
Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations

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Abstract¹

On 7 April 2009, Alberto Fujimori, president of Peru from 1990 to 2000, was found guilty of grave human rights violations and sentenced to 25 years in prison – the maximum penalty allowed by Peruvian law. The prosecution and conviction of Fujimori mark a watershed in efforts to achieve accountability after atrocity in Peru and across the globe. This article explores the factors that made the Fujimori trial possible. It briefly examines the global shift in norms favoring accountability for human rights violations that facilitated the extradition and prosecution of Fujimori, the interactions between these global norm shifts and local efforts to achieve accountability for grave human rights violations, and the specific domestic factors in Peru favoring prosecution. The article analyzes the Fujimori trial in terms of both process and outcome, and highlights its implications for politics in Peru and beyond, as well as for the broader field of transitional justice.

Introduction

On 7 April 2009, the Special Criminal Court of the Peruvian Supreme Court found former president Alberto Fujimori (1990–2000) guilty of grave human rights violations and sentenced him to 25 years in prison – the maximum penalty allowed by Peruvian law. The trial of Fujimori is truly historic: it marks the first time a democratically elected head of state has been extradited to his own country, put on trial for human rights violations and convicted. Equally historic is the fact that dozens of human rights trials are currently under way in Peru, as elsewhere in Latin America.²

The Fujimori trial is all the more remarkable given that domestic prosecutions of heads of state for human rights crimes are extremely rare in any country. Trials of

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² Kathryn Sikkink and Carrie Booth Walling, 'The Impact of Human Rights Trials in Latin America,' *Journal of Peace Research* 44(4) (2007): 427–445; Coletta Youngers and Jo-Marie Burt, *Human Rights Tribunals in Latin America* (Washington, DC: George Mason University/WOLA/Institute for Legal Defense, 2009).

other heads of state such as Charles Taylor or Slobodan Milošević have been carried out primarily by internationally constituted courts.³ Peru, in contrast, has shown that national governments can hold their former leaders accountable and that not even a head of state is above the law – this despite the fact that Peru in many ways is an unlikely place for such a high-profile trial to unfold. Fujimori remains popular among certain segments of the Peruvian public, and the judiciary historically has been held in low esteem by Peruvian citizens. During the period of internal conflict the judicial system did not seriously investigate human rights abuses, and was often complicit in assuring impunity for those responsible. Key figures in the present-day political establishment, including the current president, vice president and key opposition figures, have their own reasons to fear being put in the dock for human rights violations. Yet, in a striking display of professionalism, the tribunal charged with prosecuting Fujimori fully guaranteed his due process rights while conducting an impartial inquiry into the former president's responsibility for grave crimes committed during his time in office. The Fujimori trial demonstrates that with sufficient political will, domestic tribunals can prosecute high-level public officials who commit or order the commission of grave human rights violations.

While unprecedented in many ways, Peru's prosecution of a former head of state reflects a broader global trend favoring accountability for those who perpetrated, ordered or otherwise authorized grave violations of human rights, war crimes and crimes against humanity. This global shift toward accountability has been widely documented and analyzed.⁴ This article locates the Fujimori trial in this broader international context, but suggests that to fully understand the factors contributing to the successful prosecution of Fujimori, it is necessary to examine the specific interactions between international institutions and actors and domestic actors in Peru that expanded the opportunities for a domestic accountability agenda.

The article explores these dynamics in the context of Peru's transition to democracy in 2000. Transitional justice scholars have argued that transition by collapse provides the most likely scenario for criminal prosecutions following regime change: powerful economic and military elites who might oppose such trials have been weakened and political elites may pursue a prosecutions strategy to differentiate the new regime from its predecessor.⁵ While Peru's transition by collapse did create a more propitious climate for criminal prosecutions, this article argues that it was the combined impact of international and domestic pressure in favor of an accountability agenda that opened the door to criminal prosecutions in Peru and the later adoption of an accountability agenda by state elites. The article highlights the role played by Peruvian civil society, primarily human rights and victims' groups. In particular, the ability of these groups to unify local efforts in favor of truth, justice and reparations, and to construct international alliances in favor of accountability, was the key dynamic pushing this process forward. Of

³ Ellen Lutz and Caitlin Reiger, eds., *Prosecuting Heads of State* (New York: Cambridge University Press, 2009).

⁴ Ruti Teitel, 'Transitional Justice Genealogy,' *Harvard Human Rights Journal* 16 (2003): 69–94.

⁵ Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996).

special importance was their increasingly effective use of the inter-American system of human rights protection to advance this agenda: once Peru's transition to democracy was under way, the rich jurisprudence of the Inter-American Court of Human Rights (Inter-American Court), as well as the recommendations by the Inter-American Commission on Human Rights (IACHR), fundamentally shaped the policies regarding truth, justice and reparations adopted by the transitional government and key judicial bodies. This confluence of factors created a propitious accountability environment in Peru that is essential to understanding the successful extradition and later criminal prosecution of former president Alberto Fujimori.

The Fujimori Decade

Fujimori was elected president in 1990, a time of deep political, economic and social crisis in Peru. The two previous democratic governments of Fernando Belaúnde (1980–1985) and Alan García (1985–1990) had failed to stop the advance of the Shining Path, an insurgent group that launched its struggle to conquer state power in 1980. Shining Path became known for its widespread use of terrorist tactics, including assaults on unarmed civilians. The Peruvian state, meanwhile, resorted to terror to combat Shining Path, resulting in widespread massacres, forced disappearances and the massive use of sexual violence and torture. The result was spiraling violence, fear and insecurity.⁶

Popular discontent with 'traditional' political parties fueled support for Fujimori, a political outsider who promised 'honesty, technology and work' if elected to the presidency. His appeals to economic populism endeared him to the rural and urban poor, as did his Japanese ancestry, which made him more appealing than his main rival, internationally renowned writer Mario Vargas Llosa, to the indigenous and mestizo majorities who make up the bulk of Peru's population.⁷

Fujimori's authoritarian inclinations soon became evident however. On 5 April 1992, he announced his *autogolpe*, or 'self-coup,' in which he closed congress, suspended the constitution and took over the judiciary with the backing of the armed forces and other powerful elites. With the assistance of former army captain and *éminence grise* Vladimiro Montesinos, Fujimori established control over virtually all governing bodies and institutions, from the armed forces to the judiciary.⁸ When international pressure forced Fujimori to reinstate the legislature, he created a new unicameral body that was also easily controlled. A new constitution allowed Fujimori to seek re-election, which he did successfully in 1995. Despite the restoration of democratic institutions, the underlying structure of power remained deeply

⁶ Jo-Marie Burt, *Political Violence and the Authoritarian State in Peru: Silencing Civil Society* (New York: Palgrave Macmillan, 2007).

⁷ Carlos Iván Degregori and Romeo Grompone, *Elecciones 1990. Demonios y redentores en el nuevo Perú* (Lima: Instituto de Estudios Peruanos, 1991).

