



FUJIMORI ON TRIAL

Ex-President Found Guilty of Grave Human Rights Violations

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Jo-Marie Burt, Associate Professor of Political Science at George Mason University, and Coletta Youngers, WOLA Senior Fellow, were in Lima in April 2009 to observe the conclusion of the trial of former Peruvian President Alberto Fujimori, who was charged with ultimate responsibility in four notorious human rights cases. The following is a report on their observations of the unprecedented trial, the verdict, and the context in which the appeals process is going forward.

On April 7, 2009, after 16 months of judicial proceedings, the Special Criminal Court of Peru's Supreme Court found former Peruvian president Alberto Fujimori (1990-2000) guilty in all four cases of human rights violations of which he stood accused. In its unanimous decision, the Court argued that the gravity and extent of the crimes – and the status of the accused as head of state when the crimes were committed – warranted the imposition of the maximum penalty allowable by Peruvian law, a 25-year prison sentence.¹ The case now goes to a final appeal.

The trial of Fujimori contributes to the strengthening of the rule of law and democracy in Peru and is a genuine milestone in the struggle against impunity in the region. It is the first time that a democratically elected head of state in Latin America has been found guilty of committing crimes against humanity.² It is also the first time that a former president has been extradited to his home country to face charges for such crimes. In other such cases – such as Charles Taylor or Slobodon Milosevic – trials were carried out in internationally constituted courts. Peru, in contrast, has shown that national governments can hold their former leaders accountable; not even a former head of state is above the law.

¹ Although the Prosecutor asked for a longer sentence, this was the maximum sentence by law at the time the atrocities were committed.

² Juan María Bordaberry became president of Uruguay in 1973 through a flawed electoral process, and then dissolved congress and the judiciary and ruled with the backing of the armed forces until he himself was deposed by the military in 1976. He was arrested in 2006 and is currently being prosecuted for various human rights violations.

The trial of Alberto Fujimori was an exemplary process, setting a new standard for Peruvian courts. It clearly met the international standards for a fair, independent and impartial trial. Fujimori's due process rights were guaranteed and he was given ample opportunity to defend himself in a court of law, and the trial was conducted in a transparent manner.

National and international human rights groups enthusiastically commended the Peruvian Supreme Court for the integrity of the process throughout the trial and for ensuring justice. The U.S. government's prepared statement noted that: "This verdict is a powerful statement against impunity, and underscores the importance of the rule of law as a foundation of democratic government."

The Integrity of the Process

The Fujimori trial began on December 10, 2007, just a few months after the Chilean Supreme Court granted the Peruvian government's request to extradite the former president on several counts of human rights violations, usurpation of authority, and corruption. Fujimori was prosecuted for his role in four notorious human rights cases: the Barrios Altos massacre of 1991, in which 15 people were killed and four gravely wounded; the disappearance and later killing of nine students and a professor from the Cantuta University in 1992; and the kidnappings of journalist Gustavo Gorriti and businessman Samuel Dyer in the aftermath of the April 5, 1992, *autogolpe*, or self-coup, in which Fujimori closed congress, suspended the constitution and took control of the judiciary with the backing of the armed forces. In the cases of Barrios Altos and Cantuta, the killings were carried out by the Colina Group, a clandestine death squad that operated out of the Army Intelligence Service (SIE) and whose purpose was to eliminate suspected guerrilla sympathizers.

International observers from organizations including WOLA, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), and the Center for Justice and International Law (CEJIL) widely agree that the judicial process was conducted in a highly professional manner, and that the panel of three Supreme Court justices who oversaw the case succeeded in carrying out a fair, impartial trial with full due process guarantees. If anything, the Court erred on the side of making concessions to the defense in order to avoid any accusations of political bias.

It is important also to highlight the professional and exemplary performance of the Public Ministry, which formulated the accusation against Fujimori. The Public Ministry conducted a rigorous investigation of the four human rights cases and the broader context in which they occurred, and the arguments and evidence presented in Court by chief public prosecutor José Peláez and adjunct public prosecutor Avelino Guillén were compelling. For example, the Court accepted the prosecution's argument that Fujimori developed a two-pronged counterinsurgency strategy, which is described below.

