

The Human Rights Trial of Former Peruvian President Alberto Fujimori: A Milestone in the Global Struggle Against Impunity

Conference Executive Summary



An international symposium

Convenors:

Jo-Marie Burt, George Mason University and Carlos Rivera Paz, Instituto de Defensa Legal (IDL)

Lima, Peru, May 19-20, 2010

With the support of the Latin American Program of the Open Society Institute

Synopsis

The Fujimori trial represents a significant milestone in the struggle against impunity and for the consolidation of the rule of law in Peru. But the Fujimori trial transcends the domestic context in important ways. George Mason University and the Instituto de Defensa Legal invited renowned international experts to participate in this symposium to reflect on the significance of the Fujimori trial and verdict for anti-impunity efforts in Peru and beyond.

Conference Organizers:



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The symposium, “The Human Rights Trial of Former President Alberto Fujimori: A Milestone in the Global Struggle against Impunity,” was a collaborative effort organized by George Mason University and the Instituto de Defensa Legal (IDL) to draw local and international attention to the global significance of the Fujimori trial. It was the fifth of a conference series organized by Mason and IDL starting in 2008 with the support of the Latin America Program of the Open Society Institute focusing on the Fujimori trial and the ongoing struggle to combat impunity in Peru and Latin America more broadly. Information about these events, including rapporteur reports and a working paper series, are available at the project website, <http://cgs.gmu.edu/HRJDProject.htm>.

In contrast to the significant publicity generated by the Fujimori trial, little is known about the hundreds of other cases currently in various stages of the judicial process in Peru. The Human Rights Trials in Peru project emerged in response to this lacuna to document and analyze trends in judicial activity involving cases of grave human rights violations. Directed by Professor Jo-Marie Burt at George Mason University in close collaboration with Peruvian human rights organizations and victims associations, the project seeks to provide concrete and reliable information about the status of trial activity in Peru, and to serve as a resource and advocacy tool for lawyers, survivors and relatives of victims, journalists, researchers, and state prosecutors. The project website can be viewed at <http://rightsperu.net>.

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Published by:

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Arlington, VA 22201
cgs.gmu.edu

Layout and design: Arnaud Kurze

On April 7, 2009, a three-judge panel of Peru's Supreme Court found former President Alberto Fujimori guilty of individual criminal responsibility in four cases of grave human rights violations committed during his administration (1990-2000) and sentenced him to 25 years in prison. In January 2010, the Supreme Court unanimously upheld this sentence on appeal.

The trial of Fujimori was a very important milestone in the fight against impunity and for the consolidation of the rule of law not only in Peru but also elsewhere in Latin America and around the world. Nevertheless, despite this highly significant precedent, there continues to be considerable political pressure from various social actors (including right-wing political parties, former supporters, and the military, among others) in Peru to put an end to the process of judicialization of human rights cases. Similar challenges exist elsewhere in Latin America.

This context of considerable accomplishments combined with well-founded concerns for the future prompted George Mason University and the Instituto de Defensa Legal (IDL) to organize an international conference analyzing the Fujimori trial and verdict as well as other processes of judicialization of human rights violations currently underway in Peru. The conference was convened by Jo-Marie Burt, Associate Professor at George Mason University and Carlos Rivera Paz, Head of the Legal Team at IDL. Held in Lima on May 19-20, 2010, the conference was co-sponsored by the Coordinadora Nacional de Derechos Humanos (CNDDHH), the Asociación Pro-Derechos Humanos (APRODEH), and the Department of Social Sciences of the Pontifical Catholic University of Peru, and was made possible thanks to the support of the Latin American Program of the Open Society Institute (OSI). It was the fifth in a conference series organized by Mason and IDL with OSI support focusing on the Fujimori trial and the ongoing struggle to combat impunity in Peru and Latin America more broadly.

The conference brought together Peruvian and international experts on the judicial-

ization of human rights cases to analyze the national and international significance of the Fujimori trial and the extent to which this and other similarly successful trials are contributing to combating impunity in Peru and Latin America. As a result of the high quality of the presentations, the organizers decided to publish the conference proceedings. Individual presentations by participants were edited for publication in Spanish by Jo-Marie Burt, George Mason University, and Ernesto de la Jara, IDL's Executive Director. This Executive Summary, prepared by Joanna Drzewieniecki, synthesizes the key debates and themes raised at the conference.