⁸ Gustavo Gorriti, 'The Betrayal of Peru's Democracy: Montesinos as Fujimori's Svengali,' *Covert Action Quarterly* 49 (1994).

authoritarian.⁹ The regime used state power to undermine opposition movements through illegal surveillance systems, intimidation and outright attacks. It also established near-total control over the media. It was only after the regime's collapse, with the public airing of hundreds of videos recorded by Montesinos documenting his corrupt dealings, that the massive network of corruption that sustained the regime – involving powerful economic elites, high-ranking military officials, media moguls and even opposition leaders – was revealed. According to historian Alfonso Quiroz, the Fujimori regime was likely the most corrupt in Peruvian history, with \$1.5 to \$4 billion lost due to corruption.¹⁰

Many Peruvians remember Fujimori as the president who put Abimael Guzmán – Shining Path's top leader – behind bars. Indeed, the regime's reorientation of counterinsurgency efforts toward intelligence gathering and surveillance did achieve this and other important results. However, a parallel strategy was also put in place, in which clandestine military units engaged in targeted killings and forced disappearances. The most notorious of these was the Colina Group, a unit created in mid-1991 whose chief purpose was to eliminate suspected subversives. The Colina Group was responsible for a number of killings between 1991 and 1992, including the Barrios Altos massacre, in which several heavily armed men stormed a tenement in the Barrios Altos neighborhood of Lima in November 1991 and killed 15 people, including an eight-year-old child, and gravely wounded four others; as well as the disappearance and killing of nine students and a professor from the Cantuta University in July 1992.¹¹ When efforts to investigate these crimes advanced, the regime went to extensive lengths to cover them up and protect the material authors, including the passage of two amnesty laws in 1995. Other abuses during the Fujimori regime included forced disappearances, selective extrajudicial executions, massive arbitrary detentions and the creation of military tribunals that violated the due process rights of defendants.

In 2000, determined to remain in power, Fujimori ran for what opposition leaders charged was an illegal third term as president. The regime's effort to guarantee victory through electoral fraud was met by massive street protests, as well as international condemnation by the Organization of American States (OAS) and the US government.¹² In the end, Fujimori weathered the domestic and international criticism and was inaugurated to a third term as president on 28 July 2000.

Yet a series of scandals in the following months triggered the collapse of the Fujimori government. The first revealed that Fujimori and Montesinos were involved in a drugs-for-arms deal with the Revolutionary Armed Forces of Colombia

⁹ Carlos Iván Degregori, *La década de la antipolítica. Auge y huida de Alberto Fujimori y Vladimiro Montesinos* (Lima: Instituto de Estudios Peruanos, 2001); Burt, supra n 6.

¹⁰ Alfonso Quiroz, *Corrupt Circles: A History of Unbound Graft in Peru* (Baltimore: Johns Hopkins University Press, 2008).

¹¹ The partial remains of some of the students, bearing signs of torture, were discovered a year later. Comisión de la Verdad y Reconciliación, *Informe Final* (2003), Lima, vol. V, ch. 2.19 [hereinafter 'CVR'].

¹² Catherine Conaghan, *Fujimori's Peru: Deception in the Public Sphere* (Pittsburgh: University of Pittsburgh Press, 2005).

(FARC). The second involved the public airing of a video showing Montesinos paying off opposition legislator Alberto Kouri in exchange for him switching to Fujimori's political party. The videotape provided incontrovertible evidence of the regime's fraudulent practices and cut to the heart of its fledgling legitimacy. Montesinos immediately fled the country. Several weeks later Fujimori also decided to flee, faxing his resignation from his new safe haven in Japan. The opposition in congress, reinvigorated by this chain of events, rejected Fujimori's resignation and declared him unfit to serve as president. They then named leading opposition congressman Valentín Paniagua interim president until new elections could be held the following year.

Peru's Transitional Justice Challenges

The new Paniagua government was faced with a series of challenges. Peru's institutions had suffered under the weight of nearly a decade of authoritarian rule. The electoral system had been thoroughly corrupted. Congress and the judiciary had been almost completely subordinated to the whims of Fujimori and his cronies. The armed forces had been deeply politicized and corrupted by their subordination to the regime's authoritarian project.¹³ Fujimori's escape to Japan – along with mounting evidence of massive corruption involving high-ranking members of his government – prompted large-scale citizen indignation. In addition, human rights and victims' groups began clamoring for a truth commission to investigate human rights violations, punish those responsible and provide reparations for victims.

The Paniagua government sought to meet these challenges through a series of measures designed to restore citizen confidence in government and international faith in Peru's new democracy. The government reorganized the country's electoral institutions to ensure free and fair elections the following year. Efforts were made to purge the judiciary and other institutions of corrupt officials. Judges and military officers who had been sacked during the Fujimori regime were restored to their positions or were provided indemnity. Congressional inquiries were launched into the crimes of the Fujimori–Montesinos mafia and efforts were made to recover stolen government funds. Paniagua also created a special prosecutorial unit, the *Procuraduría Pública Ad Hoc*, tasked with working with the Public Ministry and the judiciary to prosecute corruption (but not human rights) cases.

On the international front, Paniagua initiated Peru's return to the contentious jurisdiction of the Inter-American Court.¹⁴ The Paniagua government also acknowledged the responsibility of the Peruvian state in a series of human rights violations committed during the Fujimori regime, and accepted amicable solutions or agreed to abide by the Court's rulings in some 150 cases.¹⁵ This decision

¹³ Fernando Rospigliosi, *Las fuerzas armadas y el 5 de abril. La percepción de la amenaza subversiva como una motivación golpista* (Lima: Instituto de Estudios Peruanos, 1996).

¹⁴ In 1999, angered by Court rulings on human rights cases, Fujimori withdrew Peru from the Court's jurisdiction.

¹⁵ Susana Villarán, 'Peru,' in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington, DC: Due Process of Law Foundation, 2007).

was hailed by the human rights community as a major step forward in restoring international confidence in Peru's democratic institutions, and would prove critical to efforts to criminally prosecute perpetrators of human rights abuses.¹⁶

In the meantime, momentum began to build for the creation of a truth commission. This was a key demand of the *Coordinadora Nacional de Derechos Humanos* (National Human Rights Coordinator), an umbrella group of 67 human rights organizations throughout Peru. Established in 1985, the *Coordinadora* documented human rights violations, provided legal defense to victims, and organized domestic and international campaigns to bring awareness to key problems such as forced disappearances and arbitrary detentions.¹⁷ In the face of the failure of the Peruvian judiciary to investigate and prosecute human rights violations, the *Coordinadora* and its member organizations began denouncing cases to the Inter-American Court, which later took up many of these cases. The *Coordinadora* also played a decisive role in the efforts to restore democracy in Peru in the late 1990s, denouncing the unconstitutional nature of Fujimori's bid for a third term in office as well as specific instances of fraud. The *Coordinadora's* long history of advocating for human rights and democracy lent credibility to its demands for a truth commission once the transition was under way.¹⁸

In December 2000, the Paniagua government established a working group of government officials and civil society representatives to develop a proposal toward establishing such a commission. The working group included the ministers of defense, interior and women's affairs, and was presided over by Justice Minister Diego García-Sayan. Both García-Sayan and Women's Affairs Minister Susana Villarán hailed from the human rights community – García-Sayan was the founding director of the Andean Commission of Jurists and played an important role in the Salvadoran Truth Commission, while Villarán had been the *Coordinadora's* executive secretary in the late 1990s – and were broadly supportive of a truth commission. Other participants in the working group included the *Defensoría del Pueblo* (Ombudsman), the Catholic and Evangelical churches, and the *Coordinadora*.

The *Coordinadora* became an outspoken advocate for an integral model of transitional justice. Shortly after the working group was established, Sofía Macher, executive secretary of the *Coordinadora*, called for a truth commission based on three key objectives – truth, justice and reparations – and demanded the annulment of the 1995 self-amnesty laws in order to facilitate criminal investigations of key human rights cases.¹⁹ International human rights organizations, such as Amnesty International, Human Rights Watch and the newly established

¹⁶ In 2001, the Peruvian government joined the International Criminal Court.

