

“The extradition of Peru’s former president Alberto Fujimori from Chile in 2007 represented a landmark achievement in transitional justice, marking a historic step in Peru’s efforts to break the cycle of impunity surrounding high-level officials and setting a precedent for other countries seeking to bring heads of state to justice. Vital to the success of the extradition were the decisive actions taken by the Toledo government in 2005 and 2006 that marshaled legal and political efforts to secure the admission of extradition charges in Chile and Peru. By applying the theory of *autor mediato*, or “perpetrator behind the perpetrator,” the Office of the Ad Hoc Solicitor, the body heading the extradition effort, managed to hold Fujimori criminally liable for directing an organization responsible for human rights violations, corruption, and abuse of power, thereby laying the legal foundations for his extradition and eventual conviction in Peru in 2009.



A sense of complacency in the wake of Fujimori’s conviction, however, threatens to undermine Peru’s nascent democracy. Should Fujimori’s daughter Keiko, currently a member of the Peruvian parliament, realize her presidential ambitions in 2011, she is widely expected to issue a pardon to her father, a move that would undo the exceptional achievements of Peru’s justice system. The Peruvian people cannot be allowed to forget the horrific crimes committed under Fujimori or the prosecutorial efforts that culminated in his conviction. This monumental chapter in Peru’s history cannot be permitted to fall prey to political revisionism. ”

—Antonio Maldonado, June 18, 2009

# How To Bring A Dictator To Justice: The Successful Extradition Of Alberto Fujimori

Antonio Maldonado  
Reagan-Fascell Democracy Fellow  
International Forum for Democratic Studies

National Endowment for Democracy  
Washington, D.C.  
June 18, 2009

*The views expressed in this presentation represent the analysis and opinions of the speaker and do not necessarily reflect those of the National Endowment for Democracy or its staff.*

# Outline

3

- Part I. Historical Background of Fujimori Regime
- Part II. Fujimori in Japan
- Part III. A New Approach to Extradition
- Part IV. Extraditing Fujimori from Chile
- Part V. Importance of the Extradition

# Part I. Historical Background

## The Rise of Fujimori and “*Autogolpe*”

4

- Peru during the 1980s
  - Resurrected democracy after military rule
  - Newness of political institutions
  - Terrorist threat to stability and prosperity in Peru
- Fujimori offers a stable and orderly alternative to political chaos in Peru.
- “*Autogolpe*” as an attempt to institute a totalitarian regime under the guise of an emergency measure

# Authoritarian Rule

- Development of a sophisticated pyramid criminal network led by Fujimori, Montesinos and Army Chief of Staff Hernoza.
- Use of autocratic, violent and corrupt methods to consolidate power and accumulate wealth for Fujimori and his cronies
  - Antiterrorist legislation
  - Power monopoly of intelligence services
  - Control over media and judiciary

# Colina Group

6

- A state apparatus within the Peruvian Army designed under a counterinsurgency strategy in 1990
  - Arbitrary deprivation of liberty
  - Torture
  - Forced disappearances
  - Extrajudicial executions
  
- Created, organized, supported—both financially and logistically—and covered up by Fujimori

# Examples of Human Rights Violations

7

- **Barrios Altos:** On November 3, 1991, the *Colina* Death Squad massacred 15 people and injured four in an incident of extrajudicial execution (**IACHR Judgment of March 14 2001**)
- **Cantuta:** On July 18, 1992, the *Colina* Death Squad forcibly disappeared nine students and one professor (**IACHR Judgment of Nov. 29, 2006**)
  - The disappeared were arbitrarily detained, tortured and summarily executed

# Fall of Fujimori

- Fujimori's fraudulent third election
- On September 14, 2000, a video shows Montesinos bribing a congressman. More tapes follow, implicating the regime.
- The ensuing scandal outrages public opinion and precipitates Fujimori's fall.

# Part II: Fujimori in Japan

9



- 2000: Escape to Japan!
- Utilizing his Japanese ancestry, Fujimori begins building a new, protected life in Tokyo
  - Reorganization of criminal network
  - Strengthening of Japanese political contacts
  - Search for opportunities to reenter politics in Peru (radio broadcasts, internet campaigning, etc.)

# Reaction in Peru to Fujimori's Escape

10

- Peruvian Congress declares Fujimori “morally unfit,” rejects his resignation, and bans him from politics for ten years.
- Following a transitional period, the government of Alejandro Toledo supports efforts to curb corruption and bring Fujimori-era officials to justice.
  - Investigations by Congress and the Attorney General
  - Role of the Ad Hoc Solicitor's Office

# Office of Ad Hoc Solicitor

11

- Established in 2000 under Fujimori to “investigate” Montesinos
- After Fujimori’s fall, the Solicitor is tasked with investigating the Fujimori-Montesinos criminal network.
  - Gather evidence of illicit activity alongside the attorney general’s office and the Peruvian Congress
  - Initiate criminal processes to recover assets lost by the state
  - Lead extradition efforts of fugitive officials

# Initiation of Extradition Process of Fujimori from Japan

12

- 2003 & 2004: Then-Ad Hoc Solicitor Vargas prepares two extradition requests on the following charges:
  1. Violation of human rights (Barrios Altos, La Cantuta)
  2. Corruption (“\$15 Million Case”)
- The requests implicate Fujimori in these crimes, but fail to prove the systematic sponsorship of human rights violations under international law.
- Peru attempts to pressure Japan diplomatically into extraditing Fujimori.