The tribunal was presided over by Supreme Court justices César San Martín, Víctor Prado, and Hugo Príncipe. The Court sought to ensure scrupulous observance of Peruvian law throughout the judicial process, and made every effort to guarantee the due process rights of the accused. Fujimori's defense lawyer, César Nakasaki, was permitted to present witnesses, documents, audiovisual material, and any other evidence he deemed pertinent to the case. The Court gave Nakasaki more than ample time to present his arguments in defense of his

client, as well as in cross-examinations of prosecution witnesses. Fujimori himself was allowed to address the tribunal at the very start of the process, after each witness presented his or her testimony, and in a final closing argument at the end of the trial. Indeed, Fujimori's lawyer did not question the impartiality of the tribunal nor did he claim that his client's due process rights had been compromised. In short, Fujimori was given ample opportunity to defend himself in a court of law.

The tribunal also sought to guarantee the fairness and impartiality of the judicial process by assuring transparency. To this end, the judges allowed the media direct access to the proceedings. Live coverage was made available to the electronic media, though only one cable TV channel, *Canal N*, broadcast the trial in its entirety from start to finish. Other TV stations broadcast the process in segments or reported on highlights of the trial. Several radio stations broadcast the trial proceedings in full or in part as well. The Special Criminal Court made transcripts and videotapes of each day's proceedings available to the defense and prosecution. In addition, the Court prepared brief summaries of each session and made them publicly available on its website.

The Court also permitted survivors and family members of the victims of the four human rights cases, as well as Fujimori's family members, friends, and close political associates, to sit as permanent observers to the trial. Via prior registration, human rights activists, academics, and international observers were also permitted to observe the process.

As soon as the guilty verdict was announced, some media outlets well known for backing Fujimori began to circulate arguments aimed at undermining the credibility of the president of the tribunal, César San Martín. For example, some suggested that San Martín was motivated by revenge against Fujimori, since he had been fired as a judge after the 1992 *autogolpe*. However, prior to the verdict, Fujimori's defense lawyers never challenged San Martín's participation in tribunal, which they could have done legally.

The Verdict

The verdict was handed down on the morning of April 7, 2009, after 16 months of proceedings, involving 161 sessions, more than 80 witnesses, nearly two dozen experts, thousands of pages of documentary evidence, and several hours of audiovisual evidence.³ The tribunal took extraordinary security measures to guarantee that there would be no violence in the aftermath of the reading of the verdict. Heavily armed police contingents were present on the outskirts of the courtroom, in the observation room and in the auxiliary press room. While there were minor incidents of violence, the massive protests predicted by Fujimori supporters did not materialize.

The sentence was widely hailed as exceptionally thorough and analytically sound, which will make it harder to overturn on appeal. It details in a highly structured and precise manner the elements that led the Court to its unanimous decision. Of particular significance, former president Fujimori was convicted of *autoría mediata*, which in Peruvian law is attributed to those who have the power to order and direct the system and individuals who commit crimes, or in this case, human rights violations. (This is also commonly defined as

³ The full sentence is accessible online at: <http://blog.dhperu.org/?p=2896>.

perpetration by means.⁴) The tribunal also specifically stated that they considered the four cases of human rights violations to be “crimes of state,” as well as “crimes against humanity.” The latter is particularly significant, since in international law, crimes against humanity are not subject to statutes of limitation, and amnesties or pardons are inapplicable.

Judge San Martín began the announcement of the verdict by clarifying the methodology adopted by the tribunal, noting that each of the three judges were dedicated exclusively to the Fujimori case and that they had developed a team of 20 research associates to assist them in reviewing the vast amount of evidence presented during the course of the trial. He then stated that the tribunal had found Fujimori to be guilty, and that the verdict was unanimous on all four counts. He explained that the sentence, which is more than 700 pages long, would be immediately placed on the Special Criminal Court’s website upon the conclusion of the trial.⁵ He noted that the sentence addresses each of the objections of the defense regarding the evidence offered in court, explaining why it considered the defense’s arguments to be invalid or incoherent, as well as laying out the existing evidence and established facts upon which the judges based their decision.

