

CRS Report for Congress

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Peruvian Elections in 2000: Congressional Concerns and Policy Approaches

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Summary

In a vote that observers said did not meet minimum conditions for a free and fair election, President Alberto Fujimori of Peru won a third term on May 28. The United States urged sanctions, but the OAS sent a high-level mission to press Peru for democratic reforms instead. Corruption scandals and lessened support led Fujimori to agree to new elections in April 2001 and then, on November 20, to resign.

The 106th Congress called for the review and modification of U.S. relations with Peru if elections were not judged free and fair by international observers, and then for the withholding of aid if democratic progress was not made. Other concerns, particularly the curbing of illegal drug trafficking and protecting security interests, affect how the United States responds to the situation in Peru. Options for Congress range from a cautious approach aimed at protecting security interests to applying greater pressure on the government of Peru to respect and develop democratic processes.

Background to Peru's Elections¹

Peru's first round elections were held on April 9, 2000. All 120 seats of the unicameral legislature were contested along with the presidency. Incumbent President Alberto Fujimori ran for an unprecedented third term. First elected in 1990, Fujimori did much to tame destabilizing factors such as terrorism, drug trafficking, hyperinflation, and border disputes. But Fujimori's efforts to maintain power created constitutional crises in Peru, and left its democratic institutions extremely weak. Traditional political parties were discredited in the 1980s, and current parties are mainly vehicles for an individual's candidacy.

¹ Sources for this report include U.S. Department of State, 1999 Country Reports on Human Rights Practices, 2/25/00, International Narcotics Control Strategy Report, 3/00, press releases; Statements of the National Democratic Institute for International Affairs/Carter Center Election Delegation to Peru, 12/3/99-5/3/00; Freedom House, Press Freedom Survey, 1/1/99; OAS Inter-American Commission on Human Rights, annual report 1998; articles from major news sources.

Basic elements of a democracy include effective and independent legislative and judicial branches of government, freedom of expression, respect for human rights, and free elections. A broad array of organizations, both domestic and international, have criticized Fujimori for impeding the development of these democratic elements. Fujimori effectively controls both the legislature and judiciary, inhibiting the development of either as independent democratic institutions. Freedom House classifies Peru, with a population of 25 million, as the only country in the hemisphere, besides Cuba, where the press is “not free.” The State Department’s 2000 Human Rights report says that despite some improvements, the Peruvian “Government’s human rights record was poor in several areas” in 1999, including in the protection of civil and political rights, extrajudicial killings by security forces, and lack of accountability within the armed forces.

In terms of the electoral environment, an international pre-election delegation to Peru organized by the National Democratic Institute for International Affairs (NDI) and the Carter Center stated on March 24, 2000 that, “The conditions for a fair election campaign have not been established. Irreparable damage to the integrity of the election process has already been done, but improvements still can and should be made because candidates and parties are competing, citizens are participating in the process, and the electoral outcomes are not assured.”

In early March, support for one of the other eight presidential challengers, Alejandro Toledo, began to rise dramatically, suddenly calling into question the long-held assumption that Fujimori would win the election in the first round. Toledo, a former adviser to the World Bank, holds a doctorate in economics from Stanford University, and emphasizes his humble origins – he is one of 16 children from a poor family and shined shoes as a boy – and his Indian ancestry. Continued economic reform and ethnic pride were key issues in his campaign.

No candidate won more than 50% of the votes, so a second round of elections were to be held for the presidency May 28. But both Peruvian and international observers reported that conditions for a free and fair election still did not exist. The Organization of American States (OAS) observer mission and Peruvian monitoring organization, Transparencia, withdrew from monitoring the election the week before the runoff. Toledo withdrew from the race and called for a national boycott of the elections. All said they would reconsider participating in the elections if they were delayed to allow time to resolve computer problems and other irregularities. Fujimori would not delay the vote.

Official results showed that, of total votes cast, Fujimori won 51.2%, Toledo 17.7%. Toledo had called on voters to boycott the vote or spoil their ballots; almost 30% of ballots were spoiled.

