a la prensa," Ideéle, Instituto de Defensa Legal, December 1991.

a group of policemen were taken hostage and eventually released. In various areas of the country Sendero and the MRTA engage in armed confrontations. Over the last two months, such conflict has been very prevalent in northern San Martín. Local residents report seeing mutilated bodies - - presumed dead from clashes between the two rebel forces -- coming down the river on a daily basis.

The MRTA celebrated Christmas 1991 with a military offensive in Lima and the department of San Martín. According to press reports, on December 20 bombs went off at the embassies of Spain and France in Lima, causing minimal material damage, and at a number of private and public offices, including several banks. On December 24, the MRTA looted businesses in downtown Lima and its suburbs; one merchant was killed. In San Martín, the rebels took over the town of Juanjui, killing five policemen and five civilians, on the night of December 23, 1991. Several public and private offices were destroyed by the rebels.¹⁷

COMPLIANCE WITH CONGRESSIONAL HUMAN RIGHTS REQUIREMENTS

Political violence by both sides in Peru has not gone unnoticed in Washington. Although human rights problems exist in other Andean countries -- notably Colombia -- Peru is the only country which has come under close congressional scrutiny to date. Moreover, it is the only country which has had antinarcotics-related security assistance withheld for lack of compliance with legislative human rights requirements.

a. Conditions in U.S. law¹⁸

The International Narcotics Control Act of 1990 (INCA) places human rights conditions on the provision of FY1991 antinarcotics-related security assistance to any of the Andean countries, requiring the President to issue a determination¹⁹ for each country that:

"the armed forces and law enforcement agencies of that country are not engaged in a persistent pattern of gross violations of internationally recognized human rights, and the government of that country has made significant progress in protecting internationally recognized human rights, particularly in --

• ensuring that torture, cruel, inhuman, or degrading treatment or punishment, incommunicado detention or detention without charges and trial, disappearances, and other flagrant denials of the right to life, liberty or security of the person are not practiced;

¹⁷ Reported in FBIS, 26 December 1991, from AFP wire story of December 25, 1991.

¹⁸ The information provided in sections "a" and "b" draw heavily from the Andean Initiative Legislative Update of October 1991, prepared by John Walsh, Special Assistant for U.S. International Drug Policy at the Washington Office on Latin America.

¹⁹ President Bush delegated authority to issue these determinations to Secretary of State James Baker, who signed the justifications for the determinations for Colombia, Bolivia and Ecuador in February 1991. Assistant Secretary of State Lawrence Eagleburger signed the justification for the determination for Peru issued in July 1991.

- **permitting an unimpeded investigation of alleged violations of internationally recognized human rights, including providing access to places of detention, by appropriate international organizations (including nongovernmental organizations such as the International Committee of the Red Cross) or groups acting under the authority of the United Nations and the Organization of American States."**

The INCA also requires that each Andean government "**has effective control over police and military operations related to counterinsurgency and counternarcotics activities**" and that it is implementing programs to reduce cocaine trafficking to the United States. Although the INCA only pertains to FY1991 assistance, it is highly likely that these conditions will be extended to cover security assistance allocated for FY1992 and 1993.

Section 502B of the Foreign Assistance Act of 1961 as amended prohibits the provision of U.S. security assistance "to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." Those rights are defined in detail in Section 502B. The conditions laid out in the INCA and in 502B can be waived by the president for "national security" reasons.

b. The administration's determination and the congressional response

Although the administration's determinations for the other Andean countries went relatively unnoticed, **the determination for Peru sparked the most intense conflict yet between the administration and Congress over U.S. antinarcotics policy in the Andes.** On July 30, 1991 the Bush administration released the determination for Peru and the next day notified Congress that it would obligate the security assistance allocated for Peru in the FY1991 budget, including:

\$34 million in Foreign Military Financing
\$0.9 million in International Military Education and Training
\$60 million in Economic Support Funds

The administration's notification came just three days before the congressional recess. Under notification procedures, Congress must move to withhold aid within fifteen days of the notification. Hence, the administration's timing forced the Congress to respond quickly or not at all.²⁰

The administration's written justification for the determination maintains that Peru meets the conditions laid out above, stating:

"Neither we [the Bush administration] nor major human rights groups in Peru believe that the democratically elected government of Peru is engaged in a consistent pattern of gross violations of internationally respected human rights. While there are clearly serious abuses, the situation does not rise to the level of a consistent pattern."

²⁰ For detailed explanation of process, see Washington Office on Latin America, "Andean Initiative Legislative Update," October 1991.

Primary responsibility for human rights violations is attributed to the Sendero Luminoso guerrillas.

