



PERU/CHILE

# Probable Cause

Evidence implicating Fujimori

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# **Probable Cause Evidence Implicating Fujimori**

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## I. Summary

Alberto Fujimori arrived in Chile on November 6, 2005, nearly five years after he resigned from the Peruvian presidency. Wanted in Peru on criminal charges ranging from homicide to embezzlement, Fujimori had managed to avoid being brought to trial in Peru by staying in Japan, where he claimed Japanese citizenship. His surprise appearance in Chile, a country that has a long-standing extradition treaty with Peru, sparked new hope that he would finally be extradited to Peru to face trial.

The Peruvian authorities are expected to present formal requests for Fujimori's extradition within the next few days. Under Chilean law, however, the extradition process is far from a mere formality. The extradition treaty includes standard technical requirements, such as that the crimes with which Fujimori is charged must also be crimes under Chilean law, with potential sentences of over one year. Also, Chilean courts have in the past gone beyond the terms of extradition treaties to review the evidence supporting the charges that form the basis of the extradition request. Generally, courts have required that the evidence be sufficient to establish probable cause to bring charges, but they do not require sufficient evidence to convict.

Fujimori has repeatedly claimed that there is no evidence against him and that he is the victim of political persecution. He suggests that most of the charges against him are either fabricated or involve crimes that were committed solely by his close personal advisor, Vladimiro Montesinos.

In the Chilean extradition proceedings, Fujimori will likely challenge the evidentiary basis of the charges against him in the hope that the Chilean courts will deny some or all of the extradition requests. If extradited, Fujimori could be tried in Peru only for crimes for which Chilean courts grant an extradition request, not for crimes for which extradition is denied. Thus, whether or not Fujimori will eventually face trial for crimes involving grave violations of human rights and corruption will depend to a large degree on the evidence assembled now by Peruvian authorities.

As this report documents, there is more than sufficient evidence in several serious criminal cases currently pending against Fujimori in Peru to justify his extradition. Fujimori's continued claims that there is no information linking him to the charges against him are baseless and disingenuous.

In past Human Rights Watch reports, we have written about the massive and systematic violations of human rights that occurred during the Fujimori regime. The extent of these violations has also been recently documented in detail by Peru's Truth Commission. Much has also been written about the Fujimori government's record of having achieved a near-total concentration of power through corruption and other criminal means, while maintaining a façade of democracy.

Indeed, corruption and human rights violations frequently go hand in hand. In Fujimori's Peru, large-scale corruption not only deprived Peruvians of public resources that could have been used to alleviate economic need, but also seriously eroded the rule of law, which is essential to the protection of human rights. Moreover, through corruption the government was able to fully subvert the democratic process, eliminating normal checks by the judiciary, legislature, and the media on government abuses.

This report is not, however, a general overview of the history of human rights violations and corruption during the Fujimori government. Rather, this report is focused on the specific charges and evidence that justify Fujimori's extradition to face prosecution and trial in Peru.

In particular, this report examines five of the most serious criminal cases currently pending against Fujimori, explaining briefly the underlying facts and describing some of the evidence. Our analysis of these cases shows that, contrary to Fujimori's claims, in each case there is evidence against him sufficient to justify his extradition from Chile to face trial in Peru:

- ***La Cantuta/Barrios Altos Killings:*** Fujimori, along with fifty-seven other individuals, including numerous former military officers and his advisor Montesinos, is charged with responsibility for the killings of twenty-five people in two separate events. The killings were allegedly carried out by the Colina Group, a specialized squad of military and intelligence officers, intentionally set up to "eliminate" suspected terrorists. There is evidence, including statements by Colina Group members, that Fujimori knew of the existence and operations of the Colina Group beforehand but did nothing to stop them, rendering himself potentially criminally liable. Nor did he take steps to punish the crimes after they occurred.
- ***Phone Tapping of Civil Society, Journalists, and Politicians:*** There is extensive testimony, from multiple sources, that throughout his government Fujimori ordered that the private calls of numerous individuals be intercepted

illegally, and authorized the use of state funds to purchase phone tapping equipment and pay the personnel who intercepted the calls. There is even evidence that phone tapping equipment was installed, at his request, in the president's official residence at the Palace of Government.

- ***Diverted State Funds:*** There is extensive documentary and testimonial evidence that Fujimori established a complex system to divert millions of dollars in public funds from their official purposes to special accounts in the National Intelligence Service (“Servicio de Inteligencia Nacional” or “SIN”). He and Montesinos allegedly then used the diverted funds for a variety of illegal purposes, including bribes, funding Fujimori’s presidential campaigns, and personal payments to Fujimori and his family. Former government ministers, as well as Fujimori’s close adviser Vladimiro Montesinos, have testified that Fujimori ordered substantial monthly transfers of funds from the budgets of each branch of the armed forces to the SIN, which Montesinos controlled. Montesinos and others have also testified that every month, Fujimori asked that several hundred thousand dollars of the SIN funds be delivered to him or his family. Similarly, there is evidence that Fujimori diverted donations that Japanese persons and entities made to Peru through NGOs that were managed by Fujimori and his family.
- ***Bribing Congress:*** It is well documented that numerous members of Congress received bribes to switch their party affiliation and join Fujimori’s party after the 2000 elections. Fujimori’s advisor Montesinos has testified that he made the payments, which Fujimori ordered.
- ***Transfer of U.S.\$15 Million in Public Funds to Montesinos:*** Shortly before the collapse of his government, Fujimori allegedly arranged to have U.S.\$15 million in state funds given to Montesinos. Former ministers who participated in the transfer, as well as Montesinos, have testified as to Fujimori’s involvement and subsequent efforts to cover up the transfer.

## II. Background: The Fujimori Government

Former President Fujimori currently faces charges in twenty-one criminal cases in Peru. Most of the charges relate to corruption and the misappropriation of public funds. The crimes charged are not isolated acts of personal enrichment, however. Rather, they reflect a broader strategy by the government to hold and maintain power through corruption and the manipulation of democratic institutions.

Indeed, during Fujimori's time in power, virtually all of Peru's democratic institutions were exploited and captured by the presidency via a combination of strong-arm tactics, extortion, and bribery. Thus, while maintaining the appearance of legality, Fujimori's government replaced the rule of law with the rule of the strongman.

The abuses and corruption of the Fujimori government can be traced back to its earliest days, when then-President Fujimori, according to witnesses, started ordering that the phone calls of politicians and others be tapped. Shortly afterwards, in 1991, the Colina Group, a squad of military and intelligence operatives, allegedly began committing a series of extrajudicial killings and "disappearances" as part of a strategy of physical elimination of suspected subversives.

On April 5, 1992, with the backing of the Peru's armed forces, Fujimori dissolved the opposition-controlled Congress in a "self-coup" and took complete control of the government. In the years that followed, he drew up a new constitution and replaced much of the judiciary. At the same time, his government made significant progress on the economic front and in fighting the Shining Path. Thanks to these successes, Fujimori was reelected president in 1995, obtaining a congressional majority.

After the 1995 elections, the Fujimori government respected the formal trappings of democracy, but steadily eroded democratic institutions. Fujimori ordered that his close personal advisor, Vladimiro Montesinos, be given de facto control over the National Intelligence Service (SIN), and, according to witnesses, ordered that millions of dollars be diverted to the SIN from the armed forces and Ministries of Defense and Interior. In turn, Montesinos used these funds, as well as other illicitly obtained cash, to buy off politicians, co-opt judges, and wrest editorial control from media owners. In some instances he also obtained loyalty or silence by extortion and blackmail. The SIN and Army Intelligence tapped the phones of journalists, civil society activists, and politicians, kept them under observation, and engaged in undercover operations to intimidate and threaten them.

Montesinos and Fujimori maintained an extremely close relationship. According to various military and government officials, Fujimori introduced Montesinos to them as his representative and the person through which they should communicate with him, and Fujimori met with Montesinos every night.<sup>1</sup> Former Commander General of the Army, Nicolas de Bari Hermoza, has testified that during much of his government, Fujimori actually resided in SIN headquarters, the base from where Montesinos operated.<sup>2</sup>

By the year 2000, through corruption, extortion, and intimidation, the presidency had achieved near-total control not only over the Congress, but also over the judiciary, the prosecutorial system, the electoral monitoring bodies, the financial and tax system, and a substantial segment of the media, especially television. To date, anti-corruption courts in Peru have charged 1,509 people for crimes committed in this context, and U.S.\$197,628,788 of stolen money has been repatriated from foreign bank accounts.<sup>3</sup>

### **Control of the Judiciary**

Three days after the April 1992 “self-coup,” President Fujimori passed decrees firing thirteen Supreme Court justices and eighty-nine judges across the country.<sup>4</sup> Provisional appointees replaced the great majority of the judges and justices fired. By the end of Fujimori’s government nearly 80 percent of the country’s judges lacked tenure and were consequently vulnerable to political pressure. In 1995 and 1996, executive commissions headed by government appointees were placed in charge of reorganizing the courts and the prosecutorial system, assuming many of the powers of the Supreme Court and the Attorney General.<sup>5</sup> These bodies were also responsible for the appointment of provisional judges and prosecutors.

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<sup>1</sup> See Testimony of Nicolas de Bari Hermoza Rios, former Commander General of the Army before the Congressional Investigative Subcomisión, May 23, 2001, described in *Acusación Constitucional Contra el Ex Presidente de la Republica, Ingeniero Alberto Fujimori Fujimori por la presunta comisión de los delitos de homicidio calificado, desaparición forzada y Lesiones Graves, por los casos denominados “La Cantuta” y “Barrios Altos,”* August 27, 2001; see also Testimony of Carlos Bergamino Cruz, December 22, 2001, described in *Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, Informe Final, Expediente Nro: 23-2001 A.V.,* March 24, 2003.

<sup>2</sup> See Testimony of former Commander General of the Army Nicolas de Bari Hermoza Rios before Supreme Court Justice Jose Luis Lecaros, September 19, 2001 (noting that Fujimori slept at the SIN and often conducted his work from SIN headquarters).

<sup>3</sup> Abraham Siles Vallejos, Ronald Gamarra Herrera, Lilia Ramirez Varela, Cruz Silva Del Carpio and Natalia Torres Zúñiga, “Lucha anticorrupción: urgente necesidad de enmienda,” *Justicia Viva*, November 24, 2005, [http://www.justiciaviva.org.pe/publica/folleto\\_la.exe](http://www.justiciaviva.org.pe/publica/folleto_la.exe) (retrieved December 9, 2005)

<sup>4</sup> Decree Laws 25423 of April 8, 1992, and 25446 of April 23, 1992.

<sup>5</sup> Law No. 26546 of November 1995 created the Executive Commission of the Judiciary, headed by a former navy captain, José Dellepiane. The Fujimori majority in the legislature appointed the commission’s members.



According to a congressional committee that investigated judicial intervention in 2002, these measures enabled Fujimori to push through his candidacy for re-election in 2000, guarantee impunity for his actions, harass his political opponents, and favor the interests of third parties.

The same committee also reported that immediately after the self-coup, the SIN removed from the Palace of Justice and the Public Ministry large quantities of files containing evidence incriminating Fujimori's opponents, information that could be later used for intimidation and blackmail. Such tactics became a hallmark of Fujimori's regime.<sup>6</sup>

Another common tactic was to rearrange the composition of courts to ensure a pro-government majority in cases in which the government had an interest. In 1997 Fujimori's party, Change 90-New Majority, dismantled the Constitutional Court, a key guarantor of constitutional rights. It impeached and fired three members of the court who had ruled that a law crafted to allow Fujimori's re-election was inapplicable.<sup>7</sup> One of the justices, Delia Revoredo, came under criminal investigation by a Callao court for the import of a car in a case which had long been closed, a typical government tactic. After receiving repeated death threats, Revoredo sought asylum in Costa Rica. Once the Fujimori government collapsed, the case was closed and Revoredo was acquitted.

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<sup>6</sup> Informe de la Comisión Investigadora de la influencia irregular ejercida durante el gobierno de Alberto Fujimori Fujimori (1990-2000) sobre el Poder Judicial, Ministerio Público y otros poderes e instituciones del Estado vinculados a la administración de la justicia, June 17, 2002, p. 6, 15, <http://www2.congreso.gob.pe/sicr/apoycomisiones/informes.nsf/0F1683791EB39A2005256AFF00789023/9EF2F044A4E2761B05256C0E007A7478> (retrieved December 12, 2005). The Peruvian Congress has also transcribed videos of meetings between presidential advisor Vladimiro Montesinos and Supreme Court justices in which he orders them to appoint and transfer judges. A congressional subcommittee investigating impeachment charges against Supreme Court Justice Alipio Montes de Oca found that Montesinos had offered him a bonus of \$10,000 and free trip to Colombia if he agreed to be president of the National Electoral Board in the 2000 elections. Congress of the Republic, Transcription of video 889. The justices at the meeting were Alipio Montes de Oca, Luis Serpa Segura, and Chief Justice Víctor Raúl Castillo.

<sup>7</sup> Article 112 of the constitution does not permit a second re-election, but the impugned law had interpreted the article as excluding terms of office prior to the promulgation of the constitution in 1993.

## **Control of the Press**

Montesinos has testified that Fujimori authorized enormous payments to ensure the government's control over the media, and Fujimori has been charged accordingly.

According to Montesinos' bookkeeper at the SIN, by 2002 the SIN handled a monthly budget of close to U.S.\$9 million.<sup>8</sup> In the run-up to the 2000 presidential elections much of this money went toward controlling the country's television stations. Presidential advisor Montesinos gave millions of dollars to the owners of Channel 4 /America, Channel 5 /Panamericana, and Canal 9/Andina, in exchange for editorial control over their broadcasts. He bought Channel 10/Cable News outright for \$2 million. Each of these transactions was recorded on videotape.<sup>9</sup>

Particularly notorious was the case of Channel 2 /Frecuencia Latina, whose majority owner, Israeli-born Baruch Ivcher, was stripped of his Peruvian citizenship in July 1997, which violated his rights under the Constitution and barred him from owning a television station. Minority shareholders beholden to the government took over the station and its editorial line changed accordingly. A criminal investigation was also initiated against Ivcher and his family; like Revoredo, Ivcher was acquitted after the Fujimori government's collapse.

Montesinos also handed over money regularly to the owners of yellow press tabloids in exchange for front page headlines ridiculing and insulting opposition politicians and journalists.

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<sup>8</sup> Sally Bowen and Jane Holligan, *The Imperfect Spy: The Many Lives of Vladimiro Montesinos* (Lima: Peisa, 2003), p. 272.

<sup>9</sup> Transcripts are available on the website of the Peruvian Congress. Congress of the Republic, Comisión Investigadora de la Gestión Presidencial de Alberto Fujimori, *Informe Final*, June 15, 2002, <http://www2.congreso.gob.pe/sicr/apoycomisiones/informes.nsf/OF1683791EB39A2005256AFF00789023/B0930CDC9F8E189505256BFE0060AAA6> (retrieved December 9, 2005).

### III. Five Cases and the Evidence

#### 1. *La Cantuta/Barríos Altos*

Fujimori, along with fifty-seven other individuals, has been charged with the killings of fifteen people, including one child, in the Barríos Altos neighborhood of Lima in November 1991, and of nine students and one professor at the University of La Cantuta, in the outskirts of Lima, in July 1992. Both sets of killings were allegedly carried out by a special squad of military and intelligence officers known as the Colina Group. Fujimori advisor Vladimiro Montesinos, former SIN Director Julio Salazar Monroe, and numerous alleged members of the Colina Group are currently on trial for these crimes and for other assassinations and “disappearances” from the early 1990s that have been attributed to the Colina Group.<sup>10</sup>

The available evidence indicates that the Colina Group was set up intentionally within the military and intelligence systems to conduct operations of “elimination” of suspected subversives, with the knowledge and approval of high-level officials.

In interviews that were broadcast on national television in 2003 and incorporated into Fujimori’s criminal case, Army Major Santiago Martín Rivas, who has been charged as being Colina’s chief of operations, stated that in 1991 Fujimori ordered the implementation of a counter-terrorism policy handbook that Martín Rivas himself drafted, which established a state policy of physical elimination of subversives. Since that time Martín Rivas (now facing criminal charges for his membership in the Colina Group) has recanted the statements he made implicating Fujimori, claiming that the recordings of them were fabricated. He now claims he was never a member of the Colina Group, and has even gone so far as to deny the Colina Group’s existence.

According to Martín Rivas’ original statements, in June 1991, the high command of the army held a meeting to discuss their new strategy to combat terrorism.<sup>11</sup> Martín Rivas had drafted a policy handbook outlining the new strategy, and he presented it at the meeting. Martín Rivas claimed that the policy’s basic principle was that of combating terrorism through “low-intensity warfare,” which he described as including military operations of “reply” to each subversive attack, as well as the physical “elimination” of

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<sup>10</sup> See Primera Fiscalía Superior Penal Especializada, Acusación, Expediente No. 28-01, May 11, 2005.

<sup>11</sup> Interview by Umberto Jara with Santiago Martín Rivas, excerpted in “In the Mouth of the Wolf,” Program by Cesar Hildebrandt, September 24 and 25, 2003, and incorporated into the case file against Fujimori. See also Umberto Jara, *Ojo por Ojo: La verdadera historia del Grupo Colina* (Lima: Norma, 2003), pp. 118-25.

terrorists.<sup>12</sup> Martin Rivas claimed that at the meeting the army decided to adopt this approach to its fight against Shining Path, and submitted the policy to Fujimori for his approval. According to Martin Rivas's 2003 claims, it was on this basis that Fujimori ordered that the plan be followed.<sup>13</sup>

Martin Rivas asserted that it was as a result of his and others' work on the counter-terrorism policy that on June 25, 1991, Fujimori sent a memo to the Minister of Defense, in which he asked that several individuals receive special recognition for their services. Fujimori followed up on July 30 with another memo in which he stated that to "stimulate" these individuals, and because of their successful special intelligence operations, he wished to issue a special recognition of their services for purposes of promotions. Both memos listed, among others, several individuals who have subsequently been linked to the Colina Group.<sup>14</sup>

Undermining claims that the Colina Group did not exist or was not part of the military structure, numerous official documents that have been found in army intelligence records specifically refer to the "Destacamento Colina." Such records also include 1991 orders that various alleged Colina members, as well as weapons and equipment, be placed at the disposal of lieutenant colonel Fernando Rodriguez Sabalbeascoa (criminally charged with being the head of Colina).<sup>15</sup> These records strongly support the view that the Colina Group, far from being a separate paramilitary group, was an integral part of the army intelligence structure, and that its members, all with military rank, were assigned, transferred, tasked, and disciplined on the orders of top military intelligence officials.<sup>16</sup>

Indeed, most of the people charged as members of the Colina Group were in fact military officers who were part of the Army Intelligence Service, under the command of

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Memorandum from Alberto Fujimori, President of the Republic of Peru to the Minister of Defense, June 25, 1991; Memorandum from Alberto Fujimori, President of the Republic of Peru to the Minister of Defense, July 30, 1991.

<sup>15</sup> These records were recovered on April 1 and 12, 2002, when Judge Luz Victoria Sánchez of the fifth special anti-corruption criminal court and provincial prosecutor Richard Saavedra conducted a search of army intelligence records on the assignments of the Colina group in 1990-1992. See *Diligencia de Exhibición de Documentos Realizada en las Instalaciones del Cuartel General del Ejército*, April 1, 2002, Fs. 14057 a 14070, Expediente Barrios Altos.

<sup>16</sup> The documents found by Judge Sánchez in army records included a transcription of personal congratulations from President Fujimori in August 1991 to members of the Colina group for "providing efficient services on national security and defense of the highest values of democracy." Other records showed that members of the group had been decorated in July 1994 for services to "national pacification." Ibid.

Army Intelligence Director Juan Rivero Lazo, who is currently under prosecution for the crimes attributed to Colina. At the same time, Montesinos has been charged for having coordinated, from within the SIN, the activities of the Colina Group with Rivero Lazo.<sup>17</sup> Former members of the Colina Group have testified that for several months in 1991, the group actually operated from SIN offices and met with Montesinos there.<sup>18</sup> Army Technician Marco Flores Alván, who has been charged with being a member of the Colina Group, has also stated that sometime in 1991 there was an “official inauguration” of the Colina Group at the SIN, at which Rivero Lazo and the head of the SIN, General Julio Salazar Monroe, were present, along with Martin Rivas and others.<sup>19</sup>

Shortly after the Barrios Altos killings occurred on November 3, 1991, there were media reports that the killers were linked to the government.<sup>20</sup> The reports cited evidence that intelligence operatives had been conducting surveillance of the house where the killings happened.<sup>21</sup> Colina Group members have also stated that immediately after the killings, Rodríguez Sabalbeascoa, along with Martin Rivas and another Colina Group leader, Carlos Pichilingue, met with Presidential advisor Montesinos at the SIN.<sup>22</sup>

In November 1991, Fujimori signed Legislative Decree No. 746, which greatly broadened the functions of the SIN and provided that the SIN would report directly to the President (previously, it had also been required to report to the Prime Minister).<sup>23</sup>

After Fujimori’s April 1992 “self-coup,” he exerted complete control over the government for several months, until January of 1993, when a constituent assembly took office to draft a new Constitution and act as a temporary legislative power. Nonetheless, the Colina Group apparently remained intact and operational.

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<sup>17</sup> See Primera Fiscalía Superior Penal Especializada, Acusación, Exp. No. 28-01, May 11, 2005.

<sup>18</sup> See Testimony of Army Technician Marco Flores Alvan, summarized in Primera Fiscalía Superior Penal Especializada, Acusación, Exp. No. 28-01, May 11, 2005; Testimony of Army Technician Julio Chuqui Aguirre, summarized in Primera Fiscalía Superior Penal Especializada, Acusación, Exp. No. 28-01, May 11, 2005.

<sup>19</sup> Testimony of Marco Flores Alván, May 21, 2001, described in Acusación Constitucional Contra el Ex Presidente de la Republica, Ingeniero Alberto Fujimori Fujimori por la presunta comisión de los delitos de homicidio calificado, desaparición forzada y Lesiones Graves, por los casos denominados “La Cantuta” y “Barrios Altos,” August 27, 2001, p. 96.

<sup>20</sup> See, for example, “Horror y Misterio,” *Revista Si*, November 11, 1991; “Alker: El Militar Asesino de Barrios Altos,” *Revista Si*, November 18, 1991.

<sup>21</sup> *Ibid.*

<sup>22</sup> See Ricardo Uceda, “Tres Misterios por Resolver en el Juicio a los Jefes del Grupo Colina,” *El Comercio*, September 18, 2005.

<sup>23</sup> Legislative Decree No. 746 of November 10, 1991, Arts. 7 and 10. Compare with Legislative Decree No. 271 of February 10, 1984.

During the period immediately after the coup, the Colina Group allegedly caused the “disappearances” of several peasants in May 1992, and of journalist Pedro Yauri in June 1992.<sup>24</sup> On July 18, 1992, the Colina Group is believed to have committed the infamous Cantuta massacre, entering the student dormitories of the University of La Cantuta in the middle of the night, abducting nine students and a professor, and executing all of them. Martin Rivas has stated that the massacre was the government’s “response” to the Shining Path’s bombing, only a few days before the massacre, of Tarata Street, in a residential district of Lima.<sup>25</sup>

In the aftermath of the Cantuta killings, there were increasing reports of the existence of a military death squad that was responsible for the killings in La Cantuta and Barrios Altos.<sup>26</sup> Within a few months, the students’ remains were found, and criminal investigations were started.

The Fujimori government came under significant international pressure in 1993 to fully investigate the Cantuta killings.<sup>27</sup> In early 1994, Major Martin Rivas and several other Colina Group members were convicted by a military tribunal for the Cantuta killings.<sup>28</sup> However, they were released on July 15, 1995, as a result of an amnesty law signed by Fujimori.<sup>29</sup> Journalist Gilberto Hume later said that Martin Rivas told Hume that he agreed to go before the military tribunals at Fujimori’s request because Fujimori offered to give him an amnesty later.<sup>30</sup>

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<sup>24</sup> See Primera Fiscalía Superior Penal Especializada, Acusación, Expediente No. 28-01, May 11, 2005.

<sup>25</sup> Interview by Umberto Jara with Santiago Martin Rivas, excerpted in “In the Mouth of the Wolf,” Program by Cesar Hildebrandt (September 24 and 25, 2003), and incorporated into the case file against Fujimori. See also Umberto Jara, *Ojo por Ojo: La verdadera historia del Grupo Colina* (Lima: Norma, 2003), pp. 176-81.

<sup>26</sup> See, for example, “Sociedad para el Crimen,” *Revista Si*, December 7, 1992; “Leon Dormido,” *Caretas*, April 7, 1993.

<sup>27</sup> See Nathaniel C. Nash, “Grisly Find in Peru Puts Army in Deep Shadow,” *The New York Times*, August 13, 1993; James Brooke, “Lima Journal: Dictator? President? Or General Manager of Peru?,” *The New York Times*, November 25, 1993; Human Rights Watch, “Anatomy of a Cover-Up: The Disappearances at La Cantuta,” *A Human Rights Watch Report*, Vol. 5, No. 9, September 1993.

<sup>28</sup> Criminal investigations were started within the civilian and military justice systems almost simultaneously. After the Supreme Court was unable to reach a quorum to decide the jurisdictional conflict, Fujimori signed, on February 9, 1994, Law No. 26291. That law allowed only three, instead of four, members of the Supreme Court to decide jurisdictional conflicts between the military and civilian tribunals (previously, the Court would have had to bring in an additional judge to reach a quorum). The Supreme Court then ruled in favor of the military justice system. See Acusación Constitucional Contra el Ex Presidente de la Republica, Ingeniero Alberto Fujimori Fujimori por la presunta comisión de los delitos de homicidio calificado, desaparición forzada y Lesiones Graves, por los casos denominados “La Cantuta” y “Barrios Altos,” August 27, 2001.

<sup>29</sup> Law No. 26479 of June 15, 1995.

<sup>30</sup> See “Participacion en Crimenes Admite Mayor (R) Martin Rivas,” *El Comercio*, May 22, 2001. See also Testimony of Gilberto Hume (September 20, 2001).

It is extremely doubtful that the existence of this group would have been unknown to Fujimori, who even before the Cantuta massacre, had conducted a successful coup with the support of the armed forces, was commander-in-chief of the armed forces, and to whom the SIN answered directly. Indeed, Major Martin Rivas has stated that Fujimori knew and authorized what the group was doing.<sup>31</sup> And two years before Martin Rivas's statements were made public, another Colina Group member, Army Technician Julio Chuqui Aguirre, had testified that, immediately before the Barrios Altos and Cantuta killings, Martin Rivas had told him and all the Colina Group members that they had "a free pass" to carry out the actions in La Cantuta and Barrios Altos because "Fujimori had knowledge and had authorized them."<sup>32</sup> Similar statements have been made by other army intelligence officers.<sup>33</sup>

## **2. Phone Tapping**

Early on in Fujimori's first term, the government started tapping the phones of a large number of Peruvian citizens, including journalists, members of civil society, and politicians. Sophisticated phone tapping equipment was set up in various buildings rented throughout the city of Lima, and specialized personnel were assigned to start intercepting and transcribing calls. Such large-scale interception of private calls not only subverted the rule of law, but facilitated the Fujimori government's concentration of power and erosion of democratic institutions.

Fujimori has been charged before Peruvian courts with planning and implementing, in conjunction with Montesinos and others, the illegal phone tapping scheme. He has also been charged with using state resources for the purchase of the phone tapping equipment and to pay the personnel who conducted the tapping.

There is strong evidence pointing to Fujimori's direct involvement in the scheme. Montesinos, for example, has testified as to his participation in the scheme, stating that it

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<sup>31</sup> Interview by Umberto Jara with Santiago Martin Rivas, excerpted in "In the Mouth of the Wolf," Program by Cesar Hildebrandt (September 24 and 25, 2003), and incorporated into the Fujimori case file. See also Umberto Jara, *Ojo por Ojo: La verdadera historia del Grupo Colina* (Lima: Norma, 2003).

<sup>32</sup> See Testimony of Julio Chuqui Aguirre before Supreme Court Justice Jose Luis Lecaros, December 21, 2001.

<sup>33</sup> Chuqui's testimony is consistent with the statements of "Witness 1," a former Army intelligence officer who claimed, in testimony to the Congress, that friends of his who were members of the Colina group had said that Martin Rivas would tell them that their orders came from Fujimori. See Comisión Investigadora sobre la Actuación, el Origen, Movimiento y Destino de los Recursos Financieros de Vladimiro Montesinos Torres y su Evidente Relación con el ex Presidente Alberto Fujimori Fujimori, Sesión on Monday February 11, 2002. Leonor La Rosa, an Army intelligence operative, has testified that she personally saw Fujimori in meetings with members of the Colina Group and Montesinos. See Testimony of Leonor La Rosa, August 1, 2002, Expediente 19-2001 A.V.

was all ordered by Fujimori.<sup>34</sup> He has also stated that the equipment was purchased and the personnel were paid with funds from each of the armed forces, as well as the SIN, with Fujimori's authorization.<sup>35</sup> These statements have been corroborated by Matilde Pinchi Pinchi, Montesinos's former assistant and accountant, who has testified that on numerous occasions she saw Fujimori order Montesinos to intercept specific phones of congressmen, journalists, and others. She has also testified that Montesinos kept Fujimori informed about the transcripts of the intercepted calls.<sup>36</sup>

Other witnesses have testified that one phone tapping center was even set up in the Palace of Government, following Fujimori's direct orders.<sup>37</sup> Army Brigade General Gerardo Luis Pérez del Águila, who served as the head of the Military House outside of the Palace of Government, has testified that when he discovered the equipment's presence in the Palace, he ordered that it be disconnected, but then received specific orders from Fujimori to reinstall the equipment.<sup>38</sup>

Numerous technicians who conducted the tapping have testified as to their activities, giving specific names of politicians and journalists whose calls they intercepted.<sup>39</sup> Equipment used to conduct the tapping has also been recovered and identified.<sup>40</sup>

### **3. Diverting State Funds**

Fujimori has been charged with diverting, throughout much of his presidency, millions of dollars in public funds for his own and his relatives' benefit. The bulk of the funds were diverted through a complex scheme by which funds were secretly transferred from various government entities to secret accounts of the SIN, which in accordance with Fujimori's instructions, were managed by his close advisor Montesinos. In this manner, Fujimori allegedly was able to obtain large sums of money, which he used to increase his monthly personal income and to fund the bribery, extortion, and concentration of power that so damaged Peru's democratic institutions during his government.

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<sup>34</sup> See "Fujimori ordenó pagar US\$2 millones para encubrir espionaje telefónico," *La Republica*, October 15, 2001.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.* See also "Fujimori ordenó pagar US\$2 millones para encubrir espionaje telefónico," *La Republica*, October 15, 2001.

<sup>38</sup> See Testimony of Army Brigade General Gerardo Luis Pérez del Águila, cited in *Fiscalía Suprema en Segunda Instancia de la Sala Penal Especial de la Corte Suprema, Dictamen de Acusación, Expediente No. 14-2003* (date not available).

<sup>39</sup> *Fiscalía Suprema en Segunda Instancia de la Sala Penal Especial de la Corte Suprema, Dictamen de Acusación, Expediente No. 14-2003* (date not available).

<sup>40</sup> *Ibid.*



There is substantial evidence that from 1992 to 2000, Fujimori colluded with Montesinos, as well as with various ministers of economy, defense, and interior, to divert public funds to the SIN.<sup>41</sup> To this end, the Ministry of Economy regularly assigned “extra-budgetary” funds to the Ministries of Defense and Interior, as well as to the Army, Navy, and Air Force.<sup>42</sup> In turn, allegedly following Fujimori’s orders, the ministers of defense and interior would order that some of these funds be delivered in cash or check every month to Montesinos at the SIN.<sup>43</sup>

The funds were then allocated to two SIN budgets for “reserved actions” which were supposed to be used for intelligence operations in emergency zones.<sup>44</sup> According to testimony by the SIN’s official leadership, Fujimori ordered them to give Montesinos complete control of the funds in two SIN budgets for “reserved” actions.<sup>45</sup>

Case files include documents showing the movements of the funds. And there is substantial evidence of Fujimori’s direct involvement in the transfers. For example, a former minister of interior, Army General César Saucedo Sánchez, has testified that Fujimori specifically told him to request that extrabudgetary funds be assigned to the ministry, and that Fujimori ordered him to deliver those funds to the SIN.<sup>46</sup> Montesinos, too, has testified in detail about the funds transfers, and has stated that Fujimori was not only aware of the transfers, but approved of them.<sup>47</sup>

There is no record whatsoever of the funds diverted to the SIN being used for official purposes. And contrary to standard practice, the SIN kept no records concerning the use to which the funds were put.<sup>48</sup> Fujimori apparently approved the spending of the funds through monthly Supreme Resolutions, which were classified as secret and did not specify how the funds were spent.<sup>49</sup>

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<sup>41</sup> See Ministerio Público del Perú, Denuncia Penal contra Alberto Fujimori y otros, March 20, 2003.

<sup>42</sup> In the case of the Ministry of Defense and the Armed Forces, these funds were consistently assigned to a budget line for “Emergency Zones,” which would ordinarily have been used for social assistance. Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> See “Fujimori ordenó dar el dinero a Montesinos,” *La Republica*, March 7, 2003.

<sup>46</sup> See Testimony of Army General Cesar Saucedo Sánchez, described in Ministerio Publico del Perú, Denuncia Penal contra Alberto Fujimori y otros, March 20, 2003.

<sup>47</sup> See “Confesiones de la Red de Corrupción II,” *Peru 21*, March 7, 2003.

<sup>48</sup> Contraloría General de la República, Informe Pericial de la Instrucción Seguida contra el Ex Presidente Alberto Fujimori Fujimori, Exp. 09-2003, pp. 82-106.

<sup>49</sup> Ibid.

According to Montesinos' testimony, the SIN funds were used, with Fujimori's knowledge, for a variety of purposes, including making payments to congressmen for their loyalty.<sup>50</sup>

In addition, Montesinos has testified that every month Fujimori asked him to deliver a sum of money, drawn from SIN accounts, to Fujimori himself or his family.<sup>51</sup> Montesinos' testimony has been corroborated by that of his former secretary Maria Angelica Arce Guerrero, and by that of Matilde Pinchi. Both have testified that they handled money that was set aside for regular deliveries to Fujimori.<sup>52</sup> Also, Army Colonel Luis Rodriguez Silva, who was one of Fujimori's escorts for four years and later became sub-director of the SIN, has testified that he personally delivered envelopes of money from the SIN to Fujimori at the Palace of Government.<sup>53</sup> In some cases, Arce and Pinchi have testified, money was also transferred to Fujimori's relatives, such as his sister Rosa Fujimori and his brother-in-law, former Peruvian Ambassador to Japan Victor Aritomi, who allegedly picked up substantial sums of money during their visits to Peru from Japan.<sup>54</sup>

Based on the testimony of Montesinos and Pinchi, the Office of the Comptroller General of Peru has estimated that Fujimori received between U.S.\$43.2 million and U.S.\$59.4 million in transfers from the SIN between 1992 and 2000.<sup>55</sup>

In light of these transactions, it is not surprising that financial analyses show a substantial imbalance between Fujimori's assets and official income as president and university professor, and his expenses (including payment for his four children's college educations and expenses in the United States).<sup>56</sup>

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<sup>50</sup> See "Confesiones de la Red de Corrupción II," *Peru 21*, March 7, 2003.

<sup>51</sup> See "Concluyen que Fujimori Manejo Fondos a Su Antojo," *El Comercio*, April 24, 2002; "Confesiones de la Red de Corrupción II," *Peru 21*, March 7, 2003.

<sup>52</sup> See Ministerio Publico del Perú, Denuncia Penal contra Alberto Fujimori y otros, March 20, 2003; Contraloría General de la República, Informe Pericial de la Instrucción Seguida contra el Ex Presidente Alberto Fujimori Fujimori, Exp. 09-2003, p. 6.

<sup>53</sup> *Ibid.*

<sup>54</sup> See Ministerio Publico del Perú, Denuncia Penal contra Alberto Fujimori y otros, March 20, 2003; Contraloría General de la República, Informe Pericial de la Instrucción Seguida contra el Ex Presidente Alberto Fujimori Fujimori, Exp. 09-2003, pp. 7-8.

<sup>55</sup> Contraloría General de la República, Informe Pericial de la Instrucción Seguida contra el Ex Presidente Alberto Fujimori Fujimori, Exp. 09-2003, p. 5

<sup>56</sup> *Ibid.*, pp. 3-5, 20-26; see also Ministerio Público del Perú, Denuncia Penal contra Alberto Fujimori y otros, March 20, 2003. Montesinos has testified that the children's college educations and expenses were paid for with money from the SIN, which he had sent to Fujimori, or directly to Fujimori's daughter Keiko. See Contraloría General de la República, Informe Pericial de la Instrucción Seguida contra el Ex Presidente Alberto Fujimori Fujimori, Exp. 09-2003, p. 22.

Other charges against Fujimori are based on his management of millions of dollars in donations that Japanese persons and entities made to Peru through various organizations and accounts set up by Fujimori and his family. There is documentary evidence, for example, that enormous donations were made to Peru via the organization Apenkai, which was established and managed by the Fujimori family from within the Palace of Government.<sup>57</sup> However, Apenkai's financial records contain serious inconsistencies and do not explain the use to which the funds were put.<sup>58</sup> Recent reports indicate U.S.\$4.5 million from Japanese donations were diverted to personal accounts of Fujimori's sister Rosa, his brother-in-law Victor Aritomi, and his mother Mutsue Inamoto.<sup>59</sup> And there is evidence that Rosa gave Fujimori three checks of approximately \$175,000 each, drawn from these accounts, between 1996 and 1997.<sup>60</sup>

#### **4. Bribes for Loyalty: Destroying the Separation of Powers**

Fujimori's party, "Peru 2000," did not obtain a parliamentary majority in the 2000 elections. Fujimori has been charged with planning and putting into effect, in conjunction with Montesinos, a scheme to pay bribes to congressional representatives from opposition parties so that they would switch and join Peru 2000. In this manner, Fujimori could ensure that he would have full congressional support during his third term. The plan completely undermined the principle of separation of powers.

As a result of the bribes, Fujimori's party went from controlling only 42.6 percent of the seats in Congress, to controlling 58 percent of the seats, thus gaining a parliamentary majority.<sup>61</sup> According to Montesinos and Matilde Pinchi, the payments were made with funds from the SIN's "reserved actions" budget, and with funds that had been diverted from the budgets of the Ministries of Defense and Interior and the Armed Forces.<sup>62</sup>

Montesinos has confirmed that he and Fujimori planned the strategy together, and he has given detailed testimony about the various payments. In at least one instance, a former congressman who switched parties testified that after an initial meeting with Montesinos at which Montesinos proposed that he change his party affiliation, he had a

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<sup>57</sup> Ibid. See also Contraloría General de la Republica, Informe Pericial de la Instrucción Seguida contra el Ex Presidente Alberto Fujimori Fujimori, Exp. 09-2003, pp. 32-82.

<sup>58</sup> Ibid.

<sup>59</sup> Fujimori's mother, despite being very elderly, is registered as having withdrawn \$1 million in cash from these accounts in Peru. See Ángel Páez, "Mamá de Fujimori retiró \$1 millón," *La Republica*, December 1, 2005.

<sup>60</sup> See Ángel Páez, "A Japón no le queda otra que abrir cuentas de los Fujimori," *La Republica*, December 2, 2005.

<sup>61</sup> See Segunda Fiscalía Suprema en lo Penal, Acusación, Expediente No. 05-2002, July 4, 2005.

<sup>62</sup> Ibid.

second meeting with Fujimori, in which Fujimori asked him about the matter, and in which the congressman agreed to the switch.<sup>63</sup>

The scheme involved the “purchase” of the loyalty of a group of representatives. In exchange for various payments, usually of thousands of dollars that Montesinos paid to them in cash in the offices of the SIN, these congressional representatives agreed to change their party affiliations. As part of the agreement, the representatives signed three documents: first, a letter of “resignation from their party of origin;” second, a letter of affiliation to the party of the government or a “commitment to support the regime of Fujimori Fujimori”; and third, a “receipt for money delivered” (copies of these papers have been incorporated into criminal records). Many of the transactions were actually recorded on videotape by Montesinos, and several of these recordings were subsequently recovered by authorities.<sup>64</sup>

### **5. Transfer of U.S.\$15 Million in Public Funds to Montesinos and Cover-up**

On September 14, 2000, a videotape in which Montesinos appeared to be bribing a Peruvian Congressman was leaked to the media and made public. The tape sparked an enormous scandal that eventually resulted in the collapse of the Fujimori government.

In the weeks after the tape’s release, Fujimori publicly denounced Montesinos, and announced an investigation and nationwide manhunt for him. Yet at the same time, Fujimori was apparently frantically trying to cover up the criminal and corrupt activities through which his government had concentrated power and avoided real democratic oversight. Fujimori has subsequently been charged with assisting Montesinos’s escape, and conducting illegal searches of Montesinos’ home. Indeed, Montesinos fled the country and, as evidence mounted against Fujimori, Fujimori himself flew to Japan, from where he resigned the presidency by fax.

Perhaps the most serious criminal charge against Fujimori arising from his activities during this period is that, shortly after the tape’s release, Fujimori arranged to have U.S.\$15 million in state funds delivered to Montesinos. According to Montesinos’s testimony, as a result of the videotape’s release, Fujimori held a meeting with him, in

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<sup>63</sup> See Testimony of Gregorio Ticona Gómez, described in Segunda Fiscalía Suprema en lo Penal, Acusación, Expediente No. 05-2002, July 4, 2005.

<sup>64</sup> Transcripts of some of the “Vladivideos” are available on the website of Peru’s Congress, at <http://www2.congreso.gob.pe/SICR/diariodebates/audiovideos.NSF/indice?OpenView&Start=1> (retrieved December 8, 2005).

which Fujimori decided to give him U.S.\$15 million.<sup>65</sup> The payment was supposed to be Montesinos's "compensation for services rendered."<sup>66</sup>

The transfer took place through an elaborate scheme. On September 19, shortly after the videotape's release, Fujimori and three of his ministers signed Emergency Decree 081-2000. The decree increased a portion of the Defense Sector budget by 69,597,810 new soles (approximately U.S.\$19 million). Formally, the decree was issued in response to an August 25 request by the Army for a budgetary increase to implement the "Sovereignty Plan" (Plan Soberanía) to protect the Peruvian border from intrusions by Colombian guerrillas. However, there is strong evidence that such a plan never existed.<sup>67</sup> And there is no record of the decree being discussed by the full Council of Ministers as would ordinarily be required under Peruvian law.<sup>68</sup>

Carlos Boloña, the former minister of the economy who signed the Emergency Decree, confessed during his criminal prosecution that he "knew the money that was being transferred to the Ministry of Defense in accordance with the Decree was going to be used to solve the problem of governance that was created with the release of the sadly famous Kouri-Montesinos videotape, *as President Fujimori told me so when he asked me to urgently handle the Defense Sector's request.*"<sup>69</sup>

On the basis of the Emergency Decree, Defense Minister Carlos Bergamino filed a formal request for 52,500,000 new soles to be placed in the bank account of the Ministry of Defense's General Administration Office. The request was immediately approved by the Ministry of Economy. Bergamino then sent a formal request to the bank, asking that the full amount be converted to U.S. dollars and turned over to Brigade General Luis Munte, the head of the Ministry of Defense's General Administration Office.

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<sup>65</sup> See Testimony of Vladimiro Montesinos, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>66</sup> See Milagros Trujillo, "El Cuento de las CTS," *Caretas*, August 14, 2003.

<sup>67</sup> Montesinos has testified that the request was in fact drafted after September 14, when the first videotape of Montesinos making payments to a Congressman was made public. *Ibid.* The Ministry of Defense has certified that the Sovereignty Plan does not appear in any of its files. See Oficio No. 4369-SGMD-C/4, August 19, 2002, referenced in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>68</sup> According to testimony by the General Secretary of the Presidency at the time, Fujimori delivered the decree directly to him so that it would be taken to the Secretariat of the Council of Ministers to be sealed and numbered, and then immediately returned to Fujimori. He also testified that because the decree was labeled "secret," Congress was not informed of it. See Testimony of Jose Kamiya Teruya, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>69</sup> "Aclaración de términos de la defensa material presentada en el juicio oral," court filing by Carlos Alberto Boloña Behr, Causa No. 23-2001, January 25, 2005 (emphasis added).

On September 22, Miente picked up the money, which in dollars added up to U.S.\$15 million. He has testified that, following Bergamino's orders, he drove the \$15 million to the SIN on September 22, and personally met with Montesinos to deliver the money. He has also testified that throughout that day, Montesinos called him repeatedly to ask about the money. In those calls, Miente says that Montesinos explained his insistence by stating that he was acting on a direct order from Fujimori.<sup>70</sup>

Montesinos has testified that he had a meeting that same night with James Stone Cohen and Swi Sudit Wasserman, who frequently handled foreign deposits and transactions for Montesinos, at the SIN.<sup>71</sup> Montesinos claims that he gave the money to Stone and Sudit for them to deposit it in a Swiss bank account, but that they kept the money instead.<sup>72</sup> Three days later, Montesinos fled Peru. Both Stone and Sudit are currently under prosecution for their participation in this scheme.

On November 2, Fujimori allegedly tried to cover up the illegal withdrawal by depositing another \$15 million back in government accounts. According to Bergamino's testimony, Fujimori called a meeting at which Fujimori gave him four suitcases containing \$15 million. Following Fujimori's instructions, Bergamino gave the money to the Treasury and drafted a memo stating that the "Sovereignty Plan" had been postponed until the following year.<sup>73</sup> The next day, the sum was deposited in the bank.

However, there is very strong evidence that the money that was withdrawn on September 22 was not the same money that was returned to the Treasury on November 3. In particular, currency conversion receipts for the money that was withdrawn and the money that was returned show that the bills withdrawn were different from the ones returned.<sup>74</sup> Also, Henry David Tunanña, an army economist who says he

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<sup>70</sup> Testimony of Luis Anibal Miente Schwarz, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>71</sup> Swi Sudit Wasserman has also testified that he met with Montesinos and that they discussed the money, but he claims that he did not receive the money. See Testimony of Swi Sudit Wasserman, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente Nro.: 23-2001 A.V., March 24, 2003.

<sup>72</sup> See Testimony of Vladimiro Montesinos, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003. Army Captain Mario Rafael Ruiz Aguero, who worked at the SIN, has stated that on the night of September 22 Montesinos instructed him to put four or five bags into the trunk of Stone's car. See Testimony of Mario Rafael Ruiz Aguero, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>73</sup> See Testimony of Carlos Bergamino Cruz, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>74</sup> See Fiscalía Suprema en Segunda Instancia, Sala Penal de la Corte Suprema, Acusacion, Expediente No.: 23-2001, November 11, 2003.

accompanied Muenta during the withdrawal of the \$15 million, has testified that the money they withdrew included \$50 and \$20 bills. He also participated in the November 3 “replacement” of the \$15 million, and testifies that the money that was returned consisted exclusively of \$100 bills and thus could not be the same money that had been withdrawn.<sup>75</sup> The origin of the \$15 million that was deposited in the account on November 3 remains unknown. Both Boloña and Bergamino have been convicted for their participation in this scheme; their convictions are currently on appeal.

#### IV. Legal Standards on Extradition from Chile

Extradition to Peru from Chile is governed by the 1932 Treaty on Extradition between the two countries.<sup>76</sup> The treaty provides that Peru and Chile agree to extradite persons to one another to face criminal charges provided the following standard requirements are met: first, the crimes charged must also be crimes that carry sentences of a year or more in the country from which extradition is requested.<sup>77</sup> Second, the crimes charged must not be considered political crimes under the law of the country from which extradition is requested.<sup>78</sup> Third, the crimes charged must not be crimes for which the statute of limitations would have run in the country from which extradition is requested.<sup>79</sup> And fourth, the requested individual must not have been convicted or acquitted, or be under trial or prosecution, for the same facts in the country from which extradition is requested as in the requesting country.<sup>80</sup>

Chilean courts also have the practice, in extradition cases, of applying additional requirements drawn from Chilean law on criminal procedure.<sup>81</sup> In particular, courts have in the past looked at the evidence supporting the charges for which extradition was

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<sup>75</sup> See Testimony of Henry David Tunanñaña, described in Vocalía Suprema de Instrucción, Corte Suprema de Justicia de la Republica, *Informe Final*, Expediente No: 23-2001 A.V., March 24, 2003.

<sup>76</sup> See Treaty on Extradition between Chile and Peru, November 5, 1932, available online at [http://www.oas.org/juridico/MLA/sp/traites/sp\\_traites-ext-chl-per.pdf](http://www.oas.org/juridico/MLA/sp/traites/sp_traites-ext-chl-per.pdf) (retrieved December 14, 2005).

<sup>77</sup> *Ibid.*, Art. II.

<sup>78</sup> *Ibid.*, Art. III. The treaty notes that extradition will be granted even if the defendant claims that he had a political motivation, so long as the crime charged is a common crime such as homicide.

<sup>79</sup> *Ibid.*, Art. V. The statute of limitations period in Chile can be for five, ten, or fifteen years, depending on the crime. See Código Penal de Chile, Art. 94. However, each time the defendant commits a new crime, the statute of limitations starts running again on the earlier crimes. *Ibid.*, Art. 96. Also, if the defendant is outside the country, the period of the statute of limitations is doubled. *Ibid.*, Art. 100.

<sup>80</sup> See Treaty on Extradition between Chile and Peru, November 5, 1932, Art. VIII, available online at [http://www.oas.org/juridico/MLA/sp/traites/sp\\_traites-ext-chl-per.pdf](http://www.oas.org/juridico/MLA/sp/traites/sp_traites-ext-chl-per.pdf) (retrieved December 14, 2005).

<sup>81</sup> Chile currently has two different codes of criminal procedure, with slightly different standards on extradition. Which code is applied in a given case usually depends on the date on which the crime was committed. There is currently some controversy over how to determine which code applies to extradition requests.

requested, to determine whether the evidence would have justified bringing charges in Chile had the crime been committed there.<sup>82</sup> In other words, if the courts consider that there would not have been probable cause to indict in Chile under similar circumstances, then they do not extradite. However, it is important to note that the standard of review the courts have applied is not that the evidence must be sufficient to convict: the evidence need only be sufficient to justify an indictment.

In accordance with the Chilean Code of Criminal Procedure, extradition requests are decided by a member of the Supreme Court. In the event that extradition is granted, the individual who is the subject of the extradition request may appeal the decision to a panel of the same court.<sup>83</sup> Once the court's decision is final, the individual is placed at the disposal of the Ministry of Foreign Relations, so that he may be handed over to the country that requested his extradition.<sup>84</sup>

## **V. Conclusion**

Each of the five cases described in this report includes evidence linking former President Fujimori to serious crimes. The evidence includes the testimony of various witnesses and, in several cases, extensive documentation. It dramatically undercuts Fujimori's repeated public assertions that there is no evidence implicating him in crimes.

Nor do the cases against Fujimori involve minor infractions or mere self enrichment. Rather, they involve crimes that harmed Peruvian democracy and violated the fundamental rights of Peruvian citizens. Justice requires that Fujimori finally be extradited to Peru to respond to the serious charges against him.

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<sup>82</sup> See Código Procesal Penal de Chile, Art. 449(c); Código de Procedimiento Penal de Chile, Art. 647(3); Supreme Court of Chile, Decision on Extradition of Juan de Dios Zerene Alveal (September 30, 1997).

<sup>83</sup> See Código de Procedimiento Penal de Chile, Art. 654.

<sup>84</sup> *Ibid.*, Art. 655.



## **Acknowledgements**

Maria McFarland and Sebastian Brett, researchers for Human Rights Watch's Americas Division, wrote this report. Joanne Mariner, deputy director of the Americas Division, Jose Miguel Vivanco, Director of the Americas Division, and Joseph Saunders, Deputy Program Director, edited it. Wilder Tayler, Human Rights Watch's Legal and Policy Director, provided legal advice. Americas Division associates Jen Nagle and Joanna Edwards, as well as Andrea Holley and Fitzroy Hepkins, worked on the production of the report. Intern Adam Abelson provided invaluable research support.

Human Rights Watch would like to thank the numerous human rights organizations, journalists, attorneys, and individuals who contributed to this report and assisted us during our field research.

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## Probable Cause

### Evidence implicating Fujimori

Alberto Fujimori arrived in Chile on November 6, 2005, nearly five years after he resigned from the Peruvian presidency in the midst of a major corruption scandal. Wanted in Peru on criminal charges ranging from homicide to embezzlement, Fujimori had managed to avoid facing trial in Peru by staying in Japan, where he claimed Japanese citizenship. Fujimori's surprise appearance in Chile, a country that has a long-standing extradition treaty with Peru, sparked new hope that he would be extradited to Peru to face trial.

Fujimori has repeatedly claimed that there are no grounds to prosecute him and that he is the victim of political persecution. In the Chilean extradition proceedings, Fujimori likely will challenge the evidentiary basis of the charges against him in the hope that the Chilean courts will deny some or all of the extradition requests.

This report examines five of the most serious criminal cases brought against Fujimori in Peru, explaining the underlying facts and describing some of the support for the charges. Our analysis of these cases shows that, contrary to Fujimori's claims, in each case there is sufficient information pointing to his involvement in crimes to justify his extradition to Peru. This information includes the testimony of various witnesses and, in several cases, extensive documentation. It dramatically undercuts Fujimori's repeated public assertions that there is no evidence implicating him in crimes.

Nor do the cases against Fujimori involve minor infractions or mere self-enrichment. Rather, they involve crimes that violated the fundamental rights of Peruvian citizens, eroded the rule of law, and harmed Peruvian democracy. Justice requires that Fujimori finally be extradited to Peru to respond to the serious charges against him.

Former Peruvian President  
Alberto Fujimori in a press  
conference with his close advisor,  
Vladimiro Montesinos.

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