¹⁷ In the late 1980s, Peru had the dubious distinction of having the highest number of forced disappearances worldwide.

¹⁸ Coletta Youngers, *Violencia política y sociedad civil en el Perú: la historia de la Coordinadora Nacional de Derechos Humanos* (Lima: Instituto de Estudios Peruanos, 2003).

¹⁹ APRODEH, *Resúmenes de prensa sobre Comisión de la Verdad* (September 2003).

International Center for Transitional Justice (ICTJ), also supported efforts to establish a truth commission in Peru.

As these debates unfolded, in March 2001 the Inter-American Court handed down a ruling that shifted the terms of the discussion. The Court ruled that the Peruvian state was responsible for the 1991 Barrios Altos massacre, and ordered the state to investigate, prosecute and punish those responsible.²⁰ It also ordered reparations be paid to victims. Most importantly, and in response to a specific request by the *Coordinadora's* lawyers, the Court determined that the 1995 self-amnesty laws, which effectively blocked criminal prosecutions for human rights violations, violated the American Convention on Human Rights and therefore lacked legal effect. The Court had previously ruled that amnesty laws violated the American Convention, but this was the first time it specifically ruled that self-amnesty laws, when intended to guarantee impunity for cases of grave violations of human rights, violate the victims' right to truth and justice and thus lack legal effect.²¹

The ruling effectively opened the door for prosecutors and judges to pursue human rights cases in court. Two weeks after the ruling, a judge ordered the arrest of two army generals and 11 members of the Colina Group death squad implicated in the Barrios Altos massacre.²² Additional arrests followed. A few days later, the president of the Supreme Court ruled that the Inter-American Court ruling must be put into effect by Peruvian tribunals,²³ formally paving the way for the reopening of the criminal case in the Barrios Altos and other Colina Group crimes.²⁴ The *Procuraduría*, meanwhile, turned from its previously exclusive focus on corruption cases to this and other human rights cases, and human rights lawyers such as Ronald Gamarra were brought in to work specifically on these cases.²⁵ The threat of criminal sanction prompted some Colina Group members to turn state's evidence in exchange for reduced sentences, providing compelling new evidence of the direct involvement of Fujimori, Montesinos and former army chief General Nicolás Hermoza Ríos in the creation and operation of the Colina Group death squad.²⁶

Other cases were brought to trial in the wake of the Barrios Altos ruling. For example, in September 2001 criminal proceedings began in the case of

²⁰ *Barrios Altos Case (Chumbipuma Aguirre et al. v. Peru)* Inter-Am. Ct. H. R. Judgment of 14 March 2001 (ser. C) No. 83, par. 1. The Court subsequently determined that this ruling has general effects and is valid for the entire region; *Barrios Altos Case*, Judgment of 3 September 2001 (ser. C) No. 83, par. 18.

²¹ Douglass Cassel, 'The Inter-American Court of Human Rights,' in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington, DC: Due Process of Law Foundation, 2007).

²² *Resumen Semanal* 23, no. 1115 (21–27 March 2001).

²³ *Resumen Semanal* 23, no. 1116 (28 March–3 April 2001).

²⁴ The trial in the Barrios Altos began in 2005. Prosecutors grouped together three other Colina Group crimes, including the Cantuta massacre. Later the Cantuta case was separated into a different trial, which ended in April 2008 with the conviction of several Colina Group members. A ruling on the Barrios Altos case is expected in late 2009.

²⁵ Personal communication, Ronald Gamarra (7 May 2009).

²⁶ Ronald Gamarra Herrera, 'Derechos humanos, justicia y transición democrática: el balance institucional,' in *El legado de la verdad. La justicia penal en la transición peruana*, ed. Lisa Magarrell and Leonardo Filippini (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).

Ernesto Castillo Páez, a university student who was forcibly disappeared in October 1991. The Inter-American Court determined that the Peruvian state was responsible and ordered the criminal prosecution of those responsible in 1997, but the amnesty laws made this impossible. In 2006, four police officers were convicted and sentenced to between 15 and 16 years in prison. This was significant not only because it was the first conviction in a human rights case, effectively breaking the wall of impunity that surrounded such crimes, but also because the Court determined that the Castillo Páez case was not an isolated incident but part of a pattern of systematic and widespread human rights violations in Peru. Also, drawing on international law, the Court argued that this and similar crimes in which the victims' bodies have not yet been found are ongoing crimes and hence are not subject to any statute of limitations.²⁷

The Barrios Altos ruling also generated new momentum for the creation of a truth commission that would not only engage in truth-telling but also seek to identify, prosecute and punish those responsible for grave violations of human rights. As these debates were unfolding, new videotapes surfaced, showing Montesinos and the military top brass collecting signatures of hundreds of military officers in support of the authors of the April 1992 *autogolpe* and the 1995 self-amnesty laws, revealing the deep politicization and manipulation of the military during Fujimori's rule. Current heads of the armed forces were among those in the video, prompting demands for a major overhaul of the military. The top military leaders offered their resignations, and the armed forces released a statement apologizing for its past support of the Fujimori regime, and pronounced its support for Peru's new democracy as well as for the creation of a truth commission. In a message to the nation on 17 April, Paniagua accepted the resignations, and announced that he would soon create a truth commission to promote national unity and reconciliation.²⁸ Thanks in large part to this episode, the armed forces lacked the political capital to impose conditions of any kind on Peru's truth commission.

Peru's Truth Commission

Calls for a truth commission thus gathered strength in the context of growing local momentum in favor of not only truth but also justice. This coincided with a growing global trend toward accountability for grave human rights violations, genocide, crimes against humanity and war crimes, as evident in the creation of the international tribunals for the former Yugoslavia and Rwanda, as well as the efforts to create the International Criminal Court.²⁹ The trend was also evident in Latin America, in renewed efforts to press for accountability in domestic courts as well as international tribunals such as the Inter-American Court, or sometimes in

²⁷ Carlos Rivera Paz, *Una Sentencia Histórica: La desaparición forzada de Ernesto Castillo Páez* (Lima: Instituto de Defensa Legal, 2006). The Supreme Court upheld this ruling in 2008.

²⁸ *Resumen Semanal* 23, no. 1118 (11–17 April 2001).

²⁹ Teitel, *supra* n 4.

foreign courts³⁰ (as with the 1998 efforts to prosecute Pinochet in Spain).³¹ Peru also had the advantage of being able to study the experiences of previous truth commissions in Latin America as well as South Africa, which helped its architects learn from what worked and avoid what did not.³²

On 2 June 2001, Paniagua issued a decree law establishing a truth commission with perhaps the most comprehensive mandate of such a commission to date. The truth commission was charged with investigating the causes and consequences of political violence in Peru between 1980 and 2000. It was also to

contribute to the clarification, by the corresponding jurisdictional bodies, as necessary, of crimes and violations of human rights committed by terrorist organizations or state agents, determine the fate of the victims, and identify, insofar as possible, those responsible.³³

The truth commission was additionally charged with making recommendations for reparations for victims, and for institutional reforms to prevent such horrendous crimes from recurring in the future. After assuming the presidency in July 2001, Alejandro Toledo ratified the truth commission, renaming it the Truth and Reconciliation Commission (CVR), and expanding the number of commissioners from seven to 12. Notably, one of the newly appointed commissioners was Sofia Macher of the *Coordinadora*.