According to the justification, some excesses by state agents do occur in the military-controlled emergency zones, but these abuses are not condoned by President Fujimori. At the same time, the administration asserts that the Peruvian president "**has effective control over police and military operations related to counter-narcotics and counter-insurgency.**" These contradictory statements were never clarified by the administration and further reduced the credibility of the determination.

The most hotly contested assertion, however, was that regarding the opinion of the Peruvian human rights groups. **In fact, national and international human rights groups widely agree that human rights violations in Peru form a systematic pattern and that the government is responsible for abuses committed by state agents.** Pilar Coll, director of Peru's National Human Rights Coordinating Committee, called the administration's contention an "outrageous lie"²¹ (see Appendix C for letter by Peru's National Human Rights Coordinating Committee to the U.S. Ambassador to Peru on the determination). In testimony before Congress on September 12, 1991 Richard Shifter, Assistant Secretary of State for Human Rights and Humanitarian Affairs, defended the determination, but admitted that the reference to Peruvian human rights groups is inaccurate.

Members of Congress responded to both the timing and content of the administration's determination and moved immediately to withhold temporarily security assistance to Peru.²² The timing of the determination was interpreted by many members of Congress as indicative of bad faith on the part of the administration. Its content was widely discredited in Congress, with bipartisan criticism ranging from arch-conservative Senator Jesse Helms (R-NC) to liberal Rep. Ted Weiss (D-NY). Members of Congress pointed out that the determination contradicts the State Department's own 1990 human rights report on Peru and strongly objected to the clumsy attempt to justify its position by claiming the support of Peruvian human rights groups and in the process, misrepresenting the views of those organizations.

In an August 13, 1991 letter to Secretary of State Baker, nine senators on the Foreign Relations Committee stated that they "**did not believe that the Government of Peru can currently meet the eligibility standards set forth in the INCA, in the area of protection of the internationally recognized human rights of its people. This view is supported by every human rights organization that monitors such matters in Peru, as well as by officials in your Department who recently described the human rights situation in that country as the 'worst in the hemisphere' during a briefing of Congressional staff.**" Senator Alan Cranston (D-CA), a signatory of the letter, also wrote Secretary Baker independently to express his "**strongly held view that the current U.S. policy toward Peru is seriously in error. I do not**

²¹ Sam Dillon, "Rights advocates in Peru criticize report from U.S.," The Miami Herald, 22 August 1991.

²² All four congressional committees with the authority to withhold aid under notification procedures acted. The four are: the House Foreign Affairs Committee and Foreign Operations Subcommittee and the Senate Foreign Relations Committee and Foreign Operations Subcommittee.

believe that a policy which ignores the serious and persistent human rights violations of the Peruvian military and security forces, and proposes to provide military assistance to such forces in order to 'encourage' their participation in a United States-imposed Andean anti-narcotics strategy has any chance of being successful."

Congressional opposition was focused on the military component of the antinarcotics package, and those involved made clear from the beginning that the balance of payments support (ESF) for Peru would be released by Congress.²³ The administration, however, made equally clear that it would not go through with any aid at all if the military aid were not included. The administration's position put in jeopardy the negotiations that were taking place precisely at the same time to finalize Peru's "reinsertion" into the international financial community. Peru desperately needed the balance of payment funds to meet its international financial obligations, and U.S. support was crucial in keeping other countries -- particularly Japan -- on board. **The extent to which U.S. drug policy had become inextricably intertwined with President Fujimori's economic program was made painfully evident in the events surrounding the Washington debate.**

The Peruvian government responded quickly to try to allay congressional concerns, announcing the measures described in detail above. The initiatives were widely applauded by the national and international human rights community as significant steps forward -- if implemented effectively. The timing of the measures, however, warranted caution. As Americas Watch noted in its September 1991 report on Peru:

"The timing of the government's new proposals raises the question of whether they may have been announced in order to silence critics and guarantee the release of counternarcotics assistance. Until these measures are acted upon, and their effectiveness evaluated, and all conditions in U.S. law have been met, Peru should remain ineligible for security assistance."

President Fujimori himself travelled to Washington in mid-September to discuss human rights and other concerns with members of the U.S. Congress.

But neither Fujimori or the State Department could sway Congress to release the aid without further conditions. In three separate letters issued in late September, the relevant committee and subcommittee chairmen agreed to obligate most of the assistance; however, \$10.05 million in counterinsurgency training, weapons and equipment destined for the Peruvian army was refused. (They did allow \$3.7 million for the army's civic action programs.) They requested that the remaining \$24.85 million in military aid only be released to the Peruvian government once it has successfully fulfilled the human rights and counternarcotics conditions stipulated in U.S. law. In addition, the chairmen stipulated that no military aid be delivered until certain additional conditions are met, including:

- **Mechanisms are in place ensuring that it is provided through civilian authorities;**

²³ Because ESF is classified as security assistance, human rights conditions apply to those funds and they were therefore withheld as a result of the congressional action.