The sentence outlines the institutional framework in which Fujimori rose to power and, after 1991, redefined the nation’s counterinsurgency strategy. This new strategy consisted of a formal public strategy that claimed to respect human rights, and at the same time, a parallel, secret strategy designed to eliminate suspected subversives. As part of this restructuring of counterinsurgency strategy, Fujimori created the National Intelligence Service (SIN) and granted responsibility for this instrument of power to Vladimiro Montesinos, who became the *de facto* head of the SIN, and to Nicolás Hermoza Ríos, head of the army and commander in chief of the Peruvian armed forces. The Court also established that Fujimori ordered that Montesinos have complete control over the SIN’s budget, and that he act as Fujimori’s representative and intermediary vis-à-vis the armed forces.

In effect, the Court argues that Fujimori redefined and personally directed the new counterinsurgency strategy, and that under the rubric of the SIN as the key planning agency, Montesinos designated the army intelligence services (the DINTE and the SIE) as the implementers of that strategy. This resulted in the creation of the Colina Group, whose primary purpose was to eliminate suspected subversives. Through his control over the army and the intelligence services, the Court argues, Fujimori had direct control over and responsibility for the acts of the Colina Group. The case of the Cantuta massacre is particularly illustrative: According to interviews with Major Santiago Martín Rivas, the operative head of the Colina Group, in the aftermath of the July 16, 1992, Shining Path bombing of Tarata Street in the middle-class neighborhood of Miraflores, Fujimori himself decided to launch a powerful military operation in response, leading to the forced disappearance and later killing of nine students and a university professor.

The Court confirmed that the Colina Group was active during a 15-month period between 1991 and 1992, and that it committed at least 50 assassinations, including those of Barrios Altos and La Cantuta. The Court also established that when aspects of the Colina group’s

⁴ Shining Path leader Abimael Guzmán was also convicted of *autoría mediata*.

⁵ The website of the Special Criminal Court is:
<http://www.pj.gob.pe/CorteSuprema/spe/index.asp?opcion=inicio>.

activities came into public light, the State engaged in a series of actions designed to cover up these crimes, which were never duly punished and whose authors were ultimately protected with an amnesty law passed by the pro-Fujimori congress and promulgated by Fujimori himself.

Criminal Sanction and Reparations

The judges argued that the evidence presented during the course of the trial led them to the “absolutely rational conclusion” that the four charges against Fujimori had been duly proven and his guilt established. The “gravity and extent of the crimes,” in addition to the “nature and condition of the accused as former head of state,” led them to the decision to apply the maximum sentence allowable by Peruvian law at the time the crimes were committed: 25 years in prison.

As the convictions in the cases of Gustavo Gorriti and Samuel Dyer are for aggravated kidnapping, by Peruvian law Fujimori cannot be pardoned and the normal reductions in time served for good behavior do not apply; Fujimori must serve at least three-quarters of his sentence. More significantly, international law clearly states that pardons or amnesties cannot be granted to those convicted of crimes against humanity. As Fujimori is 70 years old, if the verdict is upheld on appeal he will most likely spend the rest of his life in jail.

Significantly, the Court found that the evidence pointed to a pattern of systemic violation of human rights, and as noted above, defined these as “state crimes” and “crimes against humanity.” This led the tribunal to recommend the prosecution of several other key figures, including Montesinos and Hermoza Ríos – already on trial for numerous other cases – for human rights violations.

In addition to the criminal sentence, the Court ruled that Fujimori is to pay 187,200 *soles* (US\$60,000) to the families of the victims in the Barrios Altos and La Cantuta cases and 46,800 *soles* (US\$15,000) each to Gorriti and Dyer.⁶ In its ruling, the tribunal makes a clear distinction between reparations the Peruvian state must pay as a result of the Barrios Altos and La Cantuta massacres, and the civil reparations owed by Fujimori. Among the non-economic reparations, the tribunal ruled that there is no evidence that those killed in the Barrios Altos and La Cantuta cases or their family members have any connection to Shining Path. This was a major victory for the family members, who have faced stigmatization, hostility and threats as a result of their fight for justice.