The importance of the Fujimori trial for Peru, for Latin America, and for international human rights jurisprudence cannot be underestimated. This was the first time that a once democratically elected president was tried for human rights violations in an unimpeachable judicial process, setting an important international precedent. The trial was also further evidence that national courts are becoming increasingly effective venues for accountability for human rights violations with important international implications.

In Peru, the Fujimori trial, together with other human rights and corruption trials of members of the Fujimori regime, marked the first time in the country's history that powerful national political actors have been tried and convicted in trials recognized as fair and legitimate — a truly historic achievement.

The trial was also remarkable because the Peruvian judicial system is known to be corrupt and dysfunctional and is not held in high esteem by the public. Despite this, the Fujimori trial was characterized by scrupulous adherence to the law and protection of the rights of everyone involved. It was also exceptionally well-organized. The trial is regularly characterized as “impeccable” and “irreproachable” and polls at the time the trial ended indicated that 70% of Peruvians accepted the verdict.

In terms of international jurisprudence, the trial “perfected, deepened, reaffirmed, and crystallized the fundamen-

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tal elements for establishing and specifying the individual criminal responsibility of someone who is at the summit of power of an apparatus dedicated to committing crimes,” according to conference participant Federico Andreu-Guzmán. The gist of the legal reasoning employed is that a person can be held responsible for human rights violations if these violations were carried out when he/she had command authority or control of an organized apparatus of power, an organ of which carried out these human rights violations. The origin of this legal reasoning, known as *autoría mediata*, is attributed to German jurist Claus Roxin. Before the Fujimori trial, the Peruvian courts already had used this doctrine in the trial of Shining Path leader Abimael Guzman. The Fujimori court’s application of this doctrine is currently being studied by jurists in other countries and it is expected that it will be increasingly applied in cases where criminal conspiracies exist but where there is only circumstantial evidence of responsibility.

In addition to establishing the criminal responsibility of Fujimori in human rights violations, the trial verdict was also the first major judicial statement in Peru establishing that during the period of political violence there was a systematic and generalized pattern of human rights violations and that carrying out a “dirty war” was a state policy. In the past, the statements of human rights and relatives groups to this effect had been categorically dismissed by government officials and large parts of public opinion. The Peruvian Truth and Reconciliation Commission (CVR) noted in its 2003 Final Report that the Peruvian armed forces engaged in systematic human rights violations “in some places and at some times,” but conservative sectors — and the armed forces themselves — still reject this interpretation. For this reason, the court’s affirmation that such a pattern existed was a significant milestone.

This trial also sent some other important messages: that no one is above the law, that crimes against humanity are not subject to statutes of limitations, that international law provides the basis for trying individuals for human rights crimes even if these were not considered crimes under national

laws at the time they were committed, and that amnesties cannot be granted for the commission of such crimes.

Finally, the trial also had a special meaning for survivors and relatives of the victims of the crimes of which Fujimori was convicted and for victims of other similar crimes who were “spiritually present” at the trial, in the words of human rights lawyer Carlos Rivera. According to Gisela Ortiz, from the association of relatives of the victims for whose murders Fujimori was convicted, the trial restored dignity to these victims, officially recognized that they were not terrorists, and provided official acknowledgment of their history. Most importantly, the relatives felt that justice was done. However, this feeling was undermined somewhat when the media revealed that Fujimori has been receiving unusually good treatment in jail and, for a while, even seemed to run his party headquarters from the prison compound built especially for him.

Many factors played a role in making such a successful trial possible. Conference participants highlighted both factors specific to Peru and those which must exist for successful trials to take place anywhere. The most important element is political support. In the case of Peru, steps to assure accountability for human rights violations began soon after Fujimori fled Peru for self-imposed exile in Japan. The transitional government (2000-2001) established a truth commission whose final report documented human rights abuses and analyzed the context in which they took place. The CVR’s report was accepted as evidence in the Fujimori trial.

In 2001, Alejandro Toledo was elected president and his government — at least in its first years — continued to support human rights trials. Had Alan García been elected instead, the fight against impunity would in all likelihood been much more difficult since García himself is thought to be complicit in human rights violations during his administration in the 1980s. Under the Toledo government, a judicial subsystem was created in 2004 especially to investigate and prosecute human rights cases. This

was the first subsystem of its kind in Latin America and it saw important successes as it got underway in 2005 and 2006.