- **A public central registry of all those detained by Peruvian security forces is created;**
- **Access to all places of detention is granted to the ICRC and public prosecutors immediately following arrest.**
- **The administration informs Congress as to the "specific actions the Peruvian government is taking to discipline and prosecute those responsible" for 9 well-known cases of human rights violations in Peru.**

Additional conditions were elaborated related to progress in improving cooperation with antinarcotics programs. The administration can spend the balance of payment component of the aid package according to its own timetable, which involves dividing the aid into periodic "tranches." The first \$20 million disbursement has been provided to the Peruvian government. Military aid is to be tranced as well. At the time of publication military aid has not yet been provided.

The administration reluctantly accepted the congressional response in a letter sent to the chairmen on September 27. Thus, the first stage of the debate on U.S. military aid to Peru was closed as the fiscal year drew to an end on September 30, 1991. However, the conflict is far from over. The strong conditions laid out in the congressional letters indicate that at least certain members will be closely monitoring both the human rights situation in Peru and the U.S. government's response. Moreover, the steady escalation of political violence by both sides and the trend of further militarization are clear indications that Peru will continue to have difficulty complying with the human rights conditions in U.S. legislation.

c. Compliance with congressional conditions

As has been explained in detail, there has been no significant improvement in Peru's human rights record since last August, and recent trends point to a deterioration in the overall human rights environment in Peru. Some progress has been made, however, in meeting several of the specific conditions laid out above. This situation lends credence to fears that the Fujimori government's primary concern is to gain the support of the U.S. Congress and that it lacks the political will to confront the country's human rights crisis on its own merits. **Perhaps even more disturbingly, the U.S. State Department appears willing to go forward with the military aid despite the lack of meaningful progress.**

Access to military and police detention centers:

On September 3, 1991 President Fujimori issued a decree guaranteeing public prosecutors access to police and military installations. The government also provided for such access by the International Committee of the Red Cross (ICRC) over a six-month period. In general terms, there has been progress in the implementation of these measures. According to the U.S. Ambassador to Peru, between September and November the ICRC visited 18 military detention centers in emergency zones and 60 police stations. Embassy personnel claim that there are no cases where access was denied. Human rights groups support these assertions, but note that the ICRC does not provide public information on its activities. Hence, monitoring access and its

impact is extremely difficult. Reportedly, the ICRC would prefer an open-ended agreement, rather than the present agreement for only six months. Human rights groups continue to receive regular reports of torture and clandestine detentions.

When requested, public prosecutors have also been granted access to military detention centers. For a variety of reasons, however, public prosecutors have not been as aggressive in seeking access. According to Dr. Clodomiro Chávez, the chief Special Prosecutor for Human Rights, between September and November, there were only "six or seven cases" where public prosecutors have sought access to military detention centers. Access was granted in those cases. A recent presidential decree expands previous legislation to assure access whether or not the commanding general or officer is present at the time of the visit.

There are a variety of problems which hinder public prosecutor's attempts to enter military barracks and investigate reports of human rights violations. Military installations are often located in remote mountain regions which can only be reached by helicopter. In those cases, the prosecutors depend on the military for transportation and security, making unannounced visits impossible. Often prosecutors are allowed into a military barracks, but are not allowed free access to all parts of the facility. Prosecutors have faced threats and intimidation by members of the security forces -- even after the government announced its intention to assure public prosecutors access to military installations. These problems have yet to be resolved.

Central registry of detained:

According to the U.S. ambassador to Peru, Anthony Quainton, some progress has been made in the development of a central registry of detained. The embassy claims that the Peruvian Ministry of Defense began implementation of the registry in August, directing the armed forces to report detentions within 48 hours, and that U.S. personnel and the ICRC have had access to the list. As of late November, local human rights groups had not requested access to the list. There is not yet a functional registry within the police forces.

U.S. embassy personnel admit that the Ministry of Defense's list is in fact "quite short." Human rights groups note that generally only those who have been released or are about to be released are reported as detained by the Ministry of Defense. Both the embassy and the human rights groups would like to see the registry managed by civilian authorities, probably within the Public Ministry. Human rights groups also insist that the list be made available to lawyers and family members and that it incorporate information from human rights groups and other sources.