The Electoral Environment

Opposition candidates and many other observers believe that electoral conditions in Peru did not represent a “level playing field” but an environment that heavily, and often unfairly, favored the incumbent. Numerous Peruvian and international election monitoring organizations and press coverage indicated areas of concern such as the executive branch’s manipulation of the judicial system to achieve its desired outcome, questions regarding the independence and impartiality of the electoral bodies responsible for organizing Peru’s elections, and use of public resources for campaign purposes. Concerns regarding

freedom of the press and access to information involved unequal media access, media bias, and harassment of candidates and domestic election observers.

The Re-election Issue. Many civic groups and other observers question the constitutionality of Fujimori's bid for a third term. The controversy revolves around whether Fujimori's first term should be counted toward the current constitution's two-term limit, and Fujimori's manipulation of the political system to ensure he could run for a third term. The constitution under which Fujimori was first elected in 1990 limited presidents to one term. In what became known as a "self-coup," Fujimori dissolved Congress and took control of the judiciary in 1992. He then oversaw the drafting of a new constitution that went into effect in 1993 and which allowed a president to serve two consecutive terms. Fujimori ran again, and won a second five-year term in 1995.

In 1996, the legislature, dominated by a pro-Fujimori majority, passed a "Law of Authentic Interpretation" which stated that Fujimori's election under the old constitution did not count against the two-term limit of the current constitution, essentially paving the way for Fujimori to run for a third term. In 1997, the Constitutional Tribunal issued an opinion that the Law of Authentic Interpretation was not applicable, with three members of the court signing, and four abstaining. The three members who signed the opinion were removed from the Tribunal by the Congress. The Inter-American Commission on Human Rights recommended in 1998 that the government reinstate the three dismissed justices and restore the Tribunal's power to rule on constitutional issues. The government announced it would not comply with the recommendation, leaving the Tribunal without the quorum needed to rule on a law's constitutionality, its main function.

Civic organizations wished to put the matter of a third term to a national referendum, and collected some 1.4 million signatures – more than the 10% of registered voters' signatures required to do so. The National Elections Tribunal (Jurado Nacional de Elecciones, or JNE) thwarted this effort by reversing an earlier decision and declaring that Congress had to approve the referendum issue before it could proceed. Congress then killed the referendum by voting against it. Citizens' ability to challenge such actions was further hampered by the Constitutional Tribunal's inability to act, and by Fujimori's withdrawal of Peru from the jurisdiction of the Inter-American Court for Human Rights.

When President Fujimori registered his candidacy in December 1999, 18 motions challenging it were immediately filed before the JNE by civic groups, opposition political parties, and the Bar Association of Lima. The JNE, which, according to the Constitution, resolves all electoral controversies, rejected all 18 motions within days. According to the NDI/Carter Center's second report, all of these steps appeared to be "an orchestration aimed to ensure a specific legal outcome on the issues of the President standing for re-election – irrespective of the merits of the legal arguments." Taken as a whole, the report said, "these measures undermine the credibility of the political process in Peru."

Freedom of the Press. Concern over the lack of freedom of the press in Peru did not begin with the election campaign period. Members of the Peruvian press have repeatedly complained of government interference in their work throughout much of Fujimori's tenure. Journalists there have been threatened to the extent that some have sought political asylum in the United States; two have been killed in recent years. Since 1992, according to Freedom House, "many print and broadcast journalists have been pressured into self-censorship by a broad government campaign of intimidation [which

includes] death threats, libel suits, withholding of advertising, police harassment, arbitrary detention, and physical mistreatment.” The OAS Special Rapporteur for Freedom of Expression reported receiving evidence that “would indicate that certain sectors of the Peruvian government [including the Peruvian Intelligence Service] have the intention of silencing journalists who have expressed opinions critical of authorities.”