These developments helped lay some of the groundwork for the Fujimori trial. Also important was the work of Peruvian human rights groups together with associations of victims of human rights violations. These organizations played an important role in preparing the ground for the extradition of Fujimori from Chile to Peru and for the trial itself. The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, as well as international human rights organizations, were also critical actors. Most importantly, the 2001 ruling by the Inter-American Court on the Barrios Altos case overturned the self-amnesty law Fujimori's allies in congress passed in 1995. As conference participant Naomi Roht-Arriaza pointed out, in Latin America, the actions of external and internal human rights actors have often complemented each other in such cases.

Nevertheless, by the time the trial started, the atmosphere was highly charged politically and many voices were raised in opposition to this and other human rights trials. In addition, the judicial subsystem set up to try those accused of human rights violations was working much less expeditiously than when it commenced its activities. Furthermore, Fujimori's daughter Keiko was a member of the Peruvian congress and she and her political movement were dedicated to securing the freedom of Alberto Fujimori. As the trial started, the judges were themselves subject to considerable pressures of various sorts. Considering these circumstances, conference participants gave particular credit to the character of the individual judges in assuring such an impeccable trial.

Perhaps the key question asked at this conference was whether successful human rights trials would set a standard for future trials in the region. Outside of Peru, the panorama is mixed. On the positive side, trials continue in various countries. The Argentine Supreme Court's 2005 declaration of the country's amnesty laws as unconstitutional has led to the judicializa-

tion of many human rights cases in that country. In addition, Argentina has found a way to deal with the large number of accused by organizing fewer trials with many cases or by choosing emblematic cases to be tried.

Still, there are also many difficulties. Political pressures against such trials continue to be exercised. As time goes by, evidence is harder to come by. The sentences currently being imposed on perpetrators vary greatly, a phenomenon that is particularly notorious in Chile, where minimal sentences are often meted out, resulting in many instances in which convicted human rights abusers actually do no prison time at all. In addition, one can sense a kind of exhaustion on the part of everyone — public opinion, relatives of victims, and even international and national NGOs.

In Peru, participants agreed that the Fujimori trial thus far has not set the standard for future trials. The situation in the judicial subsystem for human rights cases is of particular concern. The mandate of the National Criminal Court, for example, has expanded to include drug trafficking, kidnapping and organized crime, distorting the focus away from its original purpose to specialize in human rights cases. In addition, progress on the 47 "emblematic" cases that the CVR submitted to the Peruvian courts in 2003 has been very uneven, with several of these cases remaining stalled at the preliminary investigation stage. Furthermore, in two years, 85% of those sentenced in human rights cases have been absolved. There are also other serious problems: Peruvian judges seem reluctant to apply the same standards of proof and evidence that were applied in the Fujimori trial; the validity of the CVR report is being called into question; and judges are questioning whether human rights violations were part of a systematic pattern and have even called into doubt whether these crimes were political in nature. In general, judges are moving away from the parameters used not only in the Fujimori trial but also in the early days of judicial subsystem for human rights. This is all the more worrisome given that, by and large, these are the very same judges who were involved in the earlier, success-

Fujimori has been receiving unusually good treatment in jail and, for a while, even seemed to run his party headquarters from the prison compound built especially for him.

ful and impeccable human rights trials.

At the same time and probably not coincidentally, as conference organizer and participant Jo-Marie Burt noted, there is a high level of political interference in the trials. As soon as he came to power, President Alan Garcia arranged for lawyers to be provided for all members of the military who were accused of human rights violations. No similar provision was made for the victims, many of whom lack access to legal representation. The President, Vice-President, and successive defense ministers have regularly made statements attacking human rights trials and the human rights NGOs that represent victims in these cases. Retired military and sectors of the media have also carried out a sustained campaign against such trials.

Similar obstacles have been put in the way of the work of the National Council for Reparations set up on the recommendation of the CVR and Museum of Memory, though both projects are still underway.

Finally, the Peruvian situation is made more complex by the fact that Keiko Fujimori is running for president of Peru in the April 2011 elections and that she and

her political organization are dedicated to negotiating a pardon for Alberto Fujimori. While conference participants did not believe that Keiko was likely to have enough popular support to win the elections, there was considerable concern about the power of negotiation of the fujimoristas. Fernando Rospigliosi, a Peruvian political analyst, suggested that the fujimoristas would be willing to negotiate with any political movement likely to win the elections and that given the fragmented nature of Peru's political party system, most political movements would be interested in entering into such negotiations. Thus it is still possible that Fujimori could eventually receive a presidential pardon.