Human rights cases:

There are a total of nine cases of alleged human rights violations by members of the Peruvian military or police that are referred to in the September 1991 letters laying out the congressional conditions. In each of these cases -- all of which have been widely publicized -- there is significant evidence pointing to official involvement. Progress in prosecutions in these cases would be one indication of political will on the part of the Peruvian government and armed forces to end the situation of impunity for human rights violations by state agents. **To date, impunity continues to be the norm for members of the armed forces and police responsible**

for human rights violations in Peru. Although developments have occurred in two cases, there has been no progress in carrying forward effective prosecutions in the other seven cases.²⁴

1. July 1991 massacre at Santa Bárbara, Huancavelica: On October 31, 1991 the Peruvian press reported that the Minister of Defense had released the names of a lieutenant and five soldiers accused of murdering 14 peasants in Santa Bárbara, Huancavelica last July. This is the first case where the armed forces have publicly accepted responsibility for a human rights violation. The six are being tried in a military court for "second degree murder and abuse of authority." According to the Peruvian human rights organization CEAPAZ, on November 8 the public prosecutor handling the case and the president of the Santa Bárbara community were detained with a judicial order charging them with obstructing justice by making false accusations against the Peruvian military. They were released after four days but continue to fear for their personal security.

2. June 1991 murders of medical student and two minors: Three policemen are in detention for the highly publicized abduction and murder of the three students which occurred last June. All of the commanding police officials implicated in the killing have been released from detention and are working in their assigned posts. One of the policemen in detention, Infantes Quiroz, claimed in his testimony that "there is a verbal password within the police to eliminate those detained for terrorism." Immediately after making this statement he began receiving death threats and was moved to another prison for security reasons. As soon as the case was initiated in the civilian court, the military court opened proceedings -- presumably to circumvent a verdict in the civilian court. The Supreme Court ruled that the civilian court has jurisdiction in the case, and it is going forward accordingly.

3. November 1988 murder of Peruvian journalist Hugo Bustíos: According to the weekly magazine *Caretas* (7 October 1991), last June a military court acquitted the lieutenant colonel and captain accused of murdering Bustíos on November 24, 1988. A decision in a military court makes it even less likely for the prosecution to be carried forward in the civilian court system.

4. June 1989 murder of Fernando Mejía Egocheaga: no new developments.

5. August 1990 massacre at Iquicha, Ayacucho: no new developments.

6. September 1990 murders at Vilcashuamán, Ayacucho: no new developments.

7. March 1991 murders at Chuschi, Ayacucho: no new developments.

8. September 1990 murders of Zacarías Pasca Huamani and Marcelino Valencia Alvaro: no new developments.

9. May 1988 Cayara massacre: no new developments. At the opposition of the Peruvian government the Inter-American Commission on Human Rights of the Organization of American

²⁴ Information on the status of these cases was provided by the Peruvian human rights organizations, CEAPAZ and APRODEH, on November 29, 1991.

States announced in October 1991 that this case would be passed to the Inter-American Court in San José, Costa Rica.

Other conditions:

The congressional conditions also include the promotion and expansion of the work of the special human rights prosecutors in Peru. In addition to Dr. Chávez, there are presently eight special prosecutors. Many of the initiatives announced by President Fujimori last August were oriented towards strengthening the work of the public prosecutors. To WOLA's knowledge there are no efforts underway to expand the number of special prosecutors. The existing offices continue to lack even minimal financial support. The Peruvian human rights groups fear that the government's proposal to create human rights offices in local prefectures will strain scarce resources even further. Support to the special prosecutors main office, run by Dr. Chávez, has been provided by the U.S. government through Administration of Justice funds, and such support will be expanded with the delivery of the first tranche of FY1991 balance of payments support.

The U.S. Congress also recommended that the Bush administration explore the possibility of carrying out U.S. training programs for the Peruvian armed forces in the United States, rather than in Peru. According to U.S. embassy personnel, that recommendation cannot be carried forward due both operational and funding constraints. (They note that a limited amount of training already takes place in the United States.) U.S. Special Forces are presently involved in training programs for the Peruvian police, and air force and navy units. An October 1991 report by the General Accounting Office notes that over 50 percent of the Peruvian police receiving U.S. Special Forces training are counterinsurgency -- not antinarcotics -- units.²⁵ Although the U.S. Congress eliminated the antinarcotics assistance to be provided for training Peruvian army battalions, there are U.S. Mobile Training Teams in Peru involved in joint training operations with the Peruvian army.

CONCLUSION

Last August when the Fujimori government announced the measures designed to address human rights violations, expectations were raised that significant changes might occur. At that time, there was a consensus within the Peruvian human rights community that measures such as access to military barracks by the ICRC and public prosecutors and the creation of a central registry of detained could lead to improvements -- if implemented within a climate of government support for the protection of basic human rights and an end to the situation of impunity which has fostered such violations. The decline in the number of reported cases of disappearance, historically attributed to state agents in Peru, between August and October of 1991 does appear to have resulted from the government's initiatives. Thus, as was seen periodically in El Salvador throughout the 1980s, the government does have the potential ability to control such violations if it has the political will to do so.