Findings

On 28 August 2003, the CVR presented its Final Report to President Toledo. Over the course of two years, the CVR collected 17,000 testimonies, and held public hearings on a variety of topics in which victims on all sides of the conflict were able to tell their stories.³⁴ Some of the CVR's principal findings include:

- The internal armed conflict between 1980 and 2000 was the bloodiest in Peruvian history, fueled by deep social and ethnic cleavages, and in which the victims were primarily poor, rural and indigenous.
- An estimated 69,000 Peruvians died in the political violence. Shining Path was responsible for 54 percent of violent deaths; state security forces for 37 percent; the Tupac Amaru Revolutionary Movement (MRTA) – a smaller, urban

³⁰ Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America,' *Chicago Journal of International Law* 2(1) (2001): 1–34.

³¹ Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Pittsburgh: University of Pennsylvania Press, 2005).

³² Personal interviews, Salomón Lerner, CVR President, Lima, Peru, 25 July 2006; and Javier Ciurlizza, CVR Executive Secretary, Lima, Peru, 10 August 2006.

³³ Supreme Decree No. 065-2001-PCM, *El Peruano*, 2 June 2001.

³⁴ On the CVR, see, Eduardo González, 'The Peruvian Truth and Reconciliation Commission and the Challenge of Impunity,' in *Beyond Truth versus Justice: Transitional Justice in the Twenty-First Century*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (New York: Cambridge University Press, 2006); and Lisa Laplante, 'The Peruvian Truth Commission's Historical Memory Project: Empowering Truth-Tellers to Confront Truth Deniers,' *Journal of Human Rights* 6(4) (2007): 433–452.

guerrilla movement – for 2 percent; and the remaining 7 percent are unaccounted for.

- Some 6,000 Peruvians were forcibly disappeared, primarily by state agents. In most cases, their fate and whereabouts remain unknown. (This figure is now estimated to be 15,000.)³⁵
- Three-quarters of the victims were rural-dwellers whose primary tongue was Quechua or another indigenous language. This is an astonishing figure given that only 16 percent of Peruvians are not primary Spanish speakers.
- Women were particularly vulnerable to the effects of violence, both as victims of sexual abuse and rape by the armed forces and Shining Path and as new widows forced to fend for themselves and their families.
- Alberto Fujimori was criminally responsible for the creation and operations of the Colina Group death squad and therefore for the criminal acts committed by the Colina Group, including the Barrios Altos and Cantuta massacres.³⁶

In light of these dramatic findings, the CVR made a series of recommendations to the state to further the process of truth, justice and reconciliation. First, it recommended that the state provide individual and collective reparations for victims. It also recommended structural reforms of the state (particularly of the armed forces, police and judiciary) to prevent future abuses and guarantee full respect for human rights. Finally, it recommended the prosecution by competent judicial authorities of 47 cases of grave human rights violations. The CVR cautioned the government not to adopt amnesties, pardons or other measures that would create obstacles for the search for truth and justice, making specific reference to the Inter-American Court's rulings on the subject.

Truth and Justice

There were intense debates within the CVR regarding the desirability and feasibility of retributive justice. Some commissioners favored focusing on truth-telling and historical memory, while others emphasized the need to build criminal cases. After much internal debate, an integral model of transitional justice prevailed, in which retributive justice was one crucial element in a broader process of national reconciliation.³⁷ As noted by CVR President Salomón Lerner:

We said: it is necessary to link truth and reconciliation, but truth cannot be achieved automatically, and truth cannot carry us automatically to reconciliation. There has to be a mediation to achieve reconciliation, that would be not the sufficient but certainly the necessary condition for reconciliation, and the necessary condition for reconciliation is justice.³⁸

³⁵ Personal communication, José Pablo Baraybar, Director, Peruvian Forensic Anthropology Team.

³⁶ CVR, supra n 11 at vol. 2, ch. 2.3.

³⁷ Javier Ciurlizza and Eduardo González, 'Verdad y Justicia desde la óptica de la Comisión de la Verdad y Reconciliación,' in *El legado de la verdad. La justicia penal en la transición peruana*, ed. Lisa Magarrell and Leonardo Filippini (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).

³⁸ Personal interview, Salomón Lerner, Lima, Peru, 25 July 2006.

For Lerner, justice had two key dimensions: retributive justice, which would sanction those responsible for some of the worst atrocities committed during Peru's internal armed conflict; and restorative justice, which would be achieved through a program of reparations that would acknowledge, and in some ways repair, the terrible harm done to Peruvian citizens who were victims of government and insurgent violence.³⁹

In its effort to fulfill its accountability mandate, the CVR established a legal unit tasked with identifying key cases that it would recommend for criminal prosecution. When it presented its report in 2003, the CVR handed over 47 cases, involving more than 150 police and military officers, to the Public Ministry for prosecution. (A few of these cases involved Shining Path crimes, but most of the insurgent group's leaders had already been prosecuted and were in prison, or had died.)⁴⁰ By this time, several cases that had been ruled on by the Inter-American Court were already winding their way through the legal system. The CVR's Final Report gave renewed emphasis to criminal prosecutions and confirmed the state's commitment (at least theoretically) to an accountability agenda. The *Defensoría del Pueblo*, which was charged with overseeing the implementation of the CVR's recommendations, lodged complaints in an additional 12 cases, bringing the total number of criminal trials being prosecuted by the state to 59.

The Toledo government came under heavy criticism for moving too slowly on these cases. Eventually, by late 2004, the judiciary had established a special system to prosecute human rights cases. Theoretically designed to expedite criminal trials and avoid overloading the ordinary justice system, the human rights criminal system is understaffed and under-resourced.⁴¹ Yet, since the first conviction in a human rights case was handed down in 2006 in the Castillo Páez case, several other important convictions have followed. In many of the sentences, judges have made direct reference to the Inter-American Court's rulings and have used international jurisprudence to sustain their legal arguments. In 2005, the Constitutional Tribunal established that international law is part of Peruvian domestic law, and has upheld specific Inter-American Court rulings such as the right of victims to truth; the definition of forced disappearance as an ongoing crime; that crimes against humanity are not subject to statutes of limitations; and so on.⁴² In this sense

³⁹ Ibid. On the CVR and reparations, see, Juliet Guillerot and Lisa Magarrell, *Reparaciones en la transición peruana. Memorias de un proceso inacabado* (Lima: APRODEH/International Center for Transitional Justice, 2006); and Lisa Laplante and Kimberly Theidon, 'Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru,' *Human Rights Quarterly* 29(1) (2007): 228–250.

⁴⁰ After an Inter-American Court ruling that the military courts violated due process rights, hundreds of terrorism suspects, including Abimael Guzmán, were subsequently retried. Luis E. Francia Sánchez, 'Los procesos penales contra las organizaciones terroristas,' in *El legado de la verdad. La justicia penal en la transición peruana*, ed. Lisa Magarrell and Leonardo Filippini (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).

⁴¹ There is not adequate space for a full analysis of the special subsystem for human rights cases, which has evolved in response to criticisms from human rights groups and the *Defensoría del Pueblo*. See, Gamarra, supra n 26.

⁴² Eduardo Vega Luna, 'La responsabilidad penal de los agentes del Estado,' in *El legado de la verdad. La justicia penal en la transición peruana*, ed. Lisa Magarrell and Leonardo Filippini (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).

the inter-American system has made substantive contributions to strengthening human rights protection in Peru and supporting an accountability agenda.