The conference presentations made it clear that there have been extraordinary achievements in the fight against impunity in Peru and elsewhere in Latin America. However, it is equally clear that nothing can be taken for granted and that the fight against impunity must be continued by all committed actors – human rights groups, victims' relatives, journalists, the media, and other social actors and civil society organizations. Though important strides have been made in the struggle against impunity, much more remains to be done.

The *fujimoristas* have considerable negotiating power, even if Keiko does not win the upcoming presidential elections. A presidential pardon for Fujimori thus remains possible.

Conference participants: Juan Mendez, Professor of Law at American University in Washington, DC, and former president of the Inter-American Commission of Human Rights of the OAS; Salomón Lerner Febres, Rector Emeritus of the Pontifical Catholic University of Peru and ex-president of the Peruvian Truth and Reconciliation Commission; Jo-Marie Burt, Associate Professor of Political Science, George Mason University and Senior Fellow, Washington Office on Latin America (WOLA); Carlos Rivera Paz, Head of the Legal Department, IDL, and legal representative of the victims at the Fujimori trial; Avelino Guillén Jáuregui, one of the government prosecutors in the Fujimori case; Gisela Ortiz Perea, representative of the relatives of students assassinated at La Cantuta and Director of Operations of the Peruvian Forensic Anthropology Team (EPAF); Naomi Roht-Arriaza, Professor of International Law, Hastings School of Law, University of California-Berkeley; Federico Andreu-Guzmán, lawyer, Sub-Director for Litigation of the Colombian Commission of Jurists and former General Counsel of the International Commission of Jurists; Ricardo Gil Lavedra, Argentine congressman, and former judge in the trial that convicted members of the Argentine military junta for human rights violations; Augusto Álvarez Rodrich, Peruvian journalist and political analyst; Jorge Bruce, Peruvian psychoanalyst and political commentator; Fernando Rospigliosi, political analyst and former Minister of the Interior.

About the Organizations

Founded in 1972, **George Mason University** has become a major educational force and earned a reputation as an innovative, entrepreneurial institution that has gained national distinction in a range of academic fields. In its 2008 annual report of U.S. colleges, U.S. News & World Report ranks George Mason University first in its new list of 70 “up and coming schools.” **The Center for Global Studies** (CGS) at George Mason University promotes multidisciplinary research on globalization and international affairs, and has over 100 faculty affiliates from across the social sciences and humanities.

The Instituto de Defensa Legal (IDL) is a nonprofit organization that was founded in 1983 and today is a leading institution of Peruvian civil society whose principal objective is to promote and defend human rights, peace, and democracy in Peru and Latin America. Its activities focus on monitoring government compliance with the recommendations of Peru’s Truth and Reconciliation Commission, judicial and security sector reform, citizen security, and the promotion of transparency in government. IDL is a member of the Coordinadora Nacional de Derechos Humanos, Peru’s umbrella human rights institution.

Asociación Pro-Derechos Humanos (APRODEH) is a Peruvian non-governmental organization committed to defending and advocating human rights. Its mission is to contribute to the development of social, political and legal safeguards and promote the enjoyment of all rights for all citizens, in part of larger efforts to build a fair and democratic country. In its struggle to defend life and dignity of human beings, APRODEH prioritizes to fend for marginalized groups in society that for centuries have been deprived of their basic rights.

The Department of Social Sciences of Pontificia Universidad Católica del Perú was founded in 1969, rising quickly to academic and professional excellence in anthropology, sociology and political science. It has become a space for interdisciplinary research and is well known for bridging theory and practice. Both the faculty and graduates of the department have not only played an important role in the intellectual and political life of Peru, but they have also gone to work or teach at foreign universities and international organizations and are renowned for their strong academic background.

The National Human Rights Coordinator (CNDDHH) is a collaboration of several civil society institutions promoting, teaching and disseminating human rights in Peru. Created in 1985 it has achieved national and international recognition, becoming a leader in human rights advocacy. Moreover, CNDDHH has Special Consultative Status with the Economic and Social Council of the United Nations and is accredited to participate in the activities of the Organization of American States.



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