Additional Jurisdictional Advances

Three of the Court’s decisions regarding the evidence considered in the final verdict could impact on future rulings in Peru and in other countries. First, the tribunal ruled – as have other courts in Latin America – that declassified U.S. documents can be used as

⁶ Survivors and relatives of the victims of Barrios Altos received reparations from the Peruvian state following a ruling by the Inter-American Court of Human Rights. Most of the family members of the Cantuta massacre are slated to receive reparations payments by the state, also prompted by a December 2006 ruling by the Inter-American Court. The Special Criminal Court ruled that Fujimori should pay a larger sum for two of the victims’ family members who are not included in this ruling.

complementary evidence. While recognizing the limitations inherent in such documentation, the sentence provides extensive details on seven of the declassified documents obtained by the non-governmental National Security Archive and presented by the prosecutors as evidence in the Fujimori trial. The tribunal declared that while the documents could not be used as evidence of direct proof of a crime, they can help corroborate evidence and information presented by the prosecution. The judges also stated that the documents backed up the prosecution's claim of a two-tiered counterinsurgency strategy, one public and one secret, as described above. One cable sent from the U.S. Embassy in Peru to the State Department in Washington states that the U.S. Ambassador at the time, Anthony Quainton, raised concerns with Fujimori about the Barrios Altos killings well before Fujimori claimed to have first heard about the case. Several documents detail Fujimori's hands-on approach to dealing with the insurgency and his control over the armed forces and intelligence services, providing additional evidence for the charge of *autoria mediata*.

Second, the tribunal ruled that relevant decisions of the Inter-American Court of Human Rights "should be respected." The prosecutor presented three cases from the Inter-American Court: the decision in the case of Velásquez Rodríguez in Honduras, which is similar to the cases under consideration in Peru, and the decisions in the Barrios Altos and La Cantuta cases. The tribunal indicated that the second two cases were of particular importance. In the Barrios Altos case, the Inter-American Court ruled that the Peruvian government used legislative and judicial measures to prevent a meaningful investigation of the atrocities committed and to ensure impunity. (Most significantly, it ruled that amnesty laws should be considered void, thus paving the way for the possible end to impunity in Peru and other countries.) Finally, in the La Cantuta ruling, the Inter-American Court established that arbitrary executions were a systematic counterinsurgency tactic; that Fujimori had full knowledge of the Colina death squad and its activities; and that Colina was carrying out a government-sanctioned policy for eliminating suspected subversives. Finally, the tribunal noted that Peru's Constitutional Tribunal had ruled on the judicial validity of the decisions handed down by the Inter-American Court and the importance of integrating them into national judicial processes.

Third, the verdict underscored the significance of the work of Peru's Truth and Reconciliation Commission (CVR). While noting that the report of the CVR cannot in and of itself be used in establishing individual criminal responsibility, the tribunal pointed to the importance of the contextual information and analysis included in the report. The tribunal highlighted the CVR's conclusion that human rights violations, including disappearances and selective assassinations, were a systematic and generalized practice carried out by state agents. Given the incessant efforts carried out by certain sectors in Peru to discredit the work of the Peruvian truth commission, the tribunal's endorsement of its work reaffirms the importance of the work of the CVR.

The Court also ruled for the first time that "friends of the court" briefs, or *amicus curiae*, could be presented in court and taken into consideration by judges. *Amicus curiae* were presented during the Fujimori trial from a variety of academic and research institutions, including briefs by the Law School at the Catholic University of Peru, the Law Clinics at George Washington University, University of Texas, and Yale University; the Colombian organization Defjusticia, and the International Center for Transitional Justice. Similarly, the

Court allowed several international expert witnesses to testify on matters relating to international human rights law, international criminal law, and declassified U.S. documents.

The Response of the *Familiares*

Peruvian human rights organizations and survivors and relatives of the victims (*familiares*) in these four cases were satisfied with the Court's ruling. The *Coordinadora Nacional de Derechos Humanos*, Peru's umbrella human rights organization, stated: "The condemnations of the former dictator establishes an historic precedent in the face of crimes against humanity perpetrated from the highest spheres of power, which usually remain in total impunity."

In a press conference shortly following the ruling, Gisela Ortiz, spokesperson for the relatives of the Barrios Altos and Cantuta massacres, stated: "We heard with great joy the verdict handed down against the person responsible for the death of our family members: Alberto Fujimori. The Peruvian Judiciary decided to restore its reputation in the eyes of the family members of the victims of these crimes after 17 years of impunity."