However, it is important not to overstate the power of the Inter-American Court. In some countries, such as El Salvador, amnesty laws remain in place and there is little political will to dismantle them or permit trials to move forward.⁴³ In Peru, political will was in some respects born of the circumstances: the need for the new democratic regime to distinguish itself from the previous regime was one factor, and the nature of the transition provided the political opportunity to do so. But it was pressure from domestic civil society groups in favor of an accountability agenda, combined with international demands for accountability, such as the 2001 Barrios Altos ruling, that pushed the Peruvian government to adopt a firmer stance on accountability than it was perhaps inclined to. This specific convergence of factors in the wake of Peru's transition generated broad societal support in favor of a truth commission whose task would not be limited to investigating the past, but would include identifying and bringing to justice those responsible for grave crimes.

Fujimori's Extradition

It was in the context of this expanding accountability environment that Fujimori left his safe haven in Japan for Chile in November 2005 and – much to his surprise – was promptly arrested. The Peruvian government immediately announced it would seek Fujimori's extradition so he could face charges of human rights violations, usurpation of authority and corruption in Peru. The *Procuraduría*, which had long been investigating Fujimori for these cases, quickly prepared the extradition request, working in concert with other state agencies, ministries and civil society groups to ensure Fujimori's extradition.⁴⁴

It remains unclear why Fujimori left his safe haven in Japan. The Peruvian government's decision to denounce Japan before the International Court of Justice likely complicated Fujimori's standing with Japanese authorities. Fujimori clearly believed he could launch his political comeback in Peru from Chile (elections were scheduled for April 2006). His advisors must have believed that his good relationship with important Chilean business elites would protect him; the historical conservatism of the Chilean Supreme Court, and its prior refusal to admit extradition requests, likely also played a role in their calculations.

Peru's human rights community immediately mobilized to support the extradition request. Relatives of victims and members of the *Coordinadora* made numerous trips to Chile over the course of the next two years, organizing public events, protest marches, and meetings with Chilean government and judicial officials to plead their case.⁴⁵ Chilean human rights and victims' groups actively supported

⁴³ Santiago A. Cantón, 'Amnesty Laws,' in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington, DC: Due Process of Law Foundation, 2007).

⁴⁴ Public Presentation, Former Anticorruption Prosecutor Antonio Maldonado, National Endowment for Democracy, Washington, DC (18 July 2009).

⁴⁵ Personal interview, Gisela Ortiz and Carmen Amaro, Lima, Peru, 17 April 2009.

their Peruvian counterparts. International human rights organizations, including Amnesty International and Human Rights Watch, also played an important role by providing legal arguments supporting extradition and lobbying Chilean government and legal officials.⁴⁶ The Inter-American Court also weighed in, by way of a September 2006 ruling on the Cantuta case, in which it urged the Peruvian state to continue pursuing legal and diplomatic measures to ensure Fujimori's extradition.⁴⁷

In September 2007 the Chilean Supreme Court ruled in favor of extradition on the basis of a handful of cases of corruption, usurpation of authority and human rights violations.⁴⁸ Hours later, Fujimori was returned to Peru. Local and international human rights groups hailed the decision as a major precedent for global justice efforts.

The Peruvian Supreme Court determined that the cases against Fujimori would be grouped into three different public trials to be presided over by the Special Criminal Court, a panel of three Supreme Court justices. The Court determined that the first public trial would focus on the human rights cases: the Barrios Altos and Cantuta massacres and the kidnapping of journalist Gustavo Gorriti and businessman Samuel Dyer after the 1992 *autogolpe*. After 16 months of deliberations, on 7 April 2009, the Court found Fujimori guilty of all counts of aggravated homicide, assault and kidnapping and sentenced him to 25 years in prison. Fujimori appealed the decision, which is under review by a second panel of five Supreme Court justices. Their decision is not subject to further appeal.

In the second public trial, involving the illegal transfer of \$15 million in public funds to Montesinos when he fled Peru in September 2000, Fujimori was found guilty of the illicit appropriation of state funds on 20 June 2009.⁴⁹ He was sentenced to 7.5 years in prison and was ordered to pay \$1 million in reparations. (This was the third conviction for Fujimori since his extradition; in a summary trial that concluded on 11 December 2007, Fujimori was convicted of usurpation of authority for the illegal raid on the home of Montesinos' wife, presumably to secure and remove compromising evidence; his sentence of six years was upheld on appeal.)⁵⁰ The final public trial, due to start 28 September 2009, will group together three cases: (1) the illegal wiretapping of opposition leaders; (2) bribing members of congress; and (3) the illegal purchase of a television channel with state funds.

⁴⁶ Human Rights Watch, *Peru/Chile. Presunción fundada: Pruebas que comprometen a Fujimori* (December 2005). Amnesty International, *Chile, Peru. Fujimori Case – The Supreme Court of Justice Must Comply with Obligations of International Law* (August 2007).

⁴⁷ Inter-American Court of Human Rights, *Case of La Cantuta vs. Peru*, Judgment of 29 November 2006.

⁴⁸ This was greatly reduced from the original 60 cases for which Fujimori's extradition was initially sought. This is significant, since Fujimori can be prosecuted only for the cases for which he was extradited.

⁴⁹ Fujimori admitted to making the payment to Montesinos, thus avoiding a full-blown trial. Sala Penal Especial, Corte Suprema de la República, Exp. No. AV-23-2001, *Sentencia Alberto Fujimori Fujimori* (20 July 2009).

⁵⁰ Segunda Sala Penal Especial, Corte Suprema de la República, Exp. No. AV-12-2003, *Alberto Fujimori Fujimori*, Resolución 17-2008 (10 April 2008).

Guilty as Charged

Fujimori's trial for human rights violations began fittingly on 10 December 2007, the anniversary of the signing of the UN Declaration on Human Rights. It is not possible to offer here a detailed analysis of the 16 months of public hearings; the thousands of pages of documentary evidence offered by the prosecution, the civil parties and the defense; and the thousands of pages of trial transcript. Instead, the remainder of this article briefly examines the verdict, and then explores the process itself to determine whether it avoided the shortcomings scholars have pointed out often plague criminal trials for grave human rights violations. It closes with a brief analysis of the impact of Fujimori's conviction for efforts to achieve accountability in Peru, and its implications for the theory and practice of transitional justice.

The verdict in the Fujimori case was widely hailed as exceptionally thorough and analytically sound.⁵¹ The judges unanimously ruled to convict Fujimori of aggravated homicide, assault and kidnapping in the Barrios Altos, Cantuta and Gorriti/Dyer cases.⁵² The judges noted that they applied the maximum sentence allowable by Peruvian law at the time the crimes were committed – 25 years in prison – due to the 'gravity and extent of the crimes' and the 'nature and condition of the accused as former head of state.'⁵³ The Court also ordered Fujimori to pay reparations of \$60,000 to the families of the victims in the Barrios Altos and La Cantuta cases and \$15,000 each to Gorriti and Dyer. Finally, the Court determined that the victims in both cases were not members of any terrorist organization – a request by the civil parties meant as a reparative measure to survivors and relatives of victims who have suffered stigmatization, threats and intimidation due to unsubstantiated accusations that their family members were 'terrorists.'⁵⁴

The judges used the concept of *autoría mediata* to determine Fujimori's culpability in these crimes. In Peruvian law, *autoría mediata* is attributed to those who have dominion over an 'organized power apparatus' and thus have the power to order and direct the individual members of that apparatus to commit crimes or, in this case, human rights violations.⁵⁵ In the Fujimori case, the Court considered that the prosecution had fully proven that the former president, as commander in chief of the armed forces, had direct control over the Colina Group, a military unit that operated from within the army intelligence services and that engaged in a number of extralegal killings, forced disappearances and torture.⁵⁶

⁵¹ Sala Penal Especial, Corte Suprema de Justicia, Exp. No. AV-19-2001, *Sentencia Alberto Fujimori Fujimori* (7 April 2009) [herein after '*Fujimori*?].