²⁵ "The Drug War: U.S. Programs in Peru Face Serious Obstacles," General Accounting Office report #NSIAD-92-36, released October 1991.

Unfortunately, recent trends in Peru indicate a change in the form, not the intensity, of repression in Peru: disappearances have declined, but extrajudicial executions and death squad activity have increased. There are disturbing signs that the overall human rights climate has not improved and is in fact getting worse. It is difficult, given this context, to hope that the government's measures of August 1991 can have significant positive impact in the medium and long term.

Since President Fujimori took office, Sendero Luminoso has stepped up its campaign of assassinations and military actions throughout the country. Its strategies of provocation and confrontation continue to accelerate the deterioration of respect for basic human rights and have provoked further militarization of the country. Unfortunately, President Fujimori and the Peruvian armed forces have responded in kind, while the people of Peru are caught between two fires.

This is evident in disturbing trends that were set in motion shortly after President Fujimori took office in July 1990 and which have greatly intensified in recent months. These include the government's hostility toward international and national human rights groups, its failure to investigate and sanction those responsible for death squad activity, and the president's attempts to expand the authority of the Peruvian military at the expense of the protection of basic human rights, most visibly represented in the presidential decrees of mid-November 1991. President Fujimori has rejected the pleas of all opposition political parties and popular organizations to reconsider those decrees; he continues to rely on the military and a failed military strategy to confront the insurgency problem.

Given on-going levels of human rights violations and these recent trends, the prospects of Peru meeting the human rights requirements laid out in U.S. law which must be complied with to receive U.S. assistance are dim at best. If the law is to be upheld, no security assistance -- be it related to antinarcotics programs or not -- should flow to Peru at this time or at any time in the near future.

Finally, the Peruvian government must develop a political strategy for confronting Sendero to be implemented through civilian institutions, respecting basic human rights and democratic norms. Until it does so it will lack the political support required to meet the Sendero threat. A last decade of failed counterinsurgency tactics provides ample evidence of the bankruptcy of a purely military approach to stopping the rebels. The solution is to be found in those very sectors of Peruvian society which brought Fujimori into office and the civilian institutions which he, as president, should represent.

Appendix A: Legislative Decrees on Pacification, National Defense and Human Rights*

Prepared by Susana Cárdenas,
Washington Office on Latin America

Between 7 and 14 November 1991, President Alberto Fujimori and his cabinet of ministers announced a total of 126 decrees, covering a wide range of subjects: **national mobilization and defense; armed forces; confronting insurgency; state of emergency; national police; penal legislation and penal code; civil defense patrols; education; foreign residency/citizenship; fishing industry; health care; labor; housing; industry, commerce and tourism; agriculture; and energy and mines.**

Under Law No. 25327 and in accordance with Article 188 of the 1980 Peruvian Constitution, the Congress gave President Fujimori the power to promulgate decrees concerning economic policy and "National Pacification," or confronting subversion and illegal drug trafficking.

The decrees related to "National Pacification" sparked widespread concern and opposition across the political spectrum. On 6 December 1991, fifteen political parties sent an open letter to the President of the Cabinet, the presidents of both houses of Congress, and the President of the Supreme Court. As representatives of the entire spectrum of legal political parties and groups, the signers stated that the most effective, correct, and only means of confronting armed subversion was through the rule of law of a constitutional democracy. According to their analysis, the legislative decrees would extra-constitutionally change the political regime, infringe upon basic civil liberties, restrict the authority of elected civilian officials, and militarize the country. (Refer to Appendix B for translation of the entire text of the letter.)

The following is a synthesis of the most far-reaching decrees, with a closer examination at those regarding "pacification" and national defense.

National Mobilization and Defense:

Dec. Leg. 733: Introduction of Law of National Mobilization

text: establishes that all necessary human and material resources shall be made available to the Peruvian armed forces upon demand.

concerns: includes all individuals and corporations, assets and services, private and public, all that may be required for *national mobilization*, with no exceptions; declares the following illegal: refusing compulsory military service, refusing to give out information, refusing to give up private assets

* Sources: National Human Rights Coordinating Committee (CNDDHH), Center of Study and Action for Peace (CEAPAZ), Institute of Democracy and Socialism (IDS), Diario La República, Diario Oficial El Peruano, Foreign Broadcast Information Service (FBIS)

Dec. Leg. 759: Law of Compulsory Military Service

text: gives the Ministry of Defense control over distribution of eligible servicepeople and broad powers to recruit citizens for civic action programs, civil defense patrols and literacy efforts; one year minimum compulsory military service; requires participation of municipal governments.

