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Fujimori on Trial



Alberto Fujimori (back to camera), former president of Peru, faces charges of crimes against humanity and corruption.

By Jo-Marie Burt

IN 1990, I RECEIVED THE COUNTRY ON THE verge of collapse, overwhelmed by hyperinflation and terrorism,” Alberto Fujimori shouted defiantly on the first day of his trial in December for massive human rights violations committed during his 1990–2000 presidency of Peru. “With 50% of the territory in the hands of subversion, the nation was hemorrhaging, the police in retreat, and the army lacking weapons and locked in conflict with Ecuador and Chile. . . . Now the TV ads talk about how Peru is advancing, and this is because of reforms implemented during my government.” Gesticulating wildly and his voice shrill with emotion, he challenged the public prosecutor who had just read the indictment against him: “Thanks to my government, the human rights of 25 million Peruvians without exception were restored.” After several minutes of this tirade, the presiding judge interrupted, pressing Fujimori to plead

guilty or not guilty. “I reject the charges,” he proclaimed. “I am innocent!”

Three of Fujimori’s four children, along with several of his staunchest supporters in Congress who were observing the trial from behind a thick pane of glass in an adjacent room, stood and applauded Fujimori’s vigorous defense of his government. The pro-Fujimori press declared the opening day of the trial a “knockout” for the defense. In more critical circles, however, Fujimori’s screeching declaration of innocence became the object of ridicule. His cry of innocence was immediately turned into a cell-phone ring tone, and the mainstream and progressive media repudiated the outburst as a crude attempt to “politicize” the trial.

While the international media widely reported the theatrical trial opening, it has paid less attention to the detailed, often macabre testimonies that have followed. Victims of the crimes

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for which Fujimori is being tried have testified, as have former military officers who were active members of the Colina Group—the death squad that operated out of the Army Intelligence Service during the 1990s and brutally killed numerous suspected subversives, members of the opposition, and others who simply got in the way of powerful elites connected to the Fujimori regime. The trial of Fujimori is helping to reveal, in a systematic and undeniable way, the structures of state terror that operated during his decade in power.

The trial of Fujimori is truly historic: It marks the first time a former head of state has been extradited to his own country and put on trial for human rights violations. Equally historic is the fact that dozens of human rights trials are currently under way in Peru, as elsewhere in Latin America. Once the “sanctuary of impunity”—to use Eduardo Galeano’s phrase in reference to Uruguay—Latin America has taken bold new steps to hold military and civilian torturers accountable for their crimes. The advance of justice is all the more remarkable, given the historic weakness of Latin American judiciaries, the notorious absence of political will to hold those responsible for such crimes accountable, and the belief, even among some progressives, that trials were not viable, perpetuated conflict, or undermined the opportunity for reconciliation. Yet the determination of a wide gamut of groups, from survivors of rights violations and victims’ family members, to domestic and international human rights groups and social movements, to progressive intellectuals and politicians, to pursue truth and justice—the cry of the region’s most iconic human rights movement, the Mothers of the Plaza de Mayo—has shifted the course of history toward

this moment of accountability. A transnational human rights activism is challenging the region’s culture of impunity in ways unimaginable just a few years ago.

As Peru’s transitional government struggled to grapple with the legacies of two decades of internal conflict and authoritarian rule, it turned to the lessons of other nations for guidance. A truth commission, created in 2001 to investigate the causes and consequences of political violence between 1980 and 2000, explicitly sought to avoid the Faustian bargain of settling for truth at the expense of justice—as had occurred in countries like Chile and Guatemala. Instead, the Peruvian Truth and Reconciliation Commission (CVR) adopted an integral approach to post-conflict reconstruction that favored truth-telling, reparations, and institutional reforms, while also calling for retributive justice in the most heinous cases of rights abuses.

The CVR was, in fact, the first truth commission in Latin America to have created a special legal unit tasked with identifying key cases that should be criminally prosecuted. When it presented its report in 2003, the CVR identified 43 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 were already in jail.) Still, many Peruvians believed that Fujimori, who had fled to Japan in the wake of a massive corruption scandal in 2000, would never be held accountable for human rights atrocities committed during his decade-long rule.

Despite repeated attempts by the Peruvian government to extradite Fujimori, Japan steadfastly refused to turn him over. In November 2005, however, he surprisingly left his safe haven in Japan for Chile, from where he presumably planned to launch a political comeback by running for president in Peru’s 2006 elections. To his obvious surprise, Fujimori was not granted the same courtesies as in Japan; instead Chilean authorities arrested and jailed him. The Peruvian government immediately announced it would seek his extradition to face charges for human rights violations, abuse of authority, and corruption in Peru. After two years, Chile’s Supreme Court ruled in favor of extradition; in September 2007, Fujimori was deported to Peru.

Fujimori can be prosecuted only for the cases for which he was extradited. Notably, the Chilean Supreme Court voted unanimously in favor of extradition in the four human rights cases at the core of the “mega-trial” now under way: the Barrios Altos massacre of 1991, in which 15 people attending a neighborhood barbecue were killed in a commando-style raid by the Colina Group; the disappearance and later killing of nine students and a professor from La Cantuta University in 1992, also carried out by the Colina Group; and the kidnappings of journalist Gustavo Gorriti and businessman Samuel Dyer in the aftermath of the April 5, 1992, coup d’état in which Fujimori closed Congress, suspended the Constitution, and took control over the judiciary with the backing of the armed forces.

Since the trial began in December,

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the public prosecutor, the human rights lawyers representing the victims, and Fujimori's attorney have called more than 80 witnesses to testify. The volume of written and audiovisual evidence is enormous. The trial is nevertheless moving along at a brisk pace, with over 50 witnesses having presented their testimonies as of late March, and is expected to culminate in July. If convicted, Fujimori could receive 30 to 35 years in prison.

Establishing the success of the Fujimori regime in defeating terrorism is a central element of the defense's strategy. Aimed at the Fujimori faithful as well as now-wavering former supporters, this argument plays on the discourse elaborated and repeated endlessly during the 1990s to justify the regime's authoritarian practices and shield its kleptocrats from public scrutiny. But Fujimori is being tried in a court of law; once prosecutors began interrogating him, he avoided answering difficult questions, claiming he "didn't remember." The "amnesia defense" (as Gorriti called it) undermines the image Fujimori and his followers seek to portray of the heroic savior who defeated terrorism and put Peru on the path to stability and prosperity.

The other strategy of Fujimori's defense is, simply, to blame his subordinates. This strategy was perfected by Chilean dictator Augusto Pinochet, whom Fujimori once claimed as his role model (he once referred to himself as "Chinochet"). His lawyer, César Nakazaki, maintains that if no written order to commit human rights violations by Fujimori exists, then he cannot be considered

culpable for the acts of lower-level security agents. Nakazaki points to a presidential directive that orders state security forces to respect human rights in the counterinsurgency effort, and denies that any parallel policy involving death squads and "dirty war" tactics existed.

This of course ignores the growing international acceptance of the precedents of "intellectual authorship," which holds that the person who authorizes or instigates a crime is as responsible as the person who carries it out, and "command responsibility," which holds that leaders of a hierarchical institution who know or should know about misdeeds yet do nothing to stop them, are also culpable.

In this regard, Fujimori has avoided pointing the finger directly at Vladimiro Montesinos, his top adviser and de facto head of the National Intelligence Service (SIN). Clearly he fears antagonizing his once-powerful adviser even though the former intelligence chief also sits in a prison cell and has been convicted on numerous corruption and related charges. Fujimori has, however, blamed military leaders and overzealous mid-ranking officers of engaging in "excesses" he claims were contrary to his directives to respect human rights. Somewhere between amnesia and blame shifting, Fujimori said during his interrogation: "If these horrendous crimes occurred during my government, that is a pity, but it was not I who ordered them."

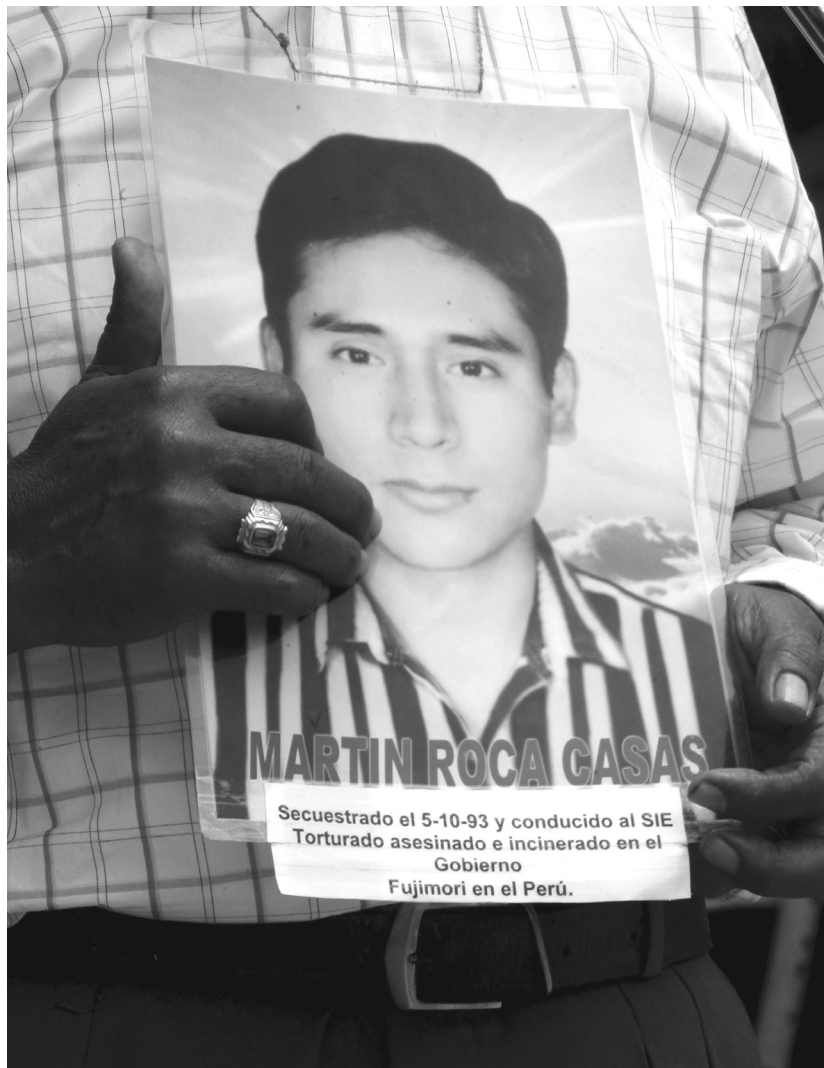
When Fujimori said he lamented the crimes committed during his regime—but could not seek forgiveness for them since they were not of his doing—family members of the

victims reacted angrily. Gisela Ortiz, whose brother Luis Enrique was one of the Cantuta victims, called it a hypocritical and opportunistic gesture. "He's had 15 years to ask for forgiveness but instead he rewarded the murderers with an amnesty law," she said. "Now he only offers apologies."

Appearing the ignorant victim of the Machiavellian Montesinos or bloodthirsty death squad leaders may convince some, but it flatly contradicts Fujimori's central claim to have saved Peru from economic and political chaos. And this is the most important problem outside the courtroom for Fujimori's followers, who have hitched their political survival to the aging former president's legacy. This is why, perhaps, they are endeavoring to question the trial's legitimacy. Most recently, Fujimori's eldest son, Kenji, accused the government of deliberately trying to kill his father, citing inadequate prison conditions and medical attention. Both charges were quietly dropped after government officials produced reports attesting to both his good health and the relatively privileged prison conditions he enjoys.

Fujimori's eldest daughter, Keiko Sofia, has often asserted that her father is being persecuted and that the tribunal is biased and influenced by the "caviar left." In mid-January, Keiko, who was elected in 2006 to Congress with the most individual party votes of any candidate, announced the launching of a new political party, Fuerza 2011, to compete in the next presidential elections. The true motive of the announcement was made clear when Kenji declared on a nightly news program that the 1 million signatures they would collect to register the new party would be his father's "passport to freedom." Sounding a little more desperate, Fujimori's brother, Santiago—also a member of

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The father of Martin Roca Casas holds a portrait of his son, who was disappeared during Fujimori's rule (1990–2000), at a December memorial held in Lima.

Congress—warned that a guilty verdict would ignite a “civil war.”

The anxiety in the Fujimori camp perhaps indicates that things are not going well for the former president. The trial started off with the testimonies of direct victims of the four human rights cases. First was the harrowing testimony of four survivors of the Barrios Altos massacre, including Tomás Livias Ortega, who was left in a wheelchair after being shot 27 times. Norma Espinoza, a student at La Cantuta University

in July 1992, recalled the night the nine students and university professor were abducted from the campus; initially a gunman identified her as one of the students to be taken away, but at the last minute another man ordered her separation from the group and her life was spared. Gorriti and Dyer offered compelling testimony of their kidnapping and incommunicado detention during the days following Fujimori's 1992 coup d'état, including their certainty that Fujimori not only knew of, but

had ordered their arrest.

One of the most dramatic moments came when the current prime minister, Jorge Del Castillo, testified—not least because of an unspoken alliance between the ruling APRA party and the small but influential bloc of pro-Fujimori legislators. Del Castillo explained how, on the evening of Fujimori's coup, he distracted the soldiers who had come to the home of Alan García—Peru's current president—to arrest, and probably kill him. Thanks to Del Castillo's actions, García was able to escape and eventually sought refuge in Colombia. Like Gorriti and Dyer, Del Castillo spent several days in a prison cell without access to a lawyer and unable to get word to his family that he was OK. He showed a document verifying that the order to detain him came from the head of the army, General Nicolás Hermoza Ríos (who is also on trial for these and other crimes).

More than a dozen members of the Colina Group have also testified, starting with the lowest-ranking members upward. The logic of this, notes human rights activist Francisco Soberón, is for the tribunal to establish the chain of command that guided the group's activities. More than 50 members of the Colina Group are currently on trial for the Cantuta and Barrios Altos massacres, and many of them have turned state's evidence, revealing intimate details of the organization's operations in order to reduce their own sentences. As a result, many described the chilling details of the death squad's activities—how they realized, after the Barrios Altos massacre, that their mission was not to capture presumed subversives but to “eliminate” them; how members were “baptized” into the group by killing someone; how they conducted eight practice runs before carrying out the Barrios

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Altos killings; how they carried lime and salt to place on top their victims' bodies because "lime eats flesh"; how they celebrated after killing their victims. In the course of these testimonies, even human rights activists have been surprised to learn that some crimes that had been attributed to the Shining Path were actually the work of the Colina Group.

The public prosecutor and the human rights lawyers are hoping that the concept of intellectual authorship will bring a conviction, despite Fujimori's assertions that he knew nothing of the killings and disappearances that occurred under his government. This concept was recently used to confirm the life sentences of Abimael Guzmán and other top leaders of the Shining Path. Command responsibility may be easier to demonstrate: The Colina Group operatives were officers and soldiers in the Peruvian armed forces, a hierarchical organization whose actions were widely reported in the press. As commander in chief of the armed forces, the prosecution maintains, Fujimori bears direct responsibility for these crimes. It remains to be determined whether prosecutors can demonstrate he had knowledge and dominion over the actions of the armed forces; the extent of his participation in the commission of crimes, if any; and the extent of his participation in covering up the crimes. The latter seems the least difficult to prove, given that the Fujimori-controlled Congress passed an amnesty law in 1995 designed to free members of the Colina Group who, under intense domestic and international pressure, had been convicted in a military court for the Cantuta massacre. Fujimori could have vetoed the legislation but instead signed it and publicly defended it as a measure of reconciliation (a position he continues to defend in the trial).

Fujimori has already been sentenced to six years in prison for abuse of authority. In separate trial proceedings, he was found guilty of ordering an illegal search and seizure operation that permitted him to remove videotapes from the home of the wife of Montesinos. The videos, still unaccounted for, presumably incriminated Fujimori in illegal activities. And, when the human rights "mega-trial" ends, he faces additional charges of corruption and abuse of authority. The first trial will include three cases: the massive wiretapping of opposition leaders; bribing members of Congress; and embezzling state funds for illegal purposes. A separate trial will be held for the transfer of \$15 million in public funds to Montesinos, presumably to buy his silence. The same panel of three Supreme Court justices that is presiding over the human rights trial will oversee these proceedings.

During a recent visit to observe the Fujimori trial in late February, I met with a former student and some of her friends in a well-heeled neighborhood in Lima. When the discussion turned to my work observing the trial, a thirty-something businessman turned to me and said, "How is it possible that they are prosecuting the best president we've had in recent memory? He saved Peru from terrorism and economic chaos." Intelligence operations, like those that resulted in the arrest of Guzmán in 1992, were only part of the successful counterinsurgency effort, he assured me. "Dirty war" tactics were also necessary to fully defeat terrorism. "Entire communities were terrorists," chimed in a mother of two, who was accompanied by her unformed, live-in nanny. "There was no

other way." This view is still very common in Peru; recent polls indicate that 30% to 50% of Peruvians still profess admiration for the former president.

Such arguments echo the editorial line plied in the pro-Fujimori press justifying murder and torture in the "war against terror." In late January, Uri Ben Schmuël, editor of *La Razón*, criticized Fujimori for failing to uphold this argument in his defense: "Relying on the excuse of 'I don't know,' 'I don't remember,' 'I refuse to answer,' seems undignified for someone who led a victorious war. . . . Fujimori should say what everyone knows but hypocritically won't

say out loud: To achieve peace it was necessary to pay a quota of blood." Jaime de Althaus, a conservative journalist who anchors a nightly news program, recently asserted that a guilty sentence for Fujimori would be seen by the Peruvian people as "a moral victory for the Shining Path."

Both comments were widely repudiated in the Peruvian blogosphere and mainstream media—an indication that the old narrative, forged and cultivated during Fujimori's decade in power, that murderous methods were justified in Peru's war on terror, is losing its power to persuade. Peru's truth commission challenged that discourse, but orphaned of political support, its findings have not been widely disseminated to the Peruvian public. Perhaps the trial of Fujimori, as it reveals the brutal methods of state terror and the links between authoritarian rule and massive theft of public goods, will challenge Peruvians, and the rest of the world, to rethink the legitimacy of such methods. ■

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