⁵² In each case, in Peruvian law a crime is considered to be 'aggravated' (*calificado*) when certain conditions are present, including cruel treatment of the victim and whether the victim was defenseless and did not represent a real danger at the time of the crime.

⁵³ Public presentation, Fujimori trial sentencing, Supreme Court Justice César San Martín, Special Criminal Court, Lima, Peru (7 April 2009).

⁵⁴ *Fujimori*, supra n 51 at 707.

⁵⁵ There is no equivalent to *autoría mediata* in English-speaking legal systems. It is sometimes translated as 'perpetration by means' of an organized apparatus of power or other instrument. Personal communication, Douglass Cassel (20 July 2009).

⁵⁶ *Fujimori*, supra n 51 at 655–657.

The sentence outlines the institutional framework in which Fujimori rose to power and, after 1991, redefined the nation's counterinsurgency strategy. The Court confirmed the prosecutor's argument that this new strategy, which Fujimori personally directed, consisted of a formal public strategy that claimed to respect human rights and a parallel, secret strategy designed to eliminate suspected subversives. Fujimori directed the National Intelligence Service (SIN) to oversee the newly created National Defense System, charged with coordinating counterinsurgency efforts, and gave Montesinos control over all SIN operations. Fujimori also made Montesinos his representative and intermediary vis-à-vis the armed forces.

Under the rubric of the SIN, Montesinos designated the army intelligence services to implement the new counterinsurgency strategy. This resulted in the creation of the Colina Group. Through his control over the army and the intelligence services, the Court argued, Fujimori had direct control over and responsibility for the acts of the Colina Group. The Court also established that when aspects of the Colina Group's activities came into public light, Fujimori and his allies engaged in a series of actions designed to cover up these crimes, which were never duly punished and whose authors were ultimately protected by the amnesty laws passed by congress and promulgated by Fujimori in 1995.

The Court specifically addressed the nature of evidentiary proof required in such cases. It argued that in criminal enterprises of this kind, there is unlikely to be direct proof of culpability, such as a written order or legislation; often, whatever documentary evidence that may have existed has been destroyed.⁵⁷ 'It is precisely the clandestine nature and the illicit practice of an organization,' the judges argued, 'that makes impossible, for obvious reasons, the prospect of demonstrating its existence and the acts it commits via normative measures' or other types of direct proof.⁵⁸ This requires the careful reconstruction and contrasting of facts and events through circumstantial and other probatory evidence. The judges thus directly refuted a key argument of Fujimori's defense: that without an order signed by Fujimori ordering the killings or kidnappings, he could not be found guilty.

The judges drew on the Inter-American Court's 2006 ruling on the Cantuta case, as well as a 2005 ruling by Peru's Constitutional Tribunal and the Final Report of the CVR, to argue that the crimes for which they found Fujimori guilty formed part of a broader pattern of 'state crimes' that could not have been committed without the prior knowledge of high-ranking government and military authorities, including Fujimori himself.⁵⁹ The judges determined 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.⁶⁰ The Court found evidence of a pattern of systematic violations of human rights and, drawing widely on international jurisprudence, defined these as 'crimes against humanity':

⁵⁷ *Ibid.*, 57.

⁵⁸ *Ibid.*, 61.

⁵⁹ *Ibid.*, 655.

⁶⁰ *Ibid.*, 483–492.

The assassinations and aggravated assaults committed in Barrios Altos and Cantuta are also crimes against humanity [f]undamentally because they were committed in the framework of a state policy of selective but systematic elimination of presumed members of subversive groups.⁶¹

The judges note that their findings coincide with those of the Inter-American Court, as well as Peru's Constitutional Tribunal, which previously categorized the Barrios Altos and Cantuta massacres as crimes against humanity.⁶² But, they argued, the Inter-American Court can determine only the culpability of the state, not of individuals, and it is exclusively the task of the domestic tribunal to determine individual criminal responsibility and impose corresponding sanctions. This careful delineation of the role of international tribunals such as the Inter-American Court and their relationship to Peru's domestic legal system highlights the principle of complementarity at its best, and reveals how international tribunals can contribute to the efforts of domestic courts to administer justice in complex cases of grave human rights violations.

Dilemmas in Criminal Prosecutions

There is a rich and ultimately unresolved debate about the viability – and desirability – of criminal trials after mass atrocity.⁶³ Despite the global shift in favor of accountability documented by transitional justice scholars,⁶⁴ these debates remain very much alive in local contexts such as Peru. As societies the world over grapple with these issues, scholars are developing empirical case studies on how societies address the accountability imperative: whether criminal trials are pursued; the extent to which criminal trials contribute to the rule of law and democratic governance; and how criminal trials fit within broader processes of transitional justice efforts. Since Peru is a case in which not only have criminal prosecutions moved forward but a former head of state has been successfully convicted for grave human rights violations, it seems apt to explore some of the specific dilemmas of criminal prosecutions for human rights violations that have been raised in the transitional justice literature and how they have played out in the Fujimori trial.

The first of these dilemmas is retroactivity: whether defendants face charges under norms that were not in force at the time the alleged crimes were committed, which would violate the rule of law. The second issue of politicization refers to whether the tribunal is an independent institution removed from political

⁶¹ Ibid., 623–624.

⁶² Ibid.

⁶³ See, for example, José Zalaquett, 'Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations,' *Hastings Law Journal* 43(6) (1992): 6–16; Juan Méndez, 'Accountability for Past Abuses,' *Human Rights Quarterly* 19(2) (1997): 255–282; Mark J. Osiel, 'Why Prosecute? Critics of Punishment for Mass Atrocity,' *Human Rights Quarterly* 22(1) (2000): 118–147; and Laurel Fletcher and Harvey Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,' *Human Rights Quarterly* 24(3) (2002): 573–639.

⁶⁴ Teitel, supra n 4; Diane Orentlicher, "'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency,' *International Journal of Transitional Justice* 1(1) (2007): 10–22.

pressures that can guarantee impartiality. The third issue of selectivity raises the question of who should be prosecuted and under what criteria. Should material as well as intellectual authors be prosecuted? Where should the line be drawn? A related concern is that many are likely to avoid prosecution either by escaping, by concealing their identities or the evidence implicating them, by death, or through the continued protection of powerful allies.⁶⁵ Let us briefly review the Fujimori trial with respect to each of these issues.