concerns: eventual unrestricted and arbitrary recruitment of citizens; refusal to serve is subject to fines and penalties to be defined by law

Dec. Leg. 743: Establishment of the National Defense System (NDS)

text: defines National Defense as the set of permanent and comprehensive measures taken to safeguard the country's independence, sovereignty and integrity; compulsory participation of all citizens (and resident foreigners) in National Defense; anyone with information that jeopardizes national security must report it to the NDS; training in national defense is compulsory at all levels of the state educational system; defines structure/members of the permanent NDS: President of the Republic (presiding official), Unified Pacification Command, National Defense Council, National Intelligence System, Ministry of Defense, National Civil Defense System, National Defense Secretariat, Ministries, and other governmental agencies; creates the Unified Pacification Command; President appoints the Armed Forces' Chiefs of Staff, the Chair of the Joint Chiefs of Staff, the Chief of the National Defense Secretariat, and the Director of the Center for Advanced Military Studies (CAEM); **puts National Police under Armed Forces' jurisdiction**; creates National Defense Secretariat in all governmental agencies

concerns: limits participation of civilian institutions and democratic accountability

Dec. Leg. 746: Establishment of the National Intelligence System (SINA)

text: organizes the SINA under the National Defense System to contribute to the nation's security; Chief of SINA appointed by President, attends Cabinet meetings but has no "political responsibilities" (i.e. not accountable to Congress); SINA budget and documentation are confidential; intelligence reports must be provided to the President and public and private sectors must provide the necessary information required by SINA for national security and defense: criminal charges if one fails to comply; intelligence bureaus are created within all governmental agencies

concerns: obliges private and public sectors to give information and documentation to the SINA; refusal to cooperate results in imprisonment; SINA officials have access to all public and private information solely by showing ID

Dec. Leg. 762: Information

text: establishes penal sanctions against those who reveal, reproduce, exhibit, publish, etc., information regarding the National Defense System; 5-10 years imprisonment

concerns: infringement upon freedom of the press and all forms of public dissemination; dubious constitutionality

State of Emergency:**Dec. Leg. 738: Role of the Armed Forces in areas not declared under State of Emergency**

text: establishes role for the Armed Forces in such areas when there is a grave alteration of the internal order, or when faced with imminent danger that surpasses the operational capacity of the National Police

concerns: unconstitutional measure; Armed Forces have exclusive control and decision-making powers; Armed Forces have control over National Police

Dec. Leg. 749: Political-Military Commands in the emergency zones (amendment to Law #24150 on Political-Military Commands)

text: political-military commands will coordinate participation of the public and private sectors in the implementation of plans and guidelines in national pacification; functions of political-military commands are amended and broadened

concerns: role of political-military commands reinforced; authority overpowers local and regional elected civilian governments; broad role of political-military commands in pacification; overall unconstitutional provision

Min. Res. N. 1302/DE/SG:

text: addendum to resolution on public ministry's access to military facilities; in emergency zones, military personnel are to escort public ministry officials and facilitate their work

Armed Forces:**Dec. Leg. 752: Law on the Status of the Armed Forces**

text: establishes new responsibilities assigned to officers in their task of "ensuring national peace and protecting human rights"; defines relations among military personnel; promotions and special benefits for officers

serving in the emergency zones; gives President powers to rapidly promote military officers; new military code goes into effect to combat terrorism and illegal drug trafficking in accordance to the National Pacification strategy

Dec. Leg. 734: Armed Forces may enter penal institutions

text: allows members of the armed forces to take internal and external custody of prisons and all other detention centers when law enforcement efforts do not suffice

concerns: broadens powers of the military; unconstitutional measure since armed forces are only allowed to enter penal institutions under a declared state of emergency; could lead to events such as the June 1986 prison massacre

Dec. Sup. N. 063-91-DE-SG:

text: creates an Army Intelligence Bureau

concerns: further defines an enhanced role of the army in counter-insurgency; unclear implications of creating an intelligence bureau in the army and not in other branches of the armed forces

Dec. Leg. 726: Amendment to Law # 23733, Art. 8, University Law

text: When authorized by the Minister of Defense or Interior, or by Military or Police Commands, the Armed Forces and/or National Police may enter university campuses when there is knowledge of terrorist activity that disturbs peace and internal order; administrative and academic autonomy shall be respected

concerns: as with Dec. Leg. 734, no independent civilian control, illegal search and seizure / interference with privacy

for more on Education, see corresponding section.

