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Fujimori on Trial: A WOLA Observer's Report

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Professor Jo-Marie Burt witnessed the first week of former President Alberto Fujimori's trial in Lima as an accredited observer for WOLA. Here is her exclusive report.

The Trial of Alberto Fujimori

By Jo-Marie Burt

The trial of Peru's former president Alberto Fujimori started on December 10, 2007, which was also the 59th anniversary of the signing of the United Nations Universal Declaration of Human Rights. Whether he was aware of this irony or not, Fujimori stands accused of precisely the sorts of crimes that the magna carta of human rights protection was meant to prevent: ordering abductions and extra-judicial killings and

abuse of authority during his rule from 1990 to 2000.

The "mega-trial," as Peruvians call it, of their former leader is currently limited to charges for which Fujimori was extradited to Peru from Chile in September. These include human rights violations in three cases: the Barrios Altos massacre of 1991, in which 15 people were killed; the disappearance and later killing of nine students and a professor from the Cantuta University in 1992; and the kidnapping 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.

Fujimori is also charged with corruption and abuse of authority in four cases, including phone tapping of the opposition; bribing members of Congress; embezzlement of state funds for illegal purposes; and the transfer of \$15 million in public funds to Vladimiro Montesinos, de facto head of the National Intelligence Service (SIN).

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The first trial is centered on the three human rights cases. In the cases of Barrios Altos and Cantuta, the killings were carried out by the Colina Group, a clandestine unit that operated out of the Army Intelligence Service (SIE) and whose purpose was to eliminate suspected guerrilla sympathizers. There is evidence that Fujimori knew of the Colina Group, including statements by the group's members, and did nothing to stop them, nor did he take steps to punish the crimes after they occurred.

The trial *Day One*

A special courtroom was created near the complex where Fujimori was being held at the Special Forces base of the National Police, located on the eastern periphery of Lima, in the dusty, working-class district of Ate Vitarte, an hour's drive east of downtown Lima.

I rode to the base Monday morning on a bus with human rights lawyers, family members of victims, activists, and another international observer. As the bus wound its way to the front gate of the base, we were stopped by a small but noisy group of Fujimori supporters. "Close your window!" someone urged me, later explaining that Fujimori's supporters had thrown eggs and orange paint (the color Fujimori's used in his first presidential campaign) at them on previous occasions.

Eventually police escorted us through. We exchanged our identity documents for credentials that would allow us into the observer's gallery, a small room partitioned from the courtroom by a glass wall. Once inside the gallery we took our seats. Family members of victims and human rights activists sat on the left side of the room, while three of Fujimori's four children and his supporters, including several congressional leaders, sat on the right.

It was a tense scene from the start. Due to the glass wall, we could not always hear the proceedings (the audio system consisted of a small speaker near the ceiling with a microphone to amplify the sound). Other times the sound frequently went out all together.

The first day of the trial was largely formal, with the judge establishing the ground rules of the process, and the defense and prosecuting attorneys presenting evidence and a list of witnesses they would call during the course of the trial. After the lunch break, the chief public prosecutor, José Peláez Bardales, read a summary of the charges against Fujimori.

"Fujimori formed the Colina Group. He approved and ordered executions in the context of a dirty war that sowed pain and spilled the blood of innocents," said the prosecutor. He noted that Fujimori did not participate directly in the crimes, but that, as head of state, he bore responsibility for the acts and for failing to duly investigate and punish the crimes when he learned of them. "Fujimori operated in a structure of authority in which he gave the orders knowing that they would be carried out," said Peláez.

The most dramatic moment of the day came when the judge asked Fujimori if he accepted or rejected the accusations against him. Fujimori launched into a lengthy speech about the disastrous state of affairs in Peru when he assumed the presidency and insisted, with visible emotion, on his government's success in

controlling hyperinflation and stopping terrorism. "In 1990 I received the country on the verge of collapse, overwhelmed by hyperinflation and terrorism ... Thanks to my government, the human rights of 25 million Peruvians without exception were rescued."

After allowing him to go on for several minutes, Judge César San Martín timorously interrupted Fujimori, directing him to respond yes or no. Fujimori continued to speak, leading San Martín to more confidently assert, "In this room I am in charge. You must respect this tribunal." He then exhorted Fujimori to accept or reject the charges. Almost euphoric, as if he could determine the trial's outcome by the sheer force of his will, Fujimori declared, "I reject the accusations [against me]. I am innocent!" Fujimori's followers, including several members of Congress, then stood and applauded jubilantly. The judge reproached the observers, noting that they were to remain quiet or risk being ejected from the gallery.

The session broke for lunch and resumed at 3 p.m. but the judge abruptly adjourned the hearing. Fujimori's blood pressure had risen to dangerous levels, his physician reported. The former president required rest.

Day Two

The trial is scheduled to take place every other day -- on Mondays, Wednesdays, and Fridays. So the trial resumed two days later, on Wednesday, December 12.

The day before, Fujimori had been convicted and sentenced by a different judge, in a different trial, to six years for abuse of power in a case involving a raid on the home of Montesinos's wife ordered by Fujimori in 2000, presumably to secure and remove compromising evidence against the president. (Fujimori ordered a military officer to impersonate a judge in order to carry out the raid. The content and whereabouts of the documents he extracted from this raid remain unknown.) Although Fujimori admitted his guilt in this case, his bid for a lower sentence was denied by the judge, who argued that his confession was, essentially, too little, too late.

The timing of this ruling was coincidental and, for Fujimori, surely a bad precedent for the main trial. This realization seemed to be reflected in his demeanor. In contrast to the spirited defense of his legacy on Monday, Fujimori seemed somber as he sat with his supporters behind the glass partition. Later in the hearing he seemed to regain his spirits a bit.

The hearing started promptly at 9:30 a.m. Judge César San Martín started the morning with clear instructions to the accused: answers must be clear and concise, the accused must respond to the person interrogating him, and that yelling is not permitted. "We must avoid any declaration outside the framework of this trial ... We are going to be firm about this," said San Martín. There was no doubt in anyone's mind that the judge was referring to Fujimori's outburst on the trial's opening day, when Fujimori took advantage of the opportunity to accept or reject the charges brought against him to defend his government.

The judge proceeded to ask Fujimori some basic questions, including his real name, his domicile, and his civil status. When Judge San Martín asked if he had ever been tried or prosecuted for a crime, the room was still. Fujimori responded in a near-whisper, "We had this process yesterday," referring to his conviction on Tuesday. The judge then directed the public prosecutor to begin his interrogation of Fujimori.

That exchange set the tone for the hearing. Fujimori was impassive, as were his supporters in the viewing room. This was a sharp contrast with the previous session on Monday, when they seemed confident and upbeat, especially after Fujimori's vigorous rejection of the charges against him, which they applauded. This would change in the course of the morning's interrogation, however, as chief prosecutor Peláez seemed to lose his way in the process of interrogating Fujimori. Peláez seemed distracted, failing to follow up key questions, and allowing Fujimori to talk at length about what he viewed as the achievements of his government in quelling guerrilla violence. When pressed on his relationship to Montesinos and the counterinsurgency war, Fujimori's fall-back line was that he only issued "directives" and did not control or directly order military operations. "I had the authority but did not give the orders," he repeatedly asserted. In Spanish, this phrase rhymes -"Tuve el mando pero no el comando"- and, repeated over and over by Fujimori, it started to sound like the O.J. Simpson defense mantra, "If the glove doesn't fit you cannot convict."

By mid-morning, Fujimori, looking more relaxed, responded to questions almost glibly, convinced, it seems, that things were going his way. When Peláez requested a second recess at around noontime, the judge suspended the morning session-an hour and a half early. Fujimori's supporters in the gallery were elated, remarking as they left the viewing room, "The prosecutor was left without any more questions." The session resumed at 3:00 p.m., but was suspended just forty minutes later when Peláez requested a leave due to the death of his father-in-law.

Human rights lawyers defending the family members expressed irritation with what seemed like Peláez's lack of preparation and his failure to follow up on several key issues during the course of the interrogation. While they acknowledged that his seeming lack of preparation could have been the result of emotional stress, they wondered why he did not request a leave earlier in the day, or turn over the questioning to the assistant prosecutor.

"The interrogation was weak and disjointed," said Ronald Gamarra, former prosecutor and one of the lawyers for the family members. "It seemed more like a conversation between the accused and the prosecutor." The pro-Fujimori press reflected the satisfaction of the Fujimori camp that day. "Fujimori won the second round," read the headline in *La Razón*, a daily firmly aligned with the former president.

Day Three

Friday's session saw a dramatic turn-around. With Peláez on personal leave, the assistant prosecutor, Avelino Guillén, was in charge of the interrogation of Fujimori. Guillén engaged in a sustained and dogged interpolation. He sometimes noted dryly that Fujimori was contradicting himself, or that his answer was incongruent with his position as head of state. At one point, he remarked that Fujimori's amnesia was selective, suggesting that he was intentionally evading answering questions that might compromise him. Fujimori was now visibly uncomfortable and much less jubilant than earlier in the week. He attempted a number of times to throw the prosecutor off track with glib remarks, corrections, or ironic statements, but

Guillén ignored them and continued his vigorous line of questioning.

The dramatic shift in the tone of the trial became even more evident in the afternoon session, when Guillén focused his questions specifically on the first human rights case, the Barrios Altos massacre, in which fifteen people including an 8-year-old boy were gunned down execution-style at a barbeque on November 3, 1991. The Colina Group, a death squad that operated out of the Army Intelligence Service (SIE), is believed to be responsible for the massacre. (A separate trial is currently underway in which 53 members of the Colina Group, as well as Fujimori's intelligence adviser, Vladimiro Montesinos, and the former head of the armed forces, General Nicolás de Bari Hermoza Ríos, are being tried for the massacre. Montesinos and Hermoza Ríos are both currently in prison, having been convicted in other cases.) Fujimori answered many of the prosecutor's questions with evasive responses and often claimed not to remember key aspects. He did, however, acknowledge that Montesinos prepared the speech he delivered on the night of the so-called self-coup of April 5, 1992, when Fujimori dissolved Congress and the judiciary in the face of a surge in violence by Shining Path guerrillas, at the state intelligence agency's headquarters. He had no response when asked why he kept Montesinos in a position of power after learning of his alleged ties with drug trafficking, except to say that Montesinos' experience was an advantage for his government, and that anti-guerrilla pacification was such an important objective as to necessitate overlooking such faults. He claimed to have had no knowledge that Montesinos was consolidating control over the armed forces by promoting his classmates from the military academy, or of his meetings with top generals, business leaders, and media moguls, many of whom are now in prison for corruption.

After asking Fujimori several questions about the events surrounding the Barrios Altos massacre, Guillén proceeded to ask Fujimori if he knew any of the victims of the massacre prior to their death. Fujimori answered that he did not. The prosecutor then said that just to be sure, he would read aloud the name of each victim, so Fujimori could note whether he knew the victim or not. He named the first victim and his age when killed. "Do you remember him?" "No, I did not know him." The prosecutor continued with the name of the next victim. Clearly hoping to stop the prosecutor from reading the full list of names, Fujimori responded, "No, I did not know him. I did not know any of them."

Guillén continued to read aloud the remaining names of the victims, to Fujimori's visible irritation, to which he replied each time, "I did not know him (or her)." The last name was read, "Javier Manuel Ríos, eight years old, killed with five bullets to the head. Do you remember him?" "No I did not know him," Fujimori replied impassively. The prosecutor repeated the boy's name to dramatic effect. He then pressed Fujimori, "You, who made visits all over Peru, did you visit the family members of the victims of Barrios Altos?" Fujimori said he had not, though he later said the military had provided some unnamed benefits to the five survivors of the Barrios Altos massacre (a claim human rights lawyers have challenged). In an attempt to recover from this devastating presentation by the prosecutor, Fujimori said, "I was so busy pacifying the country, and I was not wrong." The prosecutor, perhaps calculating that this was a good moment at which to end the day, requested

an adjournment, which the judge granted. It was the first time in the course of the first week of the trial that the victims were at center stage. It was a dramatic way to end the first week of one of the most important trials in Peru's history.

Days Four & Five

This vigorous line of questioning by the prosecution continued into the trial's second week, starting on Monday December 17, in which Guillén interrogated Fujimori further on the Barrios Altos and Cantuta massacres. Fujimori admitted in this session that in 1993 he learned about the Colina Group from Montesinos, which seemed to be a contradiction of earlier statements that he did not know anything about it.

The prosecution finished its first round of questioning of Fujimori on Wednesday, December 19, with chief prosecutor Peláez back from his leave and focusing his questions on the kidnapping cases of Gustavo Gorriti and Samuel Dyer. Peláez said that Fujimori's strategy - to claim he was unaware of the Colina Group, a unit comprised of army officers -- was incongruent with other statements the accused had made that showed his authority over and awareness of the actions of the armed forces in the context of the counterinsurgency war against Shining Path.

Human rights lawyers representing survivors of the Colina Group and family members of the victims will now have an opportunity to question Fujimori. This will be followed by the interrogation of numerous witnesses called by the prosecution and the defense.

Fujimori's supporters have tried from the beginning to de-legitimize the trial and minimize the importance of the charges against Fujimori. After Friday's session, Fujimori's supporters charged that Guillén was at the service of the "caviar left" (a Peruvian term that might be roughly translated as limousine liberals) and repeated their charges that the trial amounted to legal persecution. Keiko Fujimori, the former president's daughter and now a congresswoman, said, "They will not silence my father, Alberto Fujimori, nor make him submit to the insolent and aggressive policies of the caviar [left], expressed through the assistant supreme public prosecutor, Avelino Guillén."^[1] Fujimori supporters have staged demonstrations outside the police compound where the trial is being held. Fujimori supporters continue to harass the family members and the human rights lawyers, accusing them of being terrorists and stooges of Shining Path. The trial is expected to last until March or April 2008.

Justice and Accountability

Regardless of the outcome, the mere fact that Peru is trying Fujimori is historic. Never before has a civilian

former president been called to account for human rights abuses in Peru. The trial helps establish that all citizens, whatever public office they once held, are held to the same standards of justice and accountability. This will go a long way to helping consolidate the rule of law in Peru. This is especially important given the way the judiciary was politicized during the Fujimori regime.

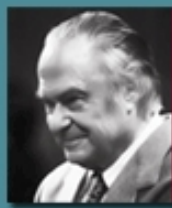
It also establishes an important precedent that goes well beyond Peru. This trial has global implications. Leaders who believe themselves to be all-powerful and violate human rights may one day face their accusers in court. They may find themselves, like Fujimori, sitting glumly behind a glass wall in a courtroom as they contemplate the prospect of jail for the rest of their lives. Dictators everywhere, take note.

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[1] From *La Razón*, available at: <<http://www.24horaslibre.com/politica/1197904143.php>>.



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