The question of retroactivity is relatively uncomplicated, since to prosecute Fujimori the Court relied on the 1979 constitution and the criminal code in place at the time the crimes were committed. The judges clearly outlined the genealogy of the concept of *autoría mediata* in the Peruvian criminal code, noting its formal adoption in 1991 and citing the works of noted Peruvian experts in criminal law on this topic.⁶⁶ Notably, *autoría mediata* was used to convict Shining Path's top leader, Abimael Guzmán, a few years earlier.⁶⁷ It was also used to convict former head of the SIN, General Julio Salazar Monroe, in the Cantuta case in April 2008.⁶⁸ In addition, while the judges argued that the Barrios Altos and Cantuta cases constituted 'crimes against humanity,' they did not base their verdict on this legal concept, which is currently not codified in Peruvian criminal law, but on the crimes of aggravated murder, assault and kidnapping, all duly codified in Peruvian law at the time the crimes were committed.

In order to avoid politicization, the second key challenge, the prosecuting tribunal must be independently constituted for its operations, resources and decisions so that rule of law norms and due process can be fully upheld, and it must not be subject to political influence or intervention.⁶⁹ This was a problem that plagued the Nuremberg trials, whose creation by the victorious Allied Powers to prosecute Nazi war criminals led to accusations of 'victor's justice.' Fujimori's children, especially his daughter Keiko, who is currently a congresswoman for the political party Alliance for the Future, claimed throughout the process that the trial was politically motivated. Yet neither Fujimori nor his lawyer, César Nakasaki, seriously questioned the fairness of the tribunal, and Nakasaki often stated in the press that the judges were the best his client could have hoped for. In the days following the verdict, new charges of politicization circulated in the pro-Fujimori media, including charges that the president of the tribunal, César San Martín, ruled against Fujimori motivated by revenge, since he had been fired as a judge after the 1992 *autogolpe*.⁷⁰ However, prior to the verdict, Nakasaki did not challenge San Martín's participation in the tribunal, which he could have done legally. Indeed,

⁶⁵ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998); and Fletcher and Weinstein, *supra* n 63.

⁶⁶ *Fujimori*, *supra* n 51 at 628–651.

⁶⁷ Francia Sánchez, *supra* n 40.

⁶⁸ Primera Sala Penal Especial, Corte Superior de Justicia de Lima, *Sentencia Caso Cantuta*, Exp. No. 03-2003-1°SPE/CSJLI (8 April 2008).

⁶⁹ Minow, *supra* n 65.

⁷⁰ Fiebre Naranja, *Caretas*, 16 April 2009.

these charges seem designed to discredit the tribunal once Fujimori was found guilty.

Domestic and international observers widely noted that the Fujimori trial was fair and impartial one that scrupulously guaranteed the due process rights of the accused.⁷¹ Fujimori was given ample opportunity to defend himself in a court of law: his lawyer was permitted to present witnesses, documents, audiovisual material and other evidence he deemed pertinent to the case. The Court gave Nakasaki ample time to present 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 start of the process, after each witness presented his or her testimony, and at the end of the trial. In addition, the judges responded fairly to key challenges that emerged during the course of the trial. For example, when Fujimori appeared to be ill, the Court allowed him to see his own physician, but ordered medical exams by a Court-appointed physician in order to prevent undue delays. When medical advice warranted, the Court canceled trial sessions and reduced the length of each session to avoid putting undue stress on the defendant.

The tribunal also sought to guarantee the fairness of the judicial process and limit possible political interference by making it as transparent as possible. To this end, the judges allowed the media direct access to the proceedings, and the trial was widely covered by the Peruvian print and electronic press. The Court also permitted survivors and family members of the victims of the human rights cases, as well as Fujimori's family members, friends and political associates, to sit as permanent observers to the trial. Human rights activists, academics and international observers were also permitted to observe the process. The 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 posted them on its website.

Human rights and victims groups were also concerned about possible politicization of the trial. For example, they feared that the current president, Alan García – who was himself charged by the CVR of political (but not necessarily criminal) responsibility for human rights violations committed during his first government – would intervene in the process in favor of Fujimori. Although there were some questionable moves during the months the trial was in progress that led many observers to decry a budding alliance between the pro-Fujimori block of congressional leaders and the ruling American Popular Revolutionary Alliance (APRA) party, the judges affirmed that there was no undue interference in the process.⁷² Undoubtedly the public nature of the trial contributed to limiting the possibilities of political interference – of fundamental and historic importance in Peru, where the judiciary has often bent to the will of the executive. Given the historically low levels of public approval of Peru's judiciary, it is also striking that the vast majority

⁷¹ Human Rights Watch, *Peru: Fujimori Verdict a Rights Victory: Former President's Trial Likely to Advance Justice, Rule of Law* (April 2009); Amnesty International, *Peru: The Conviction of Fujimori – A Milestone in the Fight for Justice* (April 2009).

⁷² Personal interview, Judge César San Martín, Lima, Peru, 29 May 2008 and 26 June 2008.

of Peruvians considered that the Fujimori trial was fair: 75 percent said Fujimori's due process rights had been respected, while 67 percent said the judges were fair and impartial.⁷³

The issue of selectivity is a more vexing question. As a result of the extradition process, Fujimori was prosecuted and convicted for a limited number of human rights cases;⁷⁴ the result is an apparently narrow basis for conviction. Indeed, a common argument throughout the process was that Fujimori should not be punished for such a 'small' number of murders given that he successfully defeated terrorism. The Court maintained that the premeditated nature of the crimes, the brutality with which they were carried out, and the clear intent on the part of the accused to protect the material authors with amnesty laws were severe enough to merit a heavy sentence. Yet the judges also went to great lengths to place these crimes in a broader context, as noted above, establishing that they were part of a systematic plan to eliminate suspected subversives and constitute crimes against humanity. Thus, the sentence goes a long way to challenging the discourse repeated frequently during Fujimori's decade in power – and which still reverberates today – that the outcome is more important than the process; that order is more important than rights; that the end justifies the means.

There is another dimension of selectivity that can only be addressed cursorily here: the question of *who* should be prosecuted. The CVR established that the worst human rights violations occurred between 1983 and 1985 – during the government of Fernando Belaúnde – and between 1988 and 1993 – during the end of the first government of Alan García and the first few years of the Fujimori regime. Fujimori made clever use of this in his closing arguments. After asserting that Barrios Altos and Cantuta were isolated incidents that contravened his orders to respect human rights, he then named specific cases of human rights violations that occurred during the Belaúnde and García years to suggest that the fact that only he has been prosecuted reveals the political nature of the trial against him:

Was it part of the institutional policy of the first government of Alan García to assassinate peasants in Cayara and Acocomarca and Los Cabitos? Was it part of the institutional policy of Fernando Belaúnde Terry to carry out the disappearances and assassinations in Putis? What difference is there? Why are Alan García and Fernando Belaúnde innocent and Alberto Fujimori is guilty? Why is there a double standard?⁷⁵

Belaúnde passed away several years ago. It remains an unanswered question whether prosecutors will attempt to indict García once he steps down as president in 2011. Several cases of human rights violations that occurred during his first government are winding their way through Peru's legal system. It remains to be

⁷³ Instituto de Opinión Pública/Pontificia Universidad Católica del Perú, 'El caso Fujimori y la opinión pública,' *Estado de la opinión pública* (April 2009).

⁷⁴ On 11 April 2009, *La República* reported that the Peruvian government reportedly requested the Chilean Supreme Court to expand the extradition ruling to include three additional cases: the 1992 killing of Shining Path prisoners in the Castro Castro penitentiary; the 1997 extrajudicial execution of MRTA members in the wake of a hostage crisis; and the illegal sale of arms to the FARC.