"Pacification":

Dec. Leg. 751: Approval of Directive on "Pacification"

text: stresses consistency of actions of private and public organizations in "pacification" process; ministries, public organizations and regional governments must comply

concerns: actual text remains confidential; illegal since there is no constitutional provision for secret presidential decrees

Dec. Leg. 753: **law laying out the basis for a comprehensive strategy of alternative development, with popular participation, to eradicate illegal drug trafficking**

text: establishes norms for land ownership and use in "special" areas; provides legal framework for establishing market economy to promote alternative development; creates an ad hoc land registry and the Institute for Alternative Development

concerns: does not set limits nor restrictions regarding land ownership; companies/organizations may own land; popular participation undefined

Dec. Leg. 652: **National "Pacification" Plan; Peace Council**

text: recommends the presentation of a National Pacification Plan; creates and defines structure of the Peace Council, headquartered in Lima with regional offices throughout

concerns: similar efforts in the past were never consolidated

Self-defense:

Dec. Leg. 741: **Civil Defense Committees**

text: institutionalizes civil defense committees; they shall be accredited and controlled by Political-Military Commands (See Dec. Leg. 740 below); patrols may form anywhere in the country (under state of emergency or not); service in civilian defense patrols establishes a new form of compulsory military service

concerns: as with Dec. Leg. 740, assessment needed on self-defense patrols' independence and their paramilitary role.

Dec. Leg. 740: **Possession/use of arms and ammunition**

text: regulates peasant defense patrols in emergency zones; Armed Forces have control, regulate purchase/distribution of arms to defense patrols under authority of the Joint Command of the Armed Forces

concerns: legitimates armed forces' provision of arms to civilian defense patrols

Penal Code:

- several amendments to the penal code, including Dec. Leg. #s 736, 747, 748, 761; provisions on money-laundering and drug trafficking; bans

banking confidentiality; penal sanctions (8-15 years) for those who use arms destined to the Armed Forces and the National Police.

- These are all changes to a recently enacted (April 1991) Penal Code

Judiciary:

Dec. Leg. 665: Prosecutors in Emergency Zones

text: prosecutors working in emergency zones are authorized to enter all detention centers including police stations, prefectures, and military installations to conduct investigations on allegations of detention and/or disappearance; Interior and Defense Ministries ensure prosecutor necessary means to carry out investigation; provincial prosecutors submit monthly report on respective human rights situation to National Prosecutor's Office

Education:

text: seven legislative decrees (Dec. Leg. #s 686, 695, 699, 700, 739, 756 and 726 as mentioned in the "Armed Forces" section)

concerns: Armed Forces and Parents' Associations will assume direct responsibility for education in the emergency zones; privatization of educational assets and facilities;

**Appendix B: Letter sent by 15 political parties to executive,
legislative and judicial branches***

December 6, 1991

President of the Cabinet of Ministers
President of the Chamber of Deputies
President of the Senate
President of the Supreme Court of Justice

Dear Sirs,

We are profoundly concerned with the country's present situation and are affected by and committed to face the challenges posed to us in the common task of national pacification. Particularly in light of the legislative decrees set forth by the executive through the powers vested upon it by Congress, the signing political organizations have resolved to come forward with the following:

1. For at least a decade, the country has confronted a complex national situation characterized by a grave and profound economic crisis, an appalling deterioration of the social conditions in which our people live, and a violent, bloody, prolonged and costly political rebellion led principally by two organizations with tactical conceptions and specific combat methods in which terrorist practices predominate.
2. The duty of the state to confront armed terrorist subversion while respecting our constitutional democratic system may be an arduous task. At the same time, it is undoubtedly the most secure, and certainly the most correct route to take toward a final victory. It is clearly the method most agreeable with the respect of basic rights set forth in our Constitution. We are committed to this, and only to this, means of confronting subversion.
3. According to our analysis, the legislative decrees on national pacification would imply an extra-constitutional change of the political regime, affecting the population's basic freedoms, restricting the powers of elected civilian authorities, and militarizing the country. We find that it is intended to adopt internal security measures which pose great threats -- even to the armed forces directly involved in the counterinsurgency campaign.

Therefore, we unequivocally set forth our efforts to modify said decrees and express our willingness to work toward their creative rectification -- all in accordance with the democratic tenets hereby stated.

* Published in Diario El Comercio, December 8, 1991. Lima, Peru; translation by the Washington Office on Latin America.

4. We consider that a just and comprehensive pacification strategy is one in which civilian politics and conscious voluntary participation of a freely-organized society prevails. The struggle for pacification should scrupulously respect the Constitution and should fully and strictly sanction all violations of human rights committed by civilians, insurgency and counterinsurgency forces, the military and the police. A deepening militarization will only prolong the war and threaten not only the country's economy but its very survival. This is why, from our differing political perspectives, the various political organizations here represented are willing to commit themselves to a joint, practical, responsible and successful struggle.

