

THE INTER-AMERICAN PROCESS

The government of Peru is a member of an inter-governmental body called the Organization of American States (OAS). As the name suggests, the members of this group include most countries in North, Central and South America. It is likened to the United Nations on a regional level. Peru became a member of the OAS in 1948, the year it was created.

The OAS has two bodies that ensure human rights in the Americas. The first is the Inter-American Commission on Human Rights (IACHR) located in Washington, D.C. The second is the Inter-American Court of Human Rights (the Court), headquartered in San José, Costa Rica. Although the seven members of the Commission are elected by the OAS body, the IACHR works independently of the OAS.

If an individual or organization issues a complaint of a human rights violation by a member state (country) of the OAS, the Inter-American Commission reviews it. According to the IACHR website there are around 800 complaints before the Commission currently. The guideline for reviewing these petitions of complaint is the American Convention on Human Rights, or if the state such as the U.S. has not ratified this document, the more general American Declaration is used. The American Convention

on Human Rights has been ratified by 25 member states including Peru. Complaints can only be submitted after all domestic means for resolution have been tried. The IACHR determines this before stating whether a case is admissible. There is an exception to this rule if there is no chance for due process in the accused state or if the state has caused excessive delays in the case. Once the IACHR begins a case, both the Government and the other party must be in communication with the IACHR and respond to the Commission's requests for documents, on site visits, and other information. The IACHR may hold a hearing to try to find a solution to which both parties can agree. To finalize the information gathering stage, the IACHR writes a report and submits it to the accused government. This includes recommendations with which the state is usually given a number of months to comply.

When the time has expired, the IACHR may publish their report, and possibly write a second report. The state will again be given time to comply. If there is no compliance then the Commission can publish this second report or take their findings and recommendations to the

The Inter-American Human Rights Process

The **judicial process**, including all possible appeals, is finished within the Country in which the case originated (i.e., the "State")

A request to review the case is submitted to the **Inter-American Commission on Human Rights (i.e., the "IACHR")** which determines the admissibility.

The **IACHR** thoroughly reviews the admissible case, holds hearings, and makes a determination.

The **IACHR** publishes the findings in its annual report that is available to the public.

OR

The **IACHR** continues with the process bringing the case against the State to the **Inter-American Court of Human Rights (i.e., the "Court")**.

The **Court** gathers all the documents and decides whether or not to hear the case.

If the case is accepted, the **Court** requests additional materials , holds hearings, and releases its final decision. All States that are members of the Court must comply with the rulings of the Court.



Inter-American Court of Human Rights.

The decision to take a case to the Court is based on how best to serve the human rights of the party whose rights have been violated. The Commission will represent their recommendations and the state will have to defend and explain why there has been no compliance on their

behalf. The Court process can last a number of years and includes several stages. Evidence is gathered from both sides, there is a hearing, and then the Court issues a final summary of recommendations. The accused state is required to comply as a member state of the Court.

**Committee to
Free Lori Berenson**
A young woman held political prisoner in Perú.



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Lori's Case in the Inter-American System

Lori Berenson was arrested in November 1995. She has been unjustly imprisoned since then. She was tried twice, once in a military court and once in a civilian court. In the second trial she was convicted of collaboration with a subversive organization and sentenced to 20 years. A petition was put forth in the Inter-American Commission on Human Rights (IACHR) after the first trial and supplemented after the second trial. (see *Inter-American Process*). The Commission issued a ruling in the spring of 2002.

The basic conclusions of the Commission were that in neither the military trial nor the civil trial was Lori given due process. In April 2002, Peru was given 90 days in which to comply with the IACHR's recommendations. When Peru refused to comply within that time period, the Commission had a decision to publish their recommendations or to take Peru to the Court. Because of



the rules of the American Convention on Human Rights, the full petition cannot be made public. However, included in the IACHR 2002 Annual Report were some statements by the Commission in its petition to the Court. The IACHR states that there were "violations of the human rights of Ms. Lori Helene Berenson Mejia in the context of both a trial to which she was subjected under the military legal system and another trial in the ordinary criminal law system, and on account of the inhumane conditions of her imprisonment in the Yanamayo penitentiary."

The Commission also said that Lori was held in the Yanamayo prison from

January 17, 1996 to October 7, 1998, "to the detriment of Ms. Berenson of the rights to a fair trial, freedom from ex post facto laws, and humane treatment..." Also that "the laws used to try and convict Ms. Berenson involved a violation by the Peruvian State of its duty to adopt provisions under domestic law pursuant to Article 2 of the American Convention."

The IACHR also demanded that Peru give monetary reparations to Lori, and "adopt immediately, in accordance with domestic law, all measures needed to put an end to the violation of Ms. Lori Berenson's human rights [...] and, specifically, to ensure Ms. Berenson's freedom to exercise the human rights that were violated."

The Court was told to require Peru "to take the necessary steps to amend Decree Laws 25475 and 25659 in such a way as to make them compatible with the American Convention on Human Rights."

It is clear that the Inter-American Commission has confirmed the Committee to Free Lori Berenson's (CFLB) beliefs, that Lori has been wrongfully held since November 1995. The only acceptable way to make amends for these egregious violations would include her release. In addition, the recommendation to reform the antiterrorist laws, as international and Peruvian human rights groups have urged for many years, is telling Perú to demonstrate a commitment to improving human rights for all its people.

On September 6, 2002, The Inter-American Court accepted the IACHR's petition. This case pits Peru against the Inter-American Commission on Human Rights. The Peruvian state must defend its belief that it was not necessary to comply with the Commission's recommendations. The Commission will have to reiterate why it came to its recommendations. A hearing will not take place until early 2004 and the decision will most probably not be rendered until the fall of 2004. Based on precedent cases at this Court, the CFLB believes this decision will be in Lori's favor and her release will follow (see *Similar Cases*). In the meantime, it is still important to explain to our government officials why Lori should not have to sit in jail another minute.



Similar Cases in The Inter-American Court



Loayza-Tamayo Case : A Peruvian citizen and a professor at the Universidad San Martín de Porres had been arrested, tortured, raped, and was tried in a military court and then in a civilian court on charges of terrorism. The Court stated that Peru had violated Loayza-Tamayo's personal liberty, right to human treatment, and numerous judicial guarantees. Peru was ordered to release Ms. Loayza-Tamayo and compensate her for her expenses and suffering.

Cesti Hurtado Case : Gustavo Cesti Hurtado was arrested, deprived of his liberty and sentenced, though a habeas corpus action had ruled that he should be freed. The Court ruled that Peru should comply with the habeas corpus petition, and the State violated the American Convention on Human Rights. Peru was ordered to annul the trial and arrest and pay reparations.

Castillo Petruzzi et Al Case : Chilean citizens Mr. Jaime Francisco Sebastián Castillo Petruzzi, Mrs. María Concepción Pincheira Sáez, Mr. Lautaro Enrique Mellado Saavedra and Mr. Alejandro Luis Astorga Valdez, were convicted of treason under Peruvian Decree-Law No. 25,659, and sentenced to life in prison. The Court ruled that Peru must amend the anti-terrorist laws under which they were tried, and reimburse the victims and their next of kin for trial costs.

Information collected from the OAS website: www.oas.org