⁷⁵ Transcript of Fujimori trial, Session No. 160, Exp. No. AV-19-2001 (3 April 2009), 4.

seen whether the Peruvian judiciary will prove able to maintain the independence and impartiality it so ably demonstrated in the Fujimori trial as these cases move forward.

Implications: Peru and Beyond

By prosecuting a former head of state, Peru has shown its citizens that its system of justice is capable of prosecuting even the most powerful – affirming that most fundamental of democratic principles, equality before the law. This goes a long way toward legitimizing the rule of law in Peru, and sets an important precedent both for those who violated human rights in the past and for those who may do so in the future. This lesson of the Fujimori trial transcends Peru, as noted by Peruvian journalist Augusto Álvarez Rodrich the day after Fujimori's conviction:

Future rulers are now forewarned that it is their duty to respect the life of all citizens and that it is not acceptable to kill – or to order someone else to do so – no matter how powerful they think they are or how 'justified' they believe their cause to be.⁷⁶

One of the key criticisms of international tribunals such as those of the former Yugoslavia and Rwanda has been that due to their distance from the events, the use of international judges, and other factors, they are unable to construct local ownership of the process. Ronald Gamarra, current executive secretary of the *Coordinadora Nacional de Derechos Humanos*, has argued that the fact that the judges prosecuting Fujimori were Peruvian, and that Fujimori was convicted based on domestic legislation (although the ruling drew widely on international jurisprudence), was of fundamental importance to constructing local legitimacy for the process and therefore greater societal acceptance of the final outcome.⁷⁷ The Fujimori trial thus suggests that the use of domestic tribunals to prosecute human rights violations can ensure greater local ownership of the process. It also reveals the rich synergy between domestic and international actors in the struggle to achieve accountability after atrocity. The Peruvian case thus reflects the ways international tribunals can complement and contribute to local efforts in favor of an accountability agenda.

Peru's transitional justice process also demonstrates that an integrated approach to transitional justice is viable in postconflict societies. Peru's process is far from complete, and there have been numerous stumbling blocks along the way. The reparations program, for example, has moved along at a glacial pace. Yet any serious student of transitional justice knows that these processes are deeply circumscribed by politics. It is precisely by studying the political context in which transitional justice processes are embedded that we can further understand what makes criminal prosecutions more likely and sustainable.

The question remains whether the Fujimori trial will be a catalyst for Peru's judiciary to continue to successfully prosecute other cases of human rights

⁷⁶ 'No matarás,' *La República* (8 April 2009).

⁷⁷ Conference presentation, 'Accountability after Atrocity: Latin American and African Examples in Comparative Perspective' (Washington, DC: George Mason University, 6 May 2009).

violations in Peru and contribute to a cycle of accountability and respect for the rule of law, or whether it will stand as a solitary example of success that has limited impact on the behavior of judicial authorities and political elites. There are positive signs indicating significant advances. There now exists a series of state institutions dedicated primarily to prosecuting human rights cases. To date, there have been more than a dozen and a half successful convictions, including eight with firm sentences. Dozens of other cases are in process. Moreover, although there is not massive organized public pressure for criminal prosecutions, there is broad public support for accountability in Peru.

Yet there are also some very serious problems in terms of the judicial process. Lawyers of alleged perpetrators make ample use of legal technicalities to delay trial dates and stall criminal proceedings. Other cases cannot move forward because the armed forces refuse to hand over information about the identities of its officials, who often used pseudonyms while conducting counterinsurgency operations. No real witness protection program is in place. The special system to try human rights cases has seen the scope of cases under its mandate expand from human rights cases only to include corruption and drug-trafficking cases, which threatens to dilute its effectiveness. Many cases remain stuck in the Public Ministry at the preliminary stage – a problem that could have as much to do with changing political winds no longer in favor of an accountability agenda as with concrete resource and legal matters. Finally, while international jurisprudence has been adopted by Peru's Constitutional Tribunal and has been used by judges to support verdicts condemning perpetrators of human rights crimes in several cases, there are also instances in which judges fail to abide by this jurisprudence, resulting in absolutions or the archiving of cases.

In addition, there are growing signs of political interference in the judicialization process that seem designed to halt accountability efforts in Peru. Shortly after García's inauguration in 2006, the defense minister announced that the state would provide legal defense to all state agents accused of human rights violations, even though many victims lack legal representation. Successive defense ministers have made generic accusations about the 'persecution' of the armed forces for human rights cases. There have been repeated efforts to pass amnesty laws, most recently in 2008, when a leading APRA congresswoman called for a general amnesty for military and police officials accused of human rights violations. The military justice system has continued to seek to try human rights cases, despite a 2005 ruling that this is unconstitutional. Most significantly, there are real concerns that Fujimori could be granted a pardon by García near the end of his term – or by his daughter Keiko, should she succeed in her bid to win the 2011 presidential elections.

The likelihood of political interference in the judicial process reflects not merely the fact that current political elites in Peru could potentially be put in the dock for human rights violations.⁷⁸ It also reflects a recomposition of deeply conservative sectors of the armed forces and the political right in Peru that refuse to acknowledge

⁷⁸ Prosecutions are possible against not only Alan García but also opposition leader Ollanta Humala, who was an army commander during Peru's internal conflict and who has been implicated in serious

any wrongdoing on the part of the military in Peru's internal armed conflict, and that continue to perceive any attempt to hold accountable individual members of the armed forces (or former presidents such as Fujimori) as a belligerent act. These same sectors frequently attack the CVR as biased, and accuse human rights organizations of advancing the agenda of 'terrorists.' They also are highly critical of the Inter-American Court, and every so often there are renewed calls to again withdraw Peru from its jurisdiction.

Mark Osiel has argued that criminal trials can help create a meaningful framework for publicly exploring the traumatic memories of political violence.⁷⁹ The Fujimori trial has done that, but only to a degree. Political violence in Peru spanned two decades and three presidents, and was carried out by a variety of actors. In societies marked by ethnic, regional and class divides, there may be less support for criminal prosecutions in cases of human rights violations, which affect only a subgroup of society, than, say, in cases of corruption, which is seen as being harmful to the whole society.⁸⁰ In such societies, the argument is often put forward that criminal trials for human rights violations will reinforce old cleavages. This does not seem to be the case in Peru, where the tribunal that prosecuted Fujimori was widely perceived as legitimate and where a majority came to believe that Fujimori was in fact guilty of human rights violations.⁸¹ The fact that Fujimori is also being prosecuted for corruption and abuse of authority will likely reinforce this view. Yet the fear remains very real in Peru today that politics may yet trump the law – a sober reminder of the reasons so many theorists and practitioners in the transitional justice field remain skeptical of the ability of criminal trials to adequately address a legacy of atrocity. All the same, the successful prosecution of former president Fujimori represents a significant achievement for the promotion of accountability and restitution to victims of atrocity in Peru and beyond.

human rights violations. Coordinadora Nacional de Derechos Humanos, *Contexto de Violencia en la Región Nororiental y Sucesos de Base Militar de 'Madre Mía' (1992)* (2006).

⁷⁹ Mark Osiel, 'Ever Again: Legal Remembrance of Administrative Massacre,' *University of Pennsylvania Law Review* 144(2) (1995): 463–704.

⁸⁰ Lutz and Reiger, *supra* n 3 at 281.

⁸¹ In a May 2009 poll, 62% said that Fujimori was guilty of human rights violations; 70% said that he was guilty of corruption; and 58% opposed a pardon for Fujimori. *La República*, 11 May 2009.