



Fujimori Trial Nears End

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The trial and conviction of former Peruvian president Alberto Fujimori for grave violations of human rights marks a watershed in the struggle against impunity in Peru and across the world. Since he fled the country in November 2000 in the wake of a series of scandals, Fujimori sought to evade justice. His decision to travel to Chile in 2005 led to his eventual extradition to Peru to stand trial for four cases of grave violations of human rights, as well as a litany of cases of corruption and abuse of power.

The human rights trial began on December 10, 2007, and centered on four notorious 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. After 16 months of judicial proceedings, a special tribunal of Supreme Court justices found Fujimori guilty and sentenced him to the maximum sentence of 25 years in prison.

Fujimori's defense lawyer has appealed the decision, which is now under review by a second Supreme Court tribunal. As part of the appeal process, public hearings took place on November 23, 24 and 25. The Public Ministry, the civil party lawyers, and Fujimori's defense attorney were each given an opportunity to offer arguments as to whether the verdict should stand, or be modified or overturned. At the final hearing, presiding Judge Duberlí Rodríguez stated that the tribunal would make its final ruling within 30 working days. This ruling cannot be appealed.

Fujimori's defense attorney, César Nakasaki, argued that the tribunal that convicted Fujimori was biased against his client, a charge few legal experts accept given the

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transparent nature of the judicial proceedings and the careful attention to the defendant's due process rights displayed throughout.

Nakasaka went on to claim that there is no evidence to convict Fujimori, arguing that no direct order was ever presented to demonstrate his client's criminal responsibility in the Barrios Altos and Cantuta massacres. However, legal experts note that circumstantial evidence can be used to determine criminal responsibility in crimes of this nature when it converges with other types of evidence. In its verdict, the Court determined that there was strong and compelling evidence of Fujimori's direct and leading role in the creation of the criminal apparatus that carried out these crimes.

Nakasaka also claimed that the Court violated the principle of retroactivity by convicting Fujimori of crimes against humanity, which was not codified in the Peruvian criminal code at the time the crimes were committed. However, as both the Public Prosecutor and the civil party lawyers noted, the Court found Fujimori guilty of aggravated homicide, assault, and kidnapping—all crimes codified in Peruvian criminal law—but added that, according to international criminal law, these crimes constitute crimes against humanity. International law rejects amnesties or pardons for crimes against humanity. Clearly, Nakasaka hopes to have this determination overturned so as to make a pardon for his client more politically viable.

Perhaps one of the most contentious issues to emerge in the public hearings was whether the Gorriti and Dyer cases should be considered aggravated kidnapping, as the Court ruled in its verdict, or simple kidnapping, as Nakasaka alleges. To the surprise of many observers, Public Prosecutor Pablo Sánchez argued that the kidnappings were illegal but should be considered only simple kidnapping, since neither was exposed to cruel treatment or excessive violence. Carlos Rivera, Gorriti's lawyer, sharply challenged this view. Gorriti and Dyer were arrested in the context of a de facto regime in which civil liberties were suspended. Their arrests were not registered by authorities, and they were held *incomunicado*, isolated from the outside world and in a situation of extreme vulnerability. This, according to Rivera, qualifies as aggravated kidnapping. Jurists note that should the verdict be changed to simple kidnapping, Fujimori could qualify for prison benefits that would substantially reduce the time he is required to serve in prison.

Despite this row, Sánchez and the civil party lawyers coincided in their arguments that Fujimori's role in the crimes of Barrios Altos, Cantuta, and the kidnappings of Gorriti and Dyer was proven beyond reasonable doubt, and called on the tribunal to confirm the 25 year sentence.

Experts agree that it is highly unlikely that the Court will rule to overturn the sentence, which is considered to be juridically sound and based on compelling evidence. However, strong political pressures exist to overturn the ruling or to substantially reduce Mr. Fujimori's sentence. Recent decisions by Peruvian courts have contradicted previous jurisprudence on human rights cases, resulting in absolutions that human rights defenders say reflect growing pressure on the part of the armed forces, as well as sectors linked to the ruling APRA party and Fujimori's supporters, to bring an end to the numerous trials

underway involving military and police personnel accused of grave violations of human rights during Peru's internal armed conflict. There is also the possibility that the sitting president, Alan García could pardon Mr. Fujimori, or that his daughter, Keiko, could do the same if she were to emerge victorious in the 2011 presidential elections.

To date, the trial of Alberto Fujimori has been an exemplary process. The international community should remain vigilant to ensure that it concludes in the same manner. Justice for the victims and their family members in these cases hangs in the balance.