The President of the Cabinet, respectful and open to dialogue with the Congress yesterday, reflects positively on the Executive, opening hopeful possibilities. This letter itself shall stand as clear proof of the opportunity to reach effective agreement among people who hold differing views concerning our country's primary problems. We believe the key to resolving this issue is to take our commonly-held constitutional principles as the starting point, showing likewise a willingness to work together and maintain tolerance and respect for each other.

Regards,

Enrique Elías Laroza, Popular Christian Party (PPC)
Rolando Ames Cobián, Socialist Affirmation Movement (MAS)
Luis Alva Castro, Peruvian APRA Party
Carlos Tapia, Socialist Left (IS)
Miguel Cruchaga, Liberty Movement (Movimiento Libertad)
Gustavo Mohme, Socialist Political Action (APS)
Manuel Dammert, Socialist Mariateguista Party (PSM)
Sandro Mariátegui, Popular Action Party (AP)
Julio Castro Gómez, Revolutionary Mariateguista Party (PMR)
Eduardo López-Therese, FIM
Tirso Vargas V., Coordinadora Independiente
Edmundo Murrugarra, Socialist Convergence (CS)
Renán Raffo Muñoz, Peruvian Communist Party (PCP)
Fausto Alvarado Doderó, SODE
Ricardo Letts, Unified Mariateguista Party (PUM)

**Appendix C: Letter by Peru's National Human Rights
Coordinating Committee to the U.S. Ambassador to Peru**

The National Human Rights Coordinating Committee of Peru is a coalition of over thirty of the country's human rights organizations. It includes the major human rights groups based in Lima and regional and local groups in those areas most affected by political violence. The Coordinating Committee, which serves as the voice of the human rights movement in Peru, documents human rights abuses by the guerrillas and by government security forces. Hence, it is caught in the crossfire of political violence in Peru today, threatened by both sides. What follows are excerpts* from a letter sent by the National Human Rights Coordinating Committee to the U.S. Ambassador to Peru regarding the U.S. government's determination that Peru meets the conditions necessary to receive antinarcotics-related security assistance.

August 1, 1991

Dear Ambassador Anthony Quainton,

We write to you to express our profound concern regarding the reasons given in the recent decision by your government to certify that the Government of Peru meets the conditions laid out in U.S. legislation necessary for the disbursement of foreign aid . . .

Your own State Department pointed out that in 1990 the number of extrajudicial executions and forced disappearances increased and that not a single member of the Armed Forces has been convicted of such practices in the eleven years of violence that our country has suffered. The situation of impunity has continued under the Fujimori government . . .

These past months have been characterized by a substantial increase in denunciations of human rights violations committed by the security forces. The massacre of Chilcahuaycco, those in Vilcashuamán and Iquicha, the collective disappearances in Chuschi, the extrajudicial executions in Huaura, Chillutira and Chumbivilcas and most recently in Santa Bárbara in the Huancavelica department -- these are all examples of the counterinsurgency strategy being carried out by the Fujimori government . . . and it is worth remembering the diverse forms of aggression against human rights monitors because of the work they carry out . . .

All of these facts reveal that human rights violations are not isolated events -- as could happen anywhere in the world -- but are the result of a pattern of conduct

* Translation done by the Washington Office on Latin America.

consistently used by the security forces, whose Commander in Chief is, constitutionally, the President of the Republic. . .

The human rights movement in Peru has consistently denounced the crimes committed by the armed insurgencies and has stated that a democratic regime has the obligation and the right to defend itself . . . Yet at the same time we affirm that the State must demonstrate an ethical superiority in the face of those who attempt to destabilize it. This moral superiority, which must be characterized by the unrestricted respect for democratic norms and human rights, is far from being established in Peru.

We reiterate that we are not opposed to the provision of foreign aid to our country. Our purpose is to call attention to the grave consequences for the promotion of human rights that the provision of unconditional aid could have if given to a government that is engaged in grave and systematic violations of those rights. This decision is particularly delicate what an important part of this aid is designated for military expenditures.

We have great respect for the people of the United States, a country with a long trajectory of respect for human rights . . . we appeal to your government and to your congress to collaborate with us in our work to defend human life and democratic values. Decisions such as that taken by the State Department are not only unhelpful, but clearly impede that work.

Sincerely yours,

Members of the Executive Committee
National Human Rights Coordinating Committee of Peru

Pilar Coll
Executive Director

José Burneo Labrín
Center of Study and Action for Peace (CEAPAZ)

Pablo Rojas
Commission of Human Rights (COMISEDH)

Francisco Soberón G.
Pro-Human Rights Association (APRODEH)

Miguel Talavera R.
Institute of Legal Defense (IDL)