Throughout the election period, smear campaigns against leading opposition candidates were waged in the tabloid press. Domestic election monitors, the Ombudsman’s Office, and news media critical of the government were also vilified by elements of the media, according to various international reports. Many observers believe these efforts were orchestrated by government officials. Access to the media was also reported to be highly imbalanced. Opposition candidate Toledo said modest improvements in media coverage just prior to elections were insufficient to make up for months of unfair and dirty tactics, which, in addition to the smear campaigns against him, he said included phone-taps, harassment, and death threats. Toledo said he would not re-enter the race unless he was also guaranteed equal access to the media.

U.S. Interests in Peru

The United States and Peru enjoy generally friendly relations. The United States provided almost \$120 million in economic assistance to Peru in 1999, and the Clinton Administration requested about \$121 million for Peru for 2000. The stated goals of U.S. assistance are broader citizen participation and more responsive government; increased incomes for Peru’s poor; improved health of high risk populations; improved environmental conditions; and reduced production of illicit narcotics.

The primary U.S. interest in Peru has been the reduction of illicit drugs production and trafficking. Peru is considered fully cooperative in working towards the goals of the U.S.-Peruvian counternarcotics framework agreement. Under Fujimori, Peru reduced illegal production of coca leaf by 66% over the past 4 years. Nonetheless, Peru remains one of the world’s largest suppliers of coca leaf for cocaine. In legislation and committee reports the 106th Congress expressed concern, however, about the Clinton Administration’s provision of counternarcotics assistance to the Peruvian intelligence service, which is widely reported to be responsible for a wide array of human rights violations.

The United States has also been concerned about security in Peru and the Andean region. Fujimori enhanced security on a national level, although his government also had one of the worst human rights records in the Western Hemisphere. He greatly debilitated Peru’s two guerrilla insurgency groups, the Shining Path (Sendero Luminoso) and the Tupac Amaru Revolutionary Movement (MRTA), which, at the time Fujimori took office, had terrorized the country for a decade. In 1995, a long-standing border conflict between Peru and Ecuador flared briefly into armed conflict; in 1998 the two countries signed an agreement to resolve the dispute peacefully.

U.S. Response to Election Conditions in Peru

Early in Peru’s electoral process, the House and Senate passed resolutions (**H.Res. 57**, passed October 4, 1999; **S.Res. 209**, passed November 8, 1999) expressing concern

over interference with freedom of the press and the independence of judicial and electoral institutions in Peru; the House called such actions “a threat to democracy in that country.” The Clinton Administration funded election monitoring missions by the NDI and Carter Center, who, at the invitation of Peru’s government, began conducting evaluations of electoral conditions in Peru in December 1999. In early March 2000, the Clinton Administration echoed the mission’s serious concerns about pre-election conditions in Peru, outlining seven specific steps the Peruvian government should take to establish confidence in the political and electoral processes, including encouraging improved media coverage of the election process “so voters can make informed and free choices at the ballot box,” and ceasing attacks on opposition candidates, domestic election observers, and Peru’s Ombudsman. Late in March, the NDI/Carter Center mission acknowledged steps taken by Peru’s government to respond to earlier recommendations, but stated that many of these steps came late, “and have not proven sufficient to overcome the media disadvantage for the opposition, to overcome the apparent lack of public awareness about voting procedures or to counteract perceptions of impunity for electoral abuse.” The Clinton Administration concurred with these findings, and similar ones by the OAS, stating that the government’s actions “still fall far short of what is required to ensure a fully democratic process....”

Peru’s April 9 elections were followed by three tense days of delayed results, widespread suspicion of fraud, and public protests. After international observers said they would not validate a first-round victory by President Fujimori, Peru announced there would be a second round of elections, though election officials denied there was any connection between the two acts. A runoff was scheduled for May 28 between Fujimori, whom election officials said won 49.84% of the vote, and Alejandro Toledo, officially reported to have won 40.31%. Because ballots were destroyed after being tallied, as allowed by Peruvian law, proving ballot tampering or conducting a re-count, was impossible. President Clinton signed a congressional resolution emphasizing the importance of free, fair, and democratic elections in Peru and warning that U.S. policy toward Peru would be reviewed in the absence of such elections (see below).

