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# Fujimori on Trial: Third WOLA Observer Mission Report

12 Jun 2008



*Jo-Marie Burt, Associate Professor of Political Science at George Mason University, and Coletta Youngers, WOLA Senior Fellow, were in Lima in late May to observe the trial of former Peruvian President Alberto Fujimori, who is charged, in this case, with command responsibility for four notorious human rights cases. Dr. Burt has traveled to Peru twice before for WOLA to observe the trial. The following is a report on their observations and reflections on the trial and the context in which human rights issues are being debated in Peru today.*

## **Background**

The "mega-trial," as Peruvians call it, of Peru's former president Alberto Fujimori started on December 10, 2007, and is centered on four cases of human rights violations: 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 kidnappings of journalist Gustavo Gorriti and businessman Samuel Dyer in the aftermath of the April 5, 1992, *autogolpe*, or self-coup, in which Fujimori closed Congress, suspended the Constitution and took control of the judiciary with the backing of the armed forces. In the cases of Barrios Altos and Cantuta, the killings were carried out by the Colina Group, a clandestine death squad that operated out of the Army Intelligence Service (SIE) and whose purpose was to eliminate suspected guerrilla sympathizers. The prosecutor alleges that Fujimori had command responsibility for these crimes. If he is convicted, Fujimori could be sentenced to up to 35 years in prison and be fined millions of dollars in reparations.

Fujimori also faces charges of 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, former de facto head of the National Intelligence

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of 100 million in public funds to Vladimir Montesinos, former top boss of the National Intelligence Service (SIN). Fujimori has already been convicted of abuse of authority and sentenced to six years in prison for authorizing and participating in an illegal raid on the home of Montesinos' wife in 2000, presumably to secure and remove compromising evidence. That prison sentence was upheld on appeal. The other corruption cases will be grouped together and proceedings will begin after the present human rights trial concludes.

As noted in the past two WOLA observation mission reports, the Fujimori trial marks an important precedent for Peru and the region more broadly. The trial marks the first time that a former Peruvian president has been prosecuted for serious human rights offenses. It is also the first time that a Latin American president has been extradited to his home country to stand trial on human rights charges. (General Luis García Meza, who ruled Bolivia briefly after taking power in a military coup in 1980, was tried in absentia for rights crimes in 1995; he was later extradited from Brazil and is currently serving out his term in a Bolivian prison.) If Fujimori is convicted, it would mark a milestone in efforts to end entrenched impunity and promote truth, justice and reconciliation in Peru and across Latin America.

### ***The Third WOLA Observer Mission***

WOLA's third mission to the Fujimori trial took place from May 22 to 29; the presiding judges told WOLA that they believe the trial is about 70 percent complete. As noted in the two previous reports, the trial continues to be carried out with full respect for due process and the rights of the defendant. The panel of three Supreme Court judges, headed by César Eugenio San Martín Castro, has sought to ensure scrupulous observance of Peruvian law and complete transparency. The proceedings are broadcast live on one open and one cable TV channel as well as on various radio programs, and the Special Criminal Court makes transcripts and videotapes of all proceedings available to the defense and prosecution. To date, all international observers have concurred on the professional and impartial nature of the trial.

"We are very careful to be transparent and to ensure clarity in the proceedings so that nobody can question the process," one of the judges told WOLA in a private meeting. The judges noted that they have not perceived any effort by the government of President Alan García to influence the proceedings, nor have they felt any pressure from politicians who support Fujimori. They noted, however, that the trial is highly contentious and that they must remain vigilant to ensure its successful culmination.