# Requests Delayed and Ignored

13

- Japanese government neither explicitly accepts nor rejects Peru's extradition requests
- Absence of bilateral extradition treaty cited as grounds for prohibiting extradition
  - Ministry of Foreign Affairs official statement
- Japan also requests supplementary information from Peru, thereby delaying the extradition process

# Why did the Government of Japan Protect Fujimori?

14

- Personal support for Fujimori from influential politicians and right-wing leaders
  - Immigrant “success story”
  - Fujimori’s authoritarian and militaristic style
  - Gratitude over embassy hostage rescue in 1996
  - Political interests in Fujimori’s support base

# Part III. A New Approach to Extradition

15

- In 2004, the failures of the early extradition requests compel the Toledo government to reorganize the Office of Ad Hoc Solicitor .
- Extradition efforts are reappraised and reworked.
  - New political and legal strategies

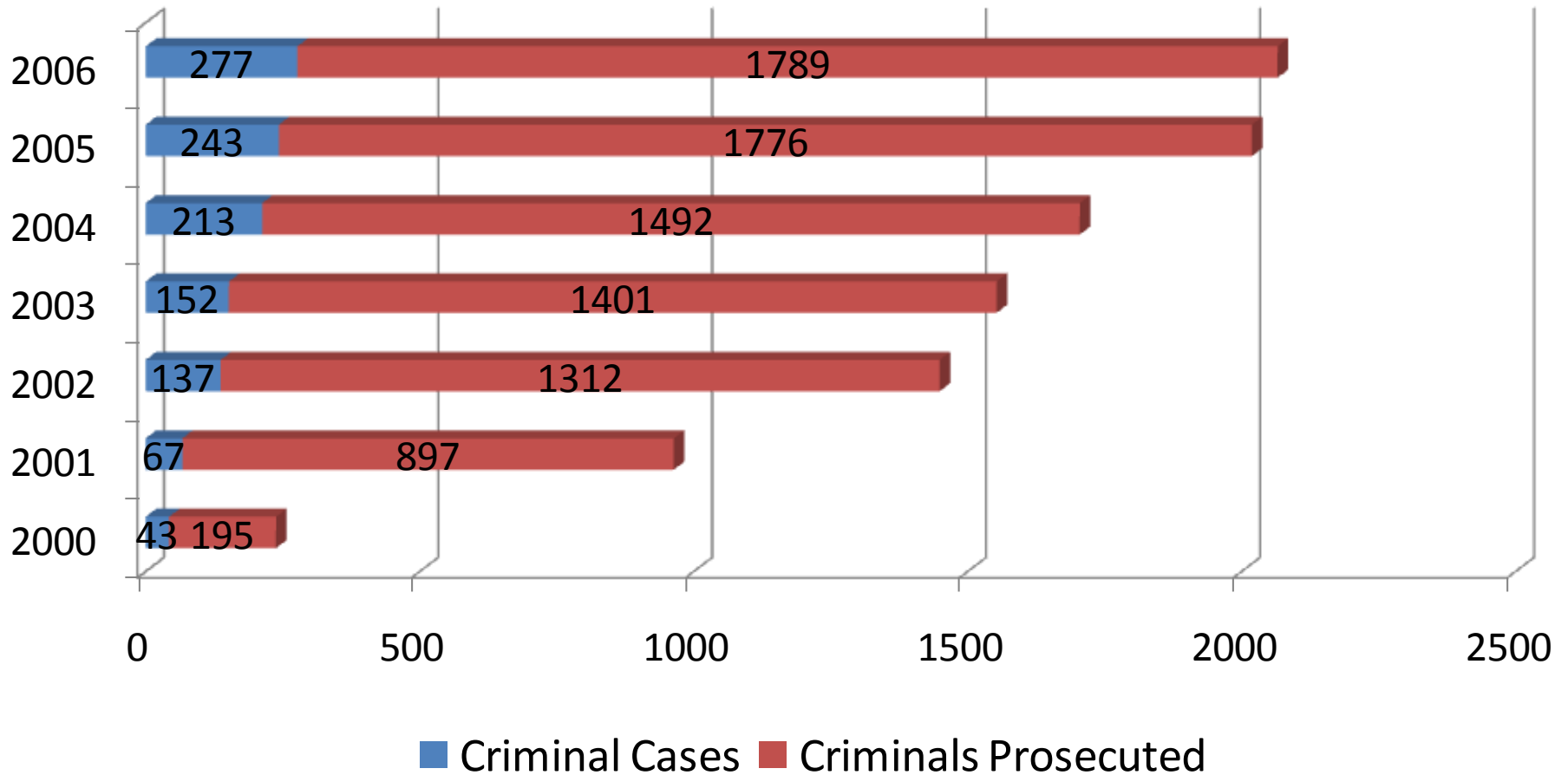
# Reorganization of Office of Ad Hoc Solicitor

16

- A new Ad Hoc Solicitor is appointed and new staff are hired and trained
- Creation of Task Force on the Fujimori Cases to counter the strategy of Fujimori's lawyer Nakasaki
- Establishment of the Extradition Unit
  - Successful extraditions of corrupt media owners Crousillats from Argentina
- Collection and analysis of intelligence

# Work of Ad Hoc Solicitor's Office

17



# Political Strategy

18

- Improved synergy and coordination between:
  - President of Peru
  - Ministry of Foreign Affairs
  - Ministry of Justice
  - Recently appointed Ad Hoc Solicitor
- Creation of Multisectoral Commission to integrate activities of government and civil society organizations

# Legal Strategy

19

- End to the provision of supplementary information to the government of Japan
- Preparation of suit against Japan before the International Court of Justice (ICJ)
  - Identification and hiring of specialized international lawyers for the case
  - Lessons from other experiences in international litigation under the ICJ
- Invocation of the international obligation of *Aut Dedere Aut Judicare*: Either extradite or prosecute

# Part IV. Extraditing Fujimori from Chile

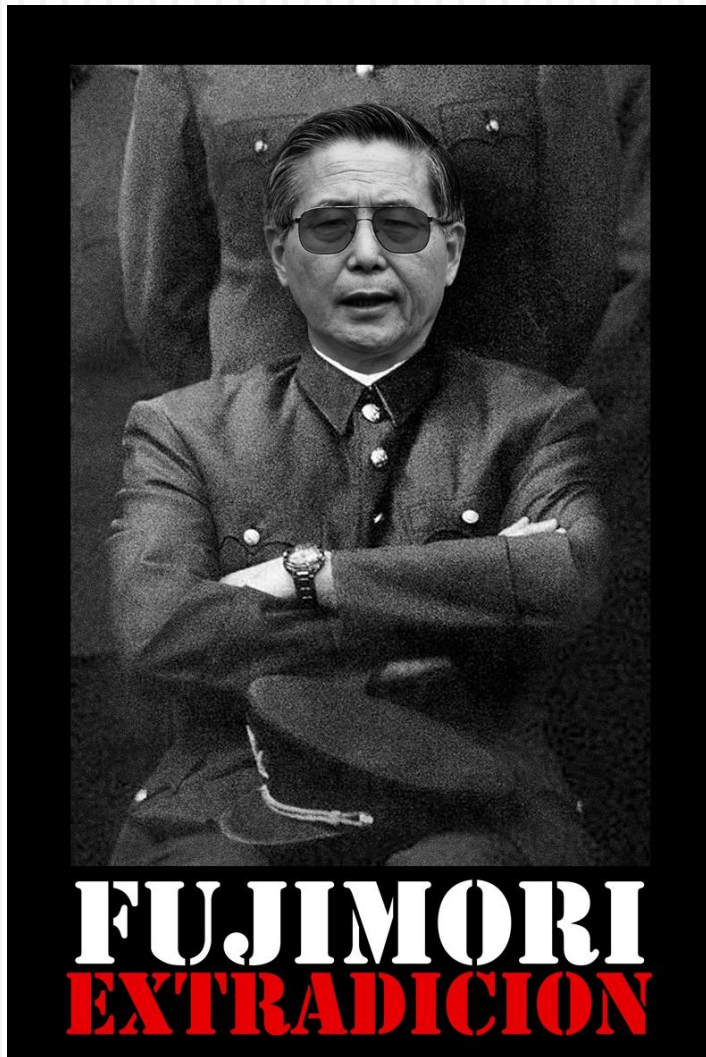
20



- Fujimori's ill-fated decision to travel to Chile in November 2005
- Miscalculation of political and legal atmosphere
- Preliminary detention upon arrival

# An Opening for Extradition

21



- Status of the diplomatic and political relations between Peru and Chile
- Legal foundations for extradition:
  - 1932 Bilateral Extradition Treaty signed by Peru & Chile
  - Bustamante Code (Code of Private International Law)

# Peru's Plan of Attack

22

- The Ad Hoc Solicitor office's role in developing the legal strategy
- Hiring a Chilean lawyer (Alfredo Etcheberry)
- Making and utilizing alliances with victims
- Publicizing the case both in Chile and Peru
- Enlisting the aid and expertise of human rights organizations
  - Human Rights Watch
  - Amnesty International

# Development of Extradition Request

23

- According to the bilateral extradition treaty, a requesting state has 60 days to prepare the essential documentation
  - **Active Extradition:** Presented to Supreme Court of Peru to obtain legal admission of extradition cases
  - **Passive Extradition:** Formal presentation of case to Supreme Court of Chile by the Peruvian government

# Challenges to Developing a Sound Legal Strategy

24

- How to identify and select the appropriate cases for both types of extradition
- How to define the standard of evidence necessary for the extradition process
- How to link facts and evidence to perpetrators not directly responsible for, or present at, crimes

# *Autor-Mediato* Theory

## A Hierarchical Organization as Perