



COUNTRIES AT THE CROSSROADS 2011: PERU

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INTRODUCTION

Since the end of a two decade-long internal conflict and the fall of authoritarian ruler Alberto Fujimori in 2000, Peruvian leaders have faced the challenge of restoring democratic institutions, strengthening the Peruvian state, and improving living standards. Under President Alejandro Toledo (2001–06), Peru experienced economic growth rates of over 5 percent, but the democratic reform process floundered, Toledo had long since lost the ability to set the political agenda, and poverty rates had fallen only slightly. Toledo’s successor, Alan García (2006–11), was able to achieve even higher growth rates (with the exception of 2010, due to the fallout from the global economic crisis), but a significant drop in the official poverty rate masked slower progress in the quest for general improvement of living standards for the vast majority of Peruvians. Structural, historical, and political factors make governing Peru difficult and unpredictable. Social tension is ever-present, institutions are underdeveloped, and corruption is endemic. Despite economic gains, some notable reforms, and the maintenance of democracy, the foundations of Peruvian stability remain unsteady.¹

Considering that García’s first term (1985–90) was marked by corruption, economic collapse, civil war, and human rights abuses, his return had initially seemed unlikely. However, he remained a masterful politician, and in 2006 was fortunate to face Ollanta Humala, a former military officer turned antisystem candidate who emerged as the voice of discontented Peruvians. Humala was tagged as a puppet of Venezuelan President Hugo Chávez, allowing García to assume the mantle of “responsible change,” and surge to victory.

However, despite the high economic growth rates of the subsequent five years, Peruvians remained largely dissatisfied with García himself and Peruvian democracy in general.² The Peruvian state is characterized by ongoing weakness in performing fundamental tasks of governance, from carrying out justice to tackling entrenched poverty. Citizens often voice frustration with problems of day-to-day life, including crime, joblessness, and corruption; discontent over other concerns also run deep, especially the issue of exclusion, which in the Peruvian context essentially describes the lack of integration between historically excluded sectors (both socioeconomic and ethnic) and the increasingly modern, largely urban portion of Peruvian society.

Despite one important win for the rule of law—the April 2009 conviction of former president Fujimori for grave human rights violations—significant corruption scandals involving illegal wiretapping and bribes tainted the García administration and resulted in a presidential approval rating of around 25 percent up until the very close of García’s presidency. Further

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reducing García's popularity was his ineffectiveness at resolving social conflict and balancing the competing objectives of protecting indigenous groups, preserving the environment, and ensuring continued economic growth, which in Peru is largely dependent on the extractive industries. The administration's ineffectiveness as mediator with respect to these matters was best illustrated by the violent clashes that left 23 police officers and at least 10 protesters dead in Bagua, in the department of Amazonas, in June 2009.

Though Peru has seen substantial overall improvements since the end of the civil war and the fall of Fujimori, democratic institutions remain feeble, and corruption continues to be a major problem. Sustained economic growth has not resulted in many new jobs and is largely based on high commodities prices. Yet nearly a decade of significant expansion has filled state coffers, thus providing for the novel possibility of strategic planning. Thus Peru in 2011 finds itself in a position of real opportunity to tangibly improve the lives of Peruvian citizens.

ACCOUNTABILITY AND PUBLIC VOICE

Both the first and second rounds of the 2006 Peruvian elections for congress and the presidency generally fulfilled international standards regarding free and fair elections. Suffrage is universal and obligatory, and turnout in each of the two rounds was close to 90 percent. Elections are conducted by a tripartite system of electoral entities. The National Registry (RENIEC) is responsible for voter registration, the National Office of Electoral Processes (ONPE) administers the electoral process, and the National Electoral Board (JNE) resolves election-related legal questions and challenges.

Many analysts support the separate organs as more specialized and effective, but others have called for a merger to avoid duplication of functions. JNE and ONPE relations were fractious during the 2006 elections, but appeared to be smoother in the following years. Congressional elections are held concurrently with the first round of the presidential election; voting is carried out through open-list proportional representation, with the number of representatives for each department determined by population. The 2006 election represented the first in which parties were required to reach an electoral hurdle of 4 percent of the national vote. If no candidate wins a first round majority in the presidential contest, a second round is held between the top two finishers.

The 2010 municipal and regional elections offered more mixed results. The Organization of American States (OAS) observed that Peru's electoral process provided citizens with the opportunity to effectively cast their lot with their candidates of choice, with justified confidence that their vote would be counted.³ Nonetheless, in a number of regions and municipalities voting was marred by violence due to the continued presence of "*golondrinos*," voters who switch districts to cast their vote, and accusations of fraud. Fortunately, no deaths or major injuries were reported as public property appeared to be the target of choice for displeased electors.

The electoral controversy that captured Peru's attention during the 2010 elections was the JNE's 23-day delay in announcing the victory of center-left candidate Susana Villarán as mayor of Lima. During the delay, President García was accused of manipulating the submitted election returns in order to impede Villarán from taking control of the powerful office.⁴ Since Villarán was favored by both pre-election and exit polls, the delay stirred distrust among the electorate. In

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the end, the JNE's tally was similar to the polls and crisis was averted, but the system's vulnerability was exposed.

[Editor's Note: The 2011 general elections were highly contested. In the first round, three center-right candidates (Toledo, Lima mayor Luis Castañeda, and former prime minister Pedro-Pablo Kuczynski, split the large centrist vote, allowing the most right-wing candidate, Keiko Fujimori (Alberto's daughter), and the most left-wing candidate, Humala, to advance to the second round. The second round was bitterly fought, with the government and many media outlets appearing to actively favor Fujimori. The race was too close to call right up until election day, when Humala was able to mobilize a sufficient number of discontented Peruvians—as well as those scared of a return to Fujimorismo—to secure a narrow but decisive win, with 51.5 percent of the vote. In congressional balloting, which was held concurrently with the first round, Humala's Gana Peru won a plurality, 47 of 130 seats, followed by Fujimori's Force 2011 party with 36, and Toledo's Peru Possible with 21. Following deep internal splits, APRA collapsed, garnering a mere 4 seats.]

Campaigning opportunities are unhindered for Peruvian political parties. Limitations on campaigning in Peru are more likely to be self-imposed, as few parties have the geographic reach, organizational structure, and ideological coherence to appeal broadly throughout the country. However, the rise and fall of parties generally occurs organically, and a rotation of parties in power is the rule. Peruvian ruling parties have been largely personalist vehicles for many decades; once a given party leader is no longer president, that party's strength dwindles. Toledo's Peru Possible party is a good example: in 2001 it captured 47 seats; in 2006, just 2. Fujimori's series of "instant" parties and the failure of APRA to compete seriously for the presidency without Alan García on the ticket further illustrate the problem. Generally, the weakness of Peruvian parties is regarded as a major reason for Peru's political instability and difficulties in building momentum toward institutional consolidation.

Under strengthened campaign finance laws, candidates and parties are now required to list all donations. However, the 2010 municipal elections featured a number of cases of alleged financing improprieties. According to analysts, laws limiting campaign contributions from individuals and corporations and requiring parties to report on fundraising are inadequately enforced. The penalty for noncompliance is denial of public financing, but such funds have not been afforded to any party since the program's supposed implementation in 2003.⁵ Furthermore, parties associated with the administration in power have allegedly been audited leniently or not at all.⁶ The need for a campaign-finance system overhaul is particularly pressing given a perceived influx of money associated with drug trafficking. OAS election observers have strongly advocated a more robust public financing system to level the electoral playing field.⁷

Although Peru is a strongly presidential system, the executive does not exercise absolute control over the legislative and judicial branches. Presidents have historically been granted broad decree powers by Congress, and although García did wield these powers on occasion, during Toledo's and García's terms the percentage of legislation passed by decree declined. The weakness of political parties, however, often limits their effectiveness as a check on the executive. Furthermore, congressional oversight of the executive corresponds to a large extent with political point-scoring potential rather than a consistent vision of the limits and standards of the executive's role. The judiciary is constitutionally autonomous (though troubled; see Rule of

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Law), and the Constitutional Tribunal, in particular, has shown a willingness to rule against other branches of government as well as the military. The 2006–11 legislature was held in particularly low esteem, as numerous corruption scandals and a general perception of inefficacy contributed to the Congress being the country's most poorly-rated institution.⁸

Peruvian ruling parties have often filled administrative positions with party activists of dubious competence upon coming to power; during the García administration, the involvement of these officials in corruption scandals created further institutional distrust. However, a new Civil Service Law promulgated in 2008 is designed to unify all public sector employment under one system, and end the current, disjointed system of hiring and compensation.⁹ Unions rejected the law as potentially weakening their negotiating position, but the García administration passed a number of legislative decrees to implement it and claimed that it would promote legitimacy and meritocracy within the Civil Service.¹⁰ Initial steps have included the simplification of pay structures and the elimination of salary limits, but full implementation is not expected to occur for several years. Meanwhile, García has been criticized for not prioritizing the reform, and the low salaries for police and other essential civil servants are expected to remain so for the foreseeable future.¹¹

Peruvian civil society is highly active. The García administration viewed many nongovernmental organizations (NGOs) as ideologically opposed to the president's political and economic agenda, and his allies in Congress have attempted to increase oversight of internationally funded NGOs by the Peruvian Agency for International Cooperation (APCI), most notably through a controversial 2006 law.¹² Such groups fell under APCI's legitimate supervision due to their legal classification as civil associations that engage in "international technical cooperation,"¹³ but many NGOs argued that increased regulatory scrutiny would foster self-censorship. In the end, the law was changed to ease restrictions on foreign aid that is not channeled to NGOs through the state. Furthermore, in September 2007 the Peruvian Constitutional Tribunal ruled that NGOs may opt out of registration and the associated reporting obligations if they do not accept state benefits or use any state resources in their activities, though this may be difficult in practice. Several NGOs have complained that APCI's interference is ideologically and politically motivated. For example, the Institute of Legal Defense (IDL), an NGO that has criticized the García administration, was audited by APCI three times within a few years.

Freedom of the press is constitutionally protected in Peru, and the media is vibrant and active, especially at the national level. Bribe-induced media support was one of the pillars of the Fujimori regime. Although the press recovered under Toledo, the media has not fully regained Peruvians' trust, and controversies related to Fujimori's media control continue to resurface occasionally. A 2010 World of Justice survey in the three major Peruvian cities of Lima, Arequipa, and Trujillo asked individuals whether the media was free to express opinions against government policies and actions. Only 27 percent responded affirmatively, while 73 percent responded that the media was not able to express opinions that contradict government positions.¹⁴

The Peruvian government refrains from direct and indirect censorship of the media, and most outlets are privately owned. Both print and broadcast media remain reliant, however, on advertising dollars from limited sources such as government (at the local level) and a few large companies (especially retailers) at the national level. Media concentration has also increased at the national level; for example, the El Comercio group now owns four of Lima's most prominent

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newspapers. Internet access is unhindered and is widespread in the cities, although it remains rare in rural and jungle areas. Freedom of cultural expression is generally unrestricted.

Libel and defamation remain classified as criminal offenses in Peru, and journalists continue to be prosecuted, receiving large fines and jail sentences, although the jail terms are generally suspended. However, a spike occurred in 2010, with five judicial sentences handed down against members of the press, including a three-year suspended sentence for defamation against former minister Jorge Mufarech issued to journalist and blogger José Alejandro Godoy; according to the Institute of the Press and Society (IPYS), the conviction was “based on no real evidence to speak of.”¹⁵ While abuses occur, not all accusations of defamation can be regarded as attempts to intimidate the press: journalistic ethics in Peru remain a work in progress. Many journalists, especially low-paid provincial ones but also those based in Lima, are willing to accept bribes in return for favorable coverage.

Especially at the local and regional levels, journalism is a dangerous profession in which reporting on local scandals can lead to intimidation, harassment, and serious attacks. In many of these cases investigations have not been carried out. Nonetheless, IPYS reports that the number of attacks against members of the press have decreased, from 121 in 2007 to 106, 87, and 69 in the following three years. In 2010, 36 of the cases were physical assaults, 9 were intimidation, and 7 involved obstacles to reporting. Assailants varied: 15 were unknown, 14 involved municipal authorities, 6 involved the private sector, and 4 were perpetrated by state security forces. A symbol of the impunity for such acts is the ongoing struggle to convict Luis Valdez, the former mayor of an Amazonian city, for the 2004 murder of journalist Antonio Rivera, despite strong evidence of his involvement.¹⁶

Another development that has drawn the concern of legal watchdogs is a series of government shutdowns of radio and television stations in 2008 and 2009. In 2008, six radio and two television stations were closed down; officials justified the moves by arguing that the stations lacked proper registration and documentation. IPYS contended, however, that they were targeted because they informed the public about ongoing social conflicts and the misuse of resources resulting from mining activities.¹⁷ Indeed, closures generally occurred in places that had experienced protest violence, which the stations were accused of inciting. Notably, the informality and lack of uniformity in the process of station registration facilitated the subsequent closures by increasing the likelihood that official registration rules had in fact been violated. In one of the most emblematic cases, Radio Voz de Bagua, which had been shut down in the aftermath of the Bagua massacre in June 2009, recovered its operating license in August 2010.

The prominence of illegally recorded telephone conversations in corruption scandals (see Anticorruption and Transparency) has affected the press. Contradictory Constitutional Tribunal decisions regarding the legality of press dissemination of recorded conversations¹⁸—even on matters of evident national interest—without prior approval of those recorded led IDL’s judicial sector watchdog unit to request clarification of the law. Another controversy occurred in November 2010, when a wealthy municipality in Lima forced a group of photographers to remove artwork, photographs, and videos of Peru’s internal armed conflict that were being exhibited in a municipal building, despite prior approval. The act was perceived to stem from pressure from conservative economic and political groups. The exhibit was reopened in February 2011 at the invitation of newly elected Lima mayor Susana Villarán, in the city’s municipal palace.¹⁹

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CIVIL LIBERTIES

Torture and ill-treatment of criminal suspects continue to be problems in Peru. The Ombudsman's Office (*Defensoría del Pueblo*) registered 480 cases of torture between 2005 and 2009.²⁰ Fully 67 percent of the cases involved the national police, with additional violations by members of the municipal police, prison authorities, and the army. As noted by Human Rights Watch, "a poor record of prosecuting state agents for abuses hinders eradication of these practices."²¹ In some cases, defendants initially charged with torture have seen their alleged crimes downgraded—a practice condoned as appropriate by the Supreme Court—on the basis of the manner in which torture was incorporated into the criminal code in 1998.²²

Extrajudicial executions have also been reported in some regions of Peru. Though police officials deny the claim, local prosecutors in Trujillo affirm the existence of a "death squad" allegedly led by high police officials. Reports indicate that at least 46 suspected criminals were kidnapped and subsequently executed; police officials claim that the deaths occurred in armed confrontations.²³ As of early 2011, no police officials in Trujillo had been held accountable for their alleged actions.

Scores of deaths have also occurred in the context of police action against Peruvians engaged in social protest. Aside from the case of Bagua, discussed below, 47 Peruvians lost their lives at the hands of state security forces in the context of social protests in 2009 and 2010.²⁴ Legal changes in recent years have encouraged internal military actions. Law 28222, promulgated in 2004, authorized the intervention of the armed forces to establish internal order; a decree passed in 2007 authorized the president to order army intervention in social conflict with the assent of the ministers of interior and defense, though it required authorization by the Council of Ministers. In 2010, Decree Law 1095 extended the ambit of direct military intervention in internal policing even further, and authorized the lethal use of force even in non-life threatening situations.²⁵

Arbitrary detention remains a concern as well. Human rights organizations reported several arbitrary detentions of individuals engaged in social protest. According to the Association for Human Rights (APRODEH), in 2009, 832 people were facing legal processes for engaging in acts of social protest.²⁶ Long-term pretrial detention is another ongoing issue in Peru. Indeed, a significant number of Peruvian detainees never serve time under formal sentence, as the maximum pretrial detention period of 24 months (36 for serious crimes) is reached with no formal verdict and prisoners are released.

While specific targeting of political activists by the government is far less frequent than during the Fujimori era, a number of serious instances of intimidation of activists have occurred in Peru in recent years. In May 2008, the Inter-American Commission on Human Rights extended precautionary measures to human rights activist Francisco Soberón, executive director of APRODEH, who received numerous threats after authoring a letter to the European Parliament reporting that the Tupac Amaru Revolutionary Movement (MRTA) was a defunct organization. Soberón, and APRODEH, played a central role in the extradition, trial, and conviction of former president Alberto Fujimori (see Rule of Law). President Garcia referred to Soberón as a 'traitor to the country' in public declarations, and government authorities called for APRODEH's dissolution. Another troubling episode occurred in 2009, when the former president of the Truth and Reconciliation Commission (CVR), Salomón Lerner, was subjected to

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repeated death threats, along with the invasion of his property and the poisoning of his dogs.²⁷ Human rights lawyers who represent victims in cases of human rights violations allegedly committed by state security forces in the context of Peru's internal armed conflict often receive death threats and harassing phone calls.

Crime has steadily increased in Peru, although it is still below the level found in many Latin American countries. Indeed, according to analysts, the perception of lack of safety is growing much faster than crime itself. A general sense of discontent, along with institutional fragility, the legacy of political violence, and the rising visibility of street gangs all contribute to this perception. Despite sensationalistic media coverage of murders, burglary and muggings are far more common. The response of the police in recent years has been sorely deficient. In addition, drug trafficking is perceived to have increased, and there have been several public killings of Mexicans, Colombians, and other foreign nationals presumably engaged in drug trafficking activities in Lima and other cities in recent years. Several dozen state security force members have died during counterinsurgency operations against the vestiges of Shining Path, which coerces and protects coca production in the south-central jungle region. The persistence of Shining Path has resulted in repeated extensions of the states of emergency in these areas.²⁸

For the limited number of criminals that are arrested, prison overcrowding continues to be the most pressing issue as the inmate population of 45,000 is nearly double the capacity of 25,000, and the prison population is growing by 9 percent each year.²⁹ A number of high-profile escapes and releases of drug offenders carrying false habeas corpus documents are emblematic of the endemic corruption in the prisons.³⁰ Gradual improvements financed by international organizations have been made, however, including providing inmates with access to healthcare and improved training for prison officials. Additionally, significant improvements appear to have been made in the accounting for government expenses on the prison system.³¹

Peruvians whose rights have been violated have an important tool of redress in the institution of the ombudsman. Constitutionally autonomous, with a highly regarded staff, the ombudsman accepts complaints about alleged rights violations ranging from torture to no-show teachers. Although findings are not binding, the office's reports carry an important moral weight.

Much progress has been made in Peru with respect to gender equity, but much remains to be accomplished. Educational inequality, measured in terms of public school enrollments, has almost disappeared: Secondary school enrollment rates for males and females were 87.7 percent and 81.7 percent, respectively, in 2000; by 2008 they had reached 89.5 percent and 88.6 percent.³²

An important step toward gender equity was taken by Congress in 2007 with the passage of the Equal Opportunity Law, which requires the Peruvian state to promote equal opportunities for women and men in the workplace.³³ The legislation guarantees equal pay for work of equal value and the right to productive work without discrimination for men and women in access to employment, training, and work conditions. Nonetheless, according to the Ministry of Labor and Employment Promotion, women earn 16 percent less than men performing the same task.³⁴ In addition, few women are promoted to top management positions, where salaries increase dramatically.³⁵

In 2001, the required portion of women candidates was raised to 30 percent, leading to an increase in the number of female representatives in the Peruvian Congress from 11 percent in 2000 to 29 percent in 2008. And in the regional elections of 2010, less than 4 percent of the 324 parties registered to participate failed to comply with the 30 percent requirement.³⁶

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Other indicators reveal deep inequalities for women on a societal level. Peru has one of the highest maternal mortality rates in the Americas, with victims being primarily rural, poor and indigenous women who lack access to emergency care, information on maternal health, and to health staff who can speak indigenous languages.³⁷ Peru's highly restrictive abortion laws and policies also contribute to high maternal mortality rates.³⁸ Despite Peru's poor international standing on this measure, there has been a significant decline in the maternal mortality rate over the past decade.³⁹ Violence against women is another serious problem. A 2011 report from the Ministry of Women and Social Development reveals that partners or ex-partners were responsible for 117 of 160 murders of women during 2010.⁴⁰ Experts note, however, that most occurrences of violence against women are not reported.

Afro-Peruvians represent approximately 8-10 percent of Peru's population and have historically been politically and economically marginalized. In a significant gesture to the Afro-Peruvian population, in December 2009 President García offered an institutional public apology for the slavery to which black Peruvians were subjected until abolition in 1854 and for the subsequent discrimination and marginalization they have endured.⁴¹ One specific complaint among Afro-Peruvian activists is that antidiscrimination legislation focuses primarily on "native" or indigenous peoples, and fails to address discrimination against black Peruvians. Afro-Peruvians are often depicted in racist terms in the print and television media and in private conversation among Peruvians. The NGO Afro-Peruvian Observatory cited more than 350 instances of racist representation in 2010 in six of the leading publications in Peru.

Indigenous peoples account for approximately 40 percent of Peru's population of 29 million. Lack of birth certificates and other official documentation, which leads to exclusion from formal education, formal employment, and full political participation, is prevalent among members of indigenous groups.⁴² One of the most significant issues affecting the government's relationship with indigenous groups relates to the principle of prior consultation before the government can take an action that affects the interests of indigenous groups. A 2010 study estimated that 44 percent of the (then) 231 active violent conflicts in Peru were related to the government's failure to conduct effective prior consultation with indigenous groups.⁴³ Indeed, lack of such consultation was the primary motivation behind the indigenous protests that led to the violent exchange between police and indigenous protestors in Bagua in June 2009 that resulted in the deaths of 23 police officers and 10 civilians.

This issue has become particularly contentious with regard to foreign investment—and mining activities in particular—in and around rural indigenous communities. For government critics, the government has failed to engage in prior consultation that is participatory and consensus-seeking, rather than simply informative. As a signatory to International Labour Organization Convention 169, ratified by Peru in 1994, the state is already subject to legal obligations regarding prior consultation, but disagreement over the convention's scope and dissatisfaction with court rulings have led most indigenous members and activists to favor clear legislation on the issue.⁴⁴ Those who oppose the right to prior consensual consultation of indigenous peoples, including Alan García, not only disagree with the effective veto of government decisions that the practice allegedly enshrines, but also oppose the ambiguous definition of "indigenous" that characterized previous attempts at legislation.⁴⁵ In June 2010 García vetoed the Law on Consultation passed by Congress, arguing that a broad definition of "indigenous" would afford this right to Peruvians who are not "truly" indigenous and expand rights involving indigenous interests in ways that would hinder essential policymaking.⁴⁶

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Notably, the right to consultation would arguably be less important to indigenous groups if the government was more effective at enforcing already existing environmental laws in the extractive industries; currently, lack of enforcement leaves communities facing the costs of environmental disasters they had no hand in approving.⁴⁷

In general, indigenous groups have focused less on combating racism per se, and more on gaining land rights, securing better prices for their products, and implementing or stopping development projects. Some argue that indigenous movements' limited emphasis on racism and discrimination has allowed the government to avoid ameliorating discriminatory practices in schools and courtrooms. Nonetheless, since 2008, over 50 municipalities and regional governments have established and diligently publicized local ordinances that severely sanction establishments that discriminate based on race. The central government has also taken steps to eradicate discrimination by altering its advertising practices to include black and indigenous faces in its messaging campaigns and by fining establishments that refuse entrance to black and indigenous Peruvians.⁴⁸ Still, racial stereotyping and discriminatory practices remain rampant in Peruvian culture and society.

Discrimination against the disabled has been largely ignored until recently, though legal protections for people with disabilities exist in the context of both employment and education. Furthermore, the law provides for preferential terms of credit or financing and access to government contracts for small and microenterprises that employ individuals with disabilities.⁴⁹ Despite these norms, only in 2010 did a disabled person register the first judicial victory on discrimination grounds. The victim of the discrimination was a disabled student and intern, and the four faculty members responsible for the discrimination were suspended from their profession and ordered to pay \$3,500 in damages.⁵⁰

In December 2010 Alan García signed the Law of Religious Liberty, which expands already strong religious freedom in Peru. The legislation prohibits discrimination based on religious belief, allows students to excuse themselves from Peru's obligatory Catholic religious instruction in public schools, allows individuals to receive religious assistance in prisons, hospitals, or police stations, and allows for conscientious objection when societal requirements contradict religious beliefs.⁵¹ Nevertheless, the law maintains the Catholic Church's privileged position in state-church relations, as sanctioned by the Concordat between Peru and the Holy See signed in 1980. By explicitly allowing the government to enter into cooperation agreements with religious institutions that have significant "roots" in the community, the government can maintain the \$750,000 provided annually to finance various Church activities.⁵² Despite the advances, Peru's principal Evangelical leaders oppose the law and plan to initiate a legal process to establish its unconstitutionality.⁵³ Among their grievances are that the law does not declare Peru to be a secular state, that continuation of the Concordat reinforces the privileges of the Catholic Church, and that, most importantly, it merely permits students to opt out of religious instruction in schools rather than eliminating religious education or allowing in alternative faiths.

Peruvian labor rights are fairly strong under the law, but far less effective in practice. Employers frequently circumvent the greater protections granted to permanent workers through the indefinite perpetuation of short-term contracts with "temporary" workers who perform the tasks of permanent workers but who are effectively denied their status and organizational rights.⁵⁴ Such conduct generally goes unpunished even when detected. In 2007, for example, Universal Textil was deemed to have been employing 1,257 permanent workers on temporary contracts, but as the end of 2009 had neither complied with an order to make the contracts

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permanent nor been punished.⁵⁵ Lack of enforcement is also the norm when firms respond to strikes by firing unionized permanent workers or their union leaders and hiring temporary workers, as allegedly occurred at Nestlé and ENI in 2008.⁵⁶ Peruvian labor law facilitates this practice by allowing firms to fire workers for any reason subject to payment of severance. Furthermore, strikes can only be initiated with the authorization of the Ministry of Labor, which can revoke its authorization at any time if the protest is deemed serious or large enough to significantly affect production or inflict some other societal harm.⁵⁷

Recent legislation has further weakened Peruvians' right to strike and protest. This is significant because Peru is a very high-protest society due to the country's ineffective institutional dispute resolution channels. In September 2010, President García issued a set of controversial legislative decrees that reduce the military and police's accountability to Peruvian citizens and provide incentives for more frequent use of force in policing strikes and protests. The decrees exempt military and police personnel from criminal and civil liability for the use of force when these are required to deal with ambiguously-termed "hostile groups." Because of this ambiguity, the exemption could dangerously extend to legal marches, protests and labor strikes. The decrees also allow military and police forces to be judged in military rather than civilian courts when accused of crimes associated with the use of force in these situations.⁵⁸ The constitutionality of some of the measures is currently under judicial review. The stakes are clear: in total, the ombudsman registered the deaths of 191 Peruvians—153 civilians and 38 security force members—in the context of social conflict during García's five-year term, with only rare accountability for the violence.⁵⁹

RULE OF LAW

The institutions responsible for administering and upholding the rule of law in Peru suffer from extremely low credibility in the eyes of the public. In an October 2009 poll of Lima residents, 81 percent of respondents declared that they had little or no trust in the judiciary.⁶⁰ In Peru, justice is often seen as a privilege for the rich and well-connected alone. The profound systemic and cultural changes that are necessary for the judiciary to regain citizens' confidence will take significant time, resources, vigilance, and political will.

Partially as a result of a history of government interference in the judiciary—which hit a zenith under Fujimori—the PJ zealously guards its autonomy, which has sometimes served as an excuse to prevent reform efforts and protect powerful vested interests. The regular judiciary is headed by the Supreme Court, whose president doubles as the chief administrator of the judiciary. The National Council of Magistrates (CNM) is constitutionally charged with the appointment, promotion, and dismissal of judges and prosecutors—including the Supreme Court—while training is the domain of the Judicial Academy (AMAG). Separately, a seven-member Constitutional Tribunal, whose members are appointed by Congress, serves as the final arbiter of the constitutionality of Peru's laws. A 2008 Judicial Career Law improved appointment and evaluation mechanisms, but in 2010 the CNM was rocked by scandals involving bribery requests in exchange for promotions as well as accusations of politically motivated unfair treatment of prosecutors.⁶¹

More broadly, corruption in the judiciary remains rampant. A recent report carried out by the judiciary's Ethics Department revealed that 60 percent of Peruvian judges that have served in

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the last 10 years have been sanctioned for ethics violations; of those sanctioned, 54 percent were removed from their position due to the violation.⁶² These investigations and removals are the result of an active and effective Office of Judicial Control (OCMA) but also reflect the sheer magnitude of the corruption problem within the judiciary.

Compliance with judicial decisions usually occurs but can be inconsistent and slow at times. The abuse of well-intentioned tools such as the *amparo*, a form of legal injunction, has harmed the judiciary's ability to have its decisions enforced. The *amparo* is easily abused by corrupt judges, although such abuse has been somewhat less visible in recent years.

The Peruvian Constitutional Tribunal (TC), created by the 1993 Constitution, has gained some credibility since the fall of Fujimori by exercising its constitutional adjudication powers in a more independent manner.⁶³ The enhanced independence of the TC in the last decade is due in large part to the increased diffusion of democratic and constitutional values among political actors and the desire to avoid a return to autocracy. The TC's consolidation of independence has been abetted by political factors, like the existence of a fragmented Congress and a competitive electoral process, and structural ones, such as an institutional design that prevents Congress and the executive from forcing the TC to reach specific legal conclusions. Yet despite improvements, the TC remains highly politicized and inconsistent, as was particularly evident in its treatment of human rights issues that came before it in the second half of the García administration.

Serious structural, economic, and cultural problems hinder the independent and impartial administration of justice. The system is generally underfunded, and the caseload far outstrips judicial capacity. Instability also diminishes the judicial system's effectiveness and credibility. In November 2010, judicial branch employees throughout the country, including judges, began a month-long strike that exacerbated a docket that already featured a two million case backlog.⁶⁴ Similar strikes, which each involved compensation issues, were carried out in 2009, 2007, and 2004.⁶⁵

All Peruvians charged with a crime are considered innocent until proven guilty and have the right to independent counsel. The difficulty, especially for poor or rural citizens, lies in navigating the justice system. Poor Peruvians deeply mistrust the legal system and often lack access to justice; occasional lynchings and the frequent outbreaks of social conflict are only the most dramatic examples of the lack of judicial intermediation in many parts of Peru. In recent years the state has attempted to increase the numbers of community-selected justices of the peace, as well as hire additional translators and exempt the poor from legal fees, but resources for such projects remain scarce. The government hopes to reap efficiency and equity gains from an overhaul of the criminal procedure code that is gradually being implemented throughout the country. The new process concentrates the investigative process in the public prosecutor's office, which then transfers specific cases to the judiciary for trial and sentencing. The process adopts an oral, accusatory format, which streamlines the process. Early evidence seemed indicate, however, that increased efficiency and judgment will require more time.

The most notable recent development for the rule of law in Peru was the creation of specialized human rights system, as recommended by the CVR, to investigate and prosecute specific cases of human rights violations associated with the internal armed conflict. The most celebrated of these was the Fujimori trial, which marked the first time a former head of state was extradited to his native country to stand trial for human rights abuses, and the first time a democratically elected president was found guilty of such crimes.⁶⁶ The proceedings were widely viewed as fair and impartial, and after his April 2009 conviction on several counts, Fujimori was

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sentenced to 25 years in prison. Though his lawyers have continued their efforts to overturn the ruling, most constitutional experts agree that they have little chance of success. Rampant speculation that Alan García would grant Fujimori a presidential pardon proved unfounded. Fujimori was also convicted on a number of separate criminal charges, including abuse of authority and corruption.

Despite the outcome of the Fujimori trial, there is increasing concern about the fate of other human rights cases, with verdicts to date exonerating a clear majority of defendants.⁶⁷ The CVR recommended the prosecution of 48 specific cases for which it found strong evidence of gross human rights violations. Most of these cases focused on state agents, as the bulk of surviving Shining Path suspects had already been prosecuted. While the special human rights system produced solid rulings in its first years of operation, it has more recently encountered numerous difficulties.

First, the human rights system's mandate was expanded to include drug trafficking, money laundering, kidnapping, and other cases, diluting its focus and greatly increasing its workload. As a result, investigations in the Public Ministry advance at a snail's pace, and judges at the National Criminal Court can dedicate only a few hours a week to human rights cases. Second, in recent years the National Criminal Court has been sharply criticized for issuing decisions that appear to ignore international law as well as the jurisprudence of previous trials. For example, in a binding December 2009 directive, the court found that state agents who are no longer public employees cannot be accused of the crime of enforced disappearance, resulting in acquittals in several high-profile cases.⁶⁸ Human rights activists have also been critical of a government policy, begun under the García administration, by which the state pays for the legal defense of state agents, even though many victims lacked legal representation.

The political climate for accountability efforts has also been extremely hostile. Lack of cooperation by the military has consistently hampered investigations, and both military and García government officials have accused human rights organizations and the judiciary of "persecuting" the armed forces, undermining military morale, and promoting a "terrorist" agenda. García is not a disinterested observer, as several cases involving abuses committed during his 1985–90 presidential term are currently being adjudicated. One of the controversial decrees issued in September 2010 would have retroactively imposed a statute of limitations for war crimes and crimes against humanity, effectively providing amnesty to state agents accused of committing torture and large numbers of murders and disappearances during the 1980s and 1990s. After a domestic and international outcry, the most problematic decree (DL 1097) was rescinded. It remains to be seen whether the Peruvian judiciary will maintain the independence and impartiality it demonstrated in the Fujimori trial as the other cases move forward. In a sign of possible political pressure, human rights prosecutor Cristina Olazábal was accused of breach of duty in early 2010 after submitting a case that held García responsible for a 1985 massacre by the military, which she deemed genocide. The charges against her were dropped a few months later, but the incident could affect prosecutors' behavior in other cases.

Civilian control over the military has improved greatly in Peru; for the most part, security forces do not unduly interfere in the political process. García made the physical and moral restoration of Peru's military a priority for his administration, investing hundreds of millions of dollars in a program to establish a "modern dissuasive" military capacity and calling for the professionalization of the military, including higher substantial salary increases.⁶⁹ García's first minister of defense, Allan Wagner, was seen as having a modernizing vision, centered on the

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idea of fortifying the defense minister's office. Civilian appointees have over time reduced the military's prerogatives over military training and budgets,⁷⁰ and García removed corrupt and verbally belligerent military leaders from leadership positions. Nonetheless, progress has stagnated under Wagner's successors. Corruption in the military and intelligence communities remains rampant, and military intransigence in the face of investigations for human rights abuses continues. The presence of Luis Giampietri as García's vice president served to ensure that military unease about exposure to prosecution would not be ignored. Giampietri, who is accused of directing a violent response to a Shining Path prison revolt at El Frontón prison in 1986, is considered one of the military's fiercest defenders and one of Peru's human rights community's primary opponents.

Property rights are semi-predictable in Peru. The country was an early innovator in land titling, and efforts continue to regularize new urban settlements as well as agricultural lands. Contract enforcement in Peru remains problematic due to the erratic functioning of the legal system. The Commercial Court system, however, which began operation in 2005, has significantly increased the speed and predictability of contract dispute resolution. Most citizens are protected from unjust deprivation of property. Laws safeguarding indigenous territories are considered fairly strong, but these lands can be bought and sold, and loopholes in the regulations have contributed to the social conflicts noted above. Peru ranked 110 of 183 countries for enforcing contracts in the World Bank's Doing Business 2011 report, largely due to the high cost of bringing a claim.⁷¹ Nonetheless, Peru was among the ten countries globally that showed the most improvement in the climate for doing business, largely due to the creation of an online one-stop shop for business registration and the introduction of fast-track procedures for registering property.

Despite longstanding land titling efforts, only 5 percent of the approximately 5,000 communities in the Peruvian Amazon have a property title that allows them to control their territory and manage their communal resources, according to the Institute of Liberty and Democracy.⁷² Few of these titles specify boundaries precise enough to allow the properties to be identified with certainty within a standardized system. Additionally, the slowness and cost of the registry system render it inaccessible to most such communities.⁷³ However, many observers retain faith that additional reforms in titling mechanisms would help resolve the hundreds of disputes among indigenous communities with respect to territorial boundaries.⁷⁴ While more progress has been made on urban property rights, evictions and expropriations remain common and often lead to conflict and even violence.

ANTICORRUPTION AND TRANSPARENCY

Corruption continues to be a grave societal problem and a principal obstacle to increased stability and prosperity in Peru. In 2010, Peru scored 3.5 out of 10 and ranked 78 out of 180 countries on Transparency International's Corruption Perceptions Index; the small score decline, indicating a heightened sense of corruption among Peruvian respondents, came after several years of annual improvements. Direct public opinion polling indicated some differentiation, however. While in 2010, over 70 percent of survey respondents in Lima considered each of the three main branches of government either "corrupt" or "very corrupt," private firms, Peruvian society, and the media

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were all considered less graft-prone. Nonetheless, 40 percent of respondents considered these entities to also be either “corrupt” or “very corrupt.”⁷⁵

Public opinion in Lima suggested that Peruvians were generally very optimistic shortly after García’s entry into office: in 2007, 52 percent of respondents viewed his government as less corrupt than prior governments. By 2010, however, only 26 percent maintained that opinion, while 50 percent viewed the administration as equally corrupt and 20 percent perceived more corruption—a striking result, given the generally more favorable views of García in Lima.⁷⁶

The shift in public opinion appears to have begun in early 2008, and was aggravated by the highly publicized “Petroaudios” scandal that became public in October 2008.⁷⁷ Initial recordings of telephone conversations played on radio and television revealed that Alberto Quimper Herrera—a member of the board of directors of the state-owned corporation Petroperú and a former García tax advisor—had negotiated a large kickback from the Norwegian firm Discover Petroleum for an oil exploration contract (Discover continues to deny having paid any bribes for its concessions). García removed Quimper from his board membership, the president of Petroperú resigned, and all contracts with Discover were suspended. However, additional recordings implicated Prime Minister Jorge del Castillo, provoking the resignation of García’s entire 13-member cabinet in order to avert a pending censure resolution in Congress. The investigation has dragged on ever since amid reports of irregularities, including the mysterious disappearance of key evidence from Public Ministry computers. Despite ongoing prosecutions of Quimper and several other figures, the perception among most Peruvians is that those primarily responsible in the case have not been held accountable.

An offshoot from the Petroaudios case is the Business Track scandal,⁷⁸ whose name stems from the private firm—staffed by former Fujimori naval officers—that surreptitiously and without consent recorded the private telephone conversations central to the petroaudios affair. Five Business Track employees directly involved in the illegal recordings were arrested and incarcerated. The revelation of the widespread incidence of *chuponeo* (eavesdropping) in Peruvian politics was particularly concerning to many Peruvians because of the reminders it offered of the darkest days of the Fujimori era. Additionally, many believe that the publicly released recordings only scratch the surface in terms of the scope of the wiretapping, a theory boosted by the significant pressure placed on prosecutors to avoid further revelations.

The effort to formulate and enforce an effective process to detect, investigate, and prosecute public officials for corruption is a major issue in Peru, given the nature of the legacy of the Fujimori regime. The process is politicized and, to a substantial degree, media driven. Efforts to investigate and prosecute ministers, members of the congress, and members of the judiciary are harmed by these officials’ attempts to hide behind immunity rules for public functionaries. Victims of corruption generally assume that they have few mechanisms to pursue their rights, and few Peruvians report the frequent solicitations of petty bribes by police and bureaucrats.

The effectiveness of the investigation and prosecution system at combating corruption is questionable. Impunity, however, is not universal; hundreds of lower-level officials are fired or prosecuted for corruption each year. Many of their misdeeds are uncovered by Peru’s primary independent auditor, the comptroller general, who is appointed by the president for a seven-year term and must be approved by Congress. The comptroller’s office (CGR) is legally, although not constitutionally, autonomous and is responsible for scrutinizing everything from state purchases to asset-declaration forms. The CGR lacks sanctioning power, however, relying instead on the agencies concerned to take action when improprieties are found. SUNAT, the national tax

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agency, is generally viewed as having increased in efficiency and transparency, and tax collection has both improved and achieved a broader base in recent years.

The current anticorruption legal subsystem was set up during the transitional Paniagua government, but became moribund during the García administration. Shortly after the Petroaudios scandal, García appeared to accelerate his plans to transform Peru's anticorruption framework and enforcement mechanisms, when, in December 2008, his administration published and disseminated a National Plan to Fight Corruption.⁷⁹ The plan was widely praised by international organizations and NGOs, and was modeled after Justicia Viva's recommended anticorruption plan published in 2006.⁸⁰ Unfortunately, it drifted quickly into irrelevance, as had the National Anticorruption Office, a fanfare-laden 2007 initiative.

Another pressing concern is that current disclosure requirements include assets and income but not other types of potential conflicts of interest. In addition, in many cases public officials have previously worked for, sponsored, or lobbied on behalf of the corporate interests they are subsequently charged with supervising and regulating; in the absence of clear and well-enforced "revolving door" rules, this creates potential or manifest conflicts of interest.

In May 2010, Congress passed a notable, though limited, package of anticorruption legislation. Among the most noteworthy acts was the Whistleblower Protection Law, which provides protection from dismissal or reprimands for whistleblowers, confidentiality in reporting acts of corruption, and compensation for the whistleblower upon verification of the proffered evidence.⁸¹ In early 2011, the new criminal procedure code was put into effect for corruption cases in 16 judicial districts, including central and east Lima.⁸²

Peru has still not sufficiently addressed the linkages between collusion and corruption in government contracting. Public procurement in Peru accounts for approximately 11 percent of the Peruvian gross domestic product, and corruption swallows up to 30 percent of the total amount spent on public procurement.⁸³ On average, the number of bidders in procurement processes in Peru is very small, which facilitates collusion and other forms of corruption. In addition, bid floors and ceilings with small bands of possible bids reduce competition and make collusion more likely, resulting in a worse outcome for the state and the taxpayer. A new State Procurement Law signed in November 2008 appears to have shortened the public procurement process, while a new software program installed in 2009 allows government agencies to identify price differentials reported by different firms in the procurement process.⁸⁴

The 2010 Open Budget Index gave Peru a score of 65 out of 100 on transparency in the budgeting process, a relatively favorable result in comparison to both its neighbors and developing countries more broadly. However, the score declined slightly from previous years, and remained negatively affected by Congress's inability to change the executive's budget proposal and its unwillingness to hold public. The index also faulted the government's independent auditing process as insufficiently funded, non-citizen friendly, and deficient in following up on the implementation of past recommendations.⁸⁵

Central to general transparency is the right of access to information. Peru features such a right in both the constitution and in the Law on Transparency and Access to Public Information, but it is not well known and remains underused as a tool to advocate for greater government openness. The executive branch normally does not generally make legislative proposals public, and historical documents and information are also difficult to access.⁸⁶ Peruvians have the right to contest a government decision to withhold information through an administrative dispute settlement process, or through the constitutional process of habeas data.⁸⁷ Despite the existence

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of these mechanisms, in practice substantial economic resources are often required to navigate these processes, a prohibitive hurdle for many Peruvians. Individual agencies and especially subnational governments, however, have made notable progress in posting key documents online and otherwise providing access, although the spirit of transparency varies widely among different agencies and localities.

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