A major challenge facing the judges at the present time is Fujimori's health. Since the beginning of the trial, the Fujimori legal team, his family and political supporters have complained of poor prison conditions and poor attention to his health problems, which include high blood pressure and a sore in his mouth. Others contend that these accusations are intended to attempt to discredit the proceedings and create political sympathy for Fujimori. Indeed, news reports indicate that Fujimori has exceptionally nice quarters for a prisoner (he was recently moved to a permanent cell in the compound of the National Police Special Forces, where the trial is also being held) and is receiving far better care than he would receive in the regular prison system. More recently, it appears that health concerns may be a tactic used to slow the trial as the most contentious (and potentially damaging) witnesses are about to be called, including former Armed Forces Commander Nicolás Hermoza Ríos and Fujimori's former spy chief Vladimiro Montesinos.

Fujimori has good reason to be concerned about the upcoming testimony. Already, significant evidence has emerged incriminating Fujimori in the creation and operation of the Colina Group. Several lower-ranking Colina members have turned state's evidence in exchange for reduced sentences, testifying that Fujimori knew of the group and its activities. In a hearing that took place during the WOLA observation mission, retired General Rodolfo Robles described the chain of military command and Fujimori's role, making clear his knowledge of if not direct participation in planning Colina Group operations. General Robles was followed

knowledge of, if not direct participation in, planning Colina Group operations. General Ríos was followed by former police chief Antonio Ketín Vidal, who described Fujimori as a hands-on executive who often gave him orders. (Ketín Vidal carefully avoided implicating Montesinos in any misdeeds.) Ketín Vidal claimed to have participated in a meeting in which both Fujimori and Santiago Martín Rivas, the alleged head of the Colina Group, were present, contradicting Fujimori's earlier testimony that he had never met Martín Rivas. Both Hermoza Ríos and Montesinos have said in other trials that Fujimori was aware of Colina Group's activities. Human rights lawyers are concerned, however, that they will change their testimony in this trial to protect Fujimori.

The judges have responded to Fujimori's health complaints by following the letter of the law and ensuring that he gets the treatment he says he needs. Although Fujimori has questioned the work of the team of doctors provided by the Legal Medicine Institute, which is under the purview of the state advocates' office known as the Public Ministry, by law they have the final say in determining his medical needs in the context of the current trial. A physician from the National Penitentiary Institute is also present at all times, because, as one of the judges explained, in addition to being a defendant in this trial, Fujimori is also a convicted felon. Fujimori is also able to consult his own personal doctor. According to the judges, despite Fujimori's complaints, to date the diagnoses of the different physicians have largely coincided. The judges, as well as the lawyers of the family members, concur that the health issues could cause delays in the trial but should not result in a permanent suspension.

During the WOLA mission, one session of the trial ended abruptly because Fujimori suffered a sudden rise in his blood pressure. Presently, the trial has been temporarily suspended while Fujimori recovers from a minor operation on June 5 to remove a growth in his mouth. Observers expect the trial to last at least until September.

### ***The Challenges Ahead***

Since the start of the trial last December, over 70 witnesses have appeared before the court to render their testimony. A handful of direct witnesses remain, including Montesinos and Hermoza Ríos. Following these witnesses, the courtroom will hear the testimony of 18 experts, including two commissioners from Peru's Truth and Reconciliation Commission (CVR), an American expert on declassified U.S. government documents, and experts on international human rights law. After all witnesses are heard, documentary evidence will be presented, each side will present its closing arguments, and Fujimori will be allowed to make a final statement.

In their interview with WOLA, the judges noted the extreme complexity of the case. In addition to the large volume of information associated with it, the Fujimori trial has broad political ramifications due to the fact that the accused is a former president who retains considerable support within Peru. In this sense it is important to note that the pro-Fujimori bloc in Congress remains united and frequently joins forces with the ruling APRA party on specific legislation and policy issues. A Fujimori conviction on human rights charges could also have serious implications for President García; during his first presidency (1985-1990), widespread human rights violations occurred and it remains an open question whether he may some day be called to account for them.

The judges must also wrestle with a number of complex legal issues before giving their verdict on the case. They must evaluate the claim of the prosecution that the Fujimori government deployed two distinct counterinsurgency strategies: one formal and legal, which called for security forces to combat the insurgencies while respecting human rights, and another informal and clandestine, which stressed the creation and deployment of a special military unit, the Colina Group, that engaged in campaigns of murder

and forced disappearances in order to paralyze insurgent activities and terrorize the population, and which resulted in massive violations of human rights. Similarly, they must determine how and when these two strategies were set in motion and whether the rights violations that resulted were systematic or not. As one of the Supreme Court justices noted, "No one denies the existence of the Colina Group, or that it operated within the structure of the army. The major question is: what was the role of Fujimori in its [creation and operation]."

On this point, a civilian court set an important precedent on April 8 with the conviction of retired General Julio Salazar Monroe, head of the National Intelligence Service (SIN) during much of the Fujimori period, and other members of the Colina Group in the Cantuta case. After three years of proceedings, the First Criminal Special Court considered Salazar Monroe – along with Montesinos – to be criminally responsible for the operations of the Colina Group that carried out the Cantuta killings (*autoría mediata* and *dominio del hecho*), sentencing him to 35 years in prison. (Montesinos, Hermoza Ríos and retired General Luis Pérez Documet will also be prosecuted for this case in a separate trial.) This was the longest sentence ever imposed by a civilian tribunal on a high-ranking member of the military for human rights violations in Peru. In its ruling, the court affirmed that the Colina Group was an operational unit within the Peruvian army whose purpose was to eliminate suspected subversives, and, most importantly, that Fujimori was aware of its operations and was directly responsible for it through his command over the SIN. This ruling establishes an important precedent through its application of the concept of *autoría mediata*, which establishes criminal responsibility for those committed a crime through an intermediary, and *dominio del hecho*, which refers to control over the criminal act through an organized apparatus of the state. Thus, the magistrates found that while Salazar Monroe was not a material actor in the Cantuta killings, he was criminally responsible by virtue of his leadership position over the SIN and the Colina Group. While not legally binding on the magistrates overseeing the Fujimori trial, the judges noted that they evaluated the evidence used to convict Salazar Monroe and other Colina Group operatives and its relevance to determine Fujimori's culpability.

### ***The Political Context***

The professionalism with which the proceedings against Fujimori have been conducted is noteworthy, given that the Peruvian judiciary has historically suffered from tremendous inefficiencies and both direct and indirect political interference. The current Peruvian government is showing increasing signs of political intolerance and disdain for human rights organizations. The García government did not actively support Fujimori's extradition from Chile in 2007. Forensic experts have been excavating two major mass graves during the trial, offering further evidence of the atrocities committed by the Peruvian armed forces. Yet the excavations have met with indifference from much of the public and have been covered only sporadically by the news media. Ironically, as evidence against Fujimori mounts, public opinion polls show that popular support for him is on the rise.

Peruvian human rights activists and organizations are increasingly under attack. Despite the lack of significant political violence currently, President García and high-ranking officials in his government have accused human rights defenders of acting as "apologists for terrorism." The president himself went so far as to accuse Francisco Soberón, one of Peru's best known human rights advocates, of being a "traitor to the fatherland." Well-known human rights lawyers and officials of former President Alejandro Toledo's administration have become targets of investigations and prosecutions for their human rights work. The Instituto de Defensa Legal alone is being investigated by Congress, the judiciary, the Public Ministry, the Comptroller's Office and the Bar Association for its role in the work of the commission set up to review cases of those unjustly detained on terrorism charges.

Other concerns raised by Peruvian human rights organizations include the criminalization of social protest, the detention of progressive activists on apparently bogus terrorism charges, and the unwillingness of the

the extension of progressive decrees on apparently bogus terrorism charges, and the unwillingness of the government to implement decisions issued by Peru's Constitutional Tribunal. The Peruvian government is yet again threatening to withdraw from the Inter-American Court of Human Rights. Human rights advocates also express concern about expanding military roles under the García administration, including new norms permitting the use of "lethal force" by security forces to subdue social protest. Observers also noted the military's continued refusal to cooperate with human rights investigations.

It is important to note that in addition to the Fujimori trial, there are hundreds of other human rights cases awaiting their date in court. Thus far, a handful of key cases have been successfully prosecuted, an achievement that has achieved relatively little attention. However, several cases have been thrown out or "archived" for one reason or another, and of those that have resulted in convictions, only one has been upheld at the appeal stage. This is the Chuschi case, in which an army officer and a police officer were convicted for the forced disappearance of three government authorities from Chuschi, a rural town in Ayacucho, and a minor in March 1991. Only about half of the cases that the CVR recommended be prosecuted in domestic court have moved to the trial stage; the others are languishing in the pre-trial stage at the Public Ministry.

Thus, Peru's progress on justice issues remains erratic. While the Fujimori trial has been an example of due process, impartiality, and transparency, other human rights cases show little progress. Problems that have long dogged Peru's judiciary are partly to blame, including a poor resource base, an overloaded court system, and insufficient training for judges involved in trying human rights cases. Of particular concern is the Public Ministry's failure to move cases forward, particularly those presented by the CVR.

The present political context has affected the judiciary, as we were told repeatedly in our interviews. The García administration has not made prosecuting cases of human rights violations a priority. Indeed, the government's first initiative when it assumed power in 2006 was to announce that it would provide lawyers, paid by the state, to defend members of the security forces accused of human rights abuses. When previously in power from 1985-1990, the APRA government was quite effective in exerting control over the judiciary.

This has resulted in a climate in which Peru's judges - sensitive to shifting political winds - may be less willing to prosecute human rights cases. As one human rights lawyer told us, "For judges, it is one thing to prosecute a human rights case under the Toledo government; it is quite another to prosecute such cases under the García-Giampetri administration." (Luis Giampetri is Peru's vice president and a former navy admiral who has been implicated in the Fronton massacre of 1986, when over 200 Shining Path prisoners were executed, many after having already surrendered, in the aftermath of a prison riot.) Human rights lawyers informed us that the Fronton case is likely to move to the trial stage this year, as are a number of other human rights cases that occurred during García's first government, including the 1985 Accomarca massacre and the 1988 Cayara massacre.

The Fujimori trial could end up being an anomaly, without broader repercussions for other human rights cases, due to the high-profile nature of the accused and the fact that the case is being tried by a special panel of Supreme Court magistrates dedicated exclusively to this trial. (Most judges are responsible for numerous trials at the same time.) Yet the Peruvian human rights community hopes that conviction of a former president for human rights violations will embolden the judiciary to pursue human rights cases, serve as a model for prosecution of such cases, and contribute to the advance of justice for past human rights abuses in Peru.

### **Conclusion**

Evidence presented to date gives reason to believe that Fujimori will be convicted of crimes of commission

Evidence presented to date gives reason to believe that Fujimori will be convicted of crimes of commission and not just omission. Yet given the present political climate in Peru, human rights lawyers and other analysts are anxious about what will happen in the likely event of an appeal by Fujimori's lawyers. A different panel of Supreme Court judges will undertake a judicial review of the first trial, but they may not be as qualified and concerned about objectivity as the present magistrates. Also, the next panel is likely to be chosen by a new Supreme Court president, who could bring a different tone to the procedures. The belief by the government and many Peruvians that Fujimori "saved Peru from terrorism" may influence the appeal process. Once that decision is handed down, there is no further legal recourse. President García could also pardon Fujimori, pointing to his age and alleged ill-health, with little or no political cost.

Bearing all these variables in mind, continued support for the Peruvian human rights community and international observation will be crucial in ensuring that the trial fulfills its promise of moving Peru and all of Latin America closer to a society with less impunity and more justice.

Previous WOLA observation mission reports on the Fujimori trial can be viewed online [here](#)



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