Leading up to the runoff election, the NDI/Carter Center delegation reported on May 5 that: “Unless immediate and comprehensive improvements are made to the political environment surrounding the presidential runoff election, as well as to administrative and technical procedures required for election day and the consolidation of results, Peru’s election process will ultimately fail to meet minimum international standards for democratic elections....At this junction, however, the credibility of the election process is at risk.” The OAS’s assessments were similar, and the OAS called for a delay in the runoff elections to correct computer and other problems that left the process open to fraud. The Clinton Administration said it supported the OAS’s recommendations.

Following the elections, the Clinton Administration at first called the election invalid. After other hemispheric nations refused to follow suit, the Administration softened its stance to an expression of “deep regret” that Peru had proceeded with the vote under conditions judged as unfair by the OAS observer mission. The OAS rejected U.S. efforts to condemn Peru’s elections, and impose sanctions. Instead it passed a resolution expressing concern over election irregularities, and sent a high-level mission to Peru to press for democratic reforms. OAS officials met with Fujimori, Toledo, and other members of the political community. They issued an agenda calling for reforms to establish an independent judicial system, guarantee press freedom, correct flaws in the electoral

process, and provide oversight of the military and intelligence services. The OAS set up a permanent office in Lima to mediate a national dialogue and oversee implementation of the reforms by late 2002.

In the midst of negotiations with the opposition on the reform agenda, corruption scandals broke relating to intelligence chief Vladimiro Montesinos. Fujimori agreed to early elections, in April 2001, in which he said he would not run, and then, as he lost more support, he resigned, on Nov. 20. A constitutionally appointed interim government, headed by President Valentin Paniagua, is overseeing preparations for the April elections.

Congressional Policy Approaches. Some observers advocate a cautious response to the weakening of democratic practices in Peru: the United States should continue to encourage the government to take steps to further democratic processes in Peru, but not take strong actions against the government. Such advocates argue that the United States has greater concerns in the region, such as economic and political instability in Colombia, Ecuador, and Venezuela. With crises fomenting in Peru's neighboring countries, this view advocates avoiding stimulating crises in Peru, which under Fujimori had become politically and economically more stable than in the past. Noting that historically the United States has had minimal influence on Peru, this approach would avoid antagonizing Peru's government in order to ensure continued cooperation on counternarcotics and other issues of U.S. concern. Opponents to this approach argue that further erosion of democratic practices in Peru is itself a destabilizing force in Peru and in the region, and needs to be addressed aggressively to protect U.S. interests.

Others advocate applying greater political pressure on the government of Peru to respect democracy. This approach is buoyed by past U.S. successes, in conjunction with the international community in recent years, in pressuring Peru to enact democratic reforms, such as the reestablishment of the Peruvian Congress in 1993, the holding of elections in 1995, and the creation in 2000 of a commission to review allegations of innocent Peruvians in jail on terrorist charges. Peru adopted some suggestions made by the Department of State and the NDI/Carter Center pre-election delegation in the recent election process. Winning reelection under what have been judged to be unfair conditions would not by law automatically trigger formal economic sanctions as happens in the case of a military coup. But some observers said an election fraudulently won would be the equivalent of a civilian coup d'état, and urged sanctions and withdrawal of recognition when observers deemed that to be the case in Peru.

Congress called for pressure to be applied if Peru does not improve its respect for democracy. **S.J.Res. 43/ P.L. 106-186** called for modifying U.S. political, economic, and military relations with Peru, and working with other democracies toward a restoration of democracy in Peru, should elections be deemed not free or fair. Supporters mentioned reevaluating support for international financial institution loans to Peru as one means of applying economic pressure. Opponents might urge caution in any approach they believe could contribute to instability in Peru.

The FY2001 Foreign Operations Appropriations Act (**P.L.106-429**, Sec.530), signed Oct. 24, 2000, calls for periodic Administration reports on whether Peru has made progress in democratic development; prohibits funds to Peru unless progress has been made; earmarks funds for nongovernmental organizations and the OAS to promote democracy.

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