Ortiz noted the special significance of the Court's ruling that there was no evidence linking any of the victims to any subversive activity or organization. "We are satisfied because this restores dignity to the memory of our family members.... [Fujimori's] accomplices called them terrorists, but the Court's recognition [of their innocence] brings this issue to a close. This means an end to accusations against and the stigmatization of the family members."

Pending Cases against Fujimori and the Appeal Process

The next "mega-trial" of Fujimori will begin on May 11, 2009, with the former president facing charges of corruption and abuse of authority in four cases, including phone tapping of the opposition; bribing members of congress; embezzlement of state funds for illegal purposes; and the transfer of \$15 million in public funds to Montesinos.⁷ If he is convicted on these charges, the political ramifications could widen. Already, 70 percent of Peruvians believe that Fujimori was guilty of the human rights crimes for which he was convicted, according to a recent poll by Apoyo.⁸

The appeals process in the conviction for crimes against humanity is already underway. Fujimori immediately requested the nullification the sentence after it was read by the Special Criminal Court on April 7. The civil parties have also requested a review of the amount of reparations granted to the survivors and family members of the victims in the sentence.

The appeal will be reviewed by the First Criminal Court of the Supreme Court. The President of the Supreme Court, Javier Villa Stein, named five Supreme Court justices to this panel in January: Duberlí Rodríguez, who will serve as the Court's president, and Elvia Barrios, José Neyra, Roberto Barandiarán and Julio Biaggi. Judge Rodríguez has a solid

⁷ Fujimori has already been convicted of usurpation of authority and sentenced to six years in prison for authorizing and participating in an illegal raid on the home of Montesinos' wife in 2000, presumably to secure and remove compromising evidence. That prison sentence was upheld on appeal.

⁸ The poll was conducted in 16 cities and was reported in the Peruvian press on April 19, 2009.

reputation after serving for years as a magistrate in the Lambayeque Superior Court, and is a specialist in criminal law.

The First Criminal Court will rule on the appeal within an estimated three to six months. The Court could rule to nullify the sentence if it deems that the due process rights of the accused were violated, or if it finds that the guilty verdict is not adequately established or proven; or if it determines that criminal action against the accused is invalid because the crimes for which he was condemned fall under the statute of limitation. Rights activists view this as unlikely given the impartiality of the judicial process and the soundness of the verdict, and because of the international principle that crimes against humanity are not subject to statutes of limitation. Another possible scenario is that the First Criminal Court could uphold the verdict but vote to modify the sentence. A modification of the sentence could occur if the justices determine that the sentence is not proportional to the crimes committed. Fujimori's lack of contrition and his refusal to acknowledge any responsibility for the crimes committed make this scenario unlikely but not impossible. A vote of four out of five judges is necessary for a definitive final ruling. If this is not obtained, a sixth judge will be appointed to join the existing tribunal to review the case. Other judges may be called upon if necessary until four judges agree on a final ruling.

Human rights groups in Peru remain concerned that political pressure could influence the final stage of the judicial process. Media sympathetic to Fujimori have launched repeated attacks against Duberlí Rodríguez. As noted in our previous observation reports ([December 2007](#), [April 2008](#) and [June 2008](#)) the political climate fostered by the government of President Alan García is not propitious for promoting human rights; on the contrary, Peruvian human rights activists and organizations are increasingly under attack. President García is likely concerned about the possibility that he too could be tried on human rights charges stemming from his first term in office (1985-2000). While the soundness of the verdict makes it hard to overturn on appeal, there are powerful political forces in Fujimori's favor that should not be ignored.

The Special Criminal Court that prosecuted Fujimori for human rights crimes demonstrated that the Peruvian judiciary is capable of administering justice in a fair and impartial way. At the same time, historically Peru's judiciary has been easily corrupted and subjected to political pressure and intervention. The international community must continue to monitor the appeals process in the Fujimori case in order to ensure that in this final stage of this historical trial, the Peruvian judiciary demonstrates the same commitment to independence, impartiality, and fairness that has characterized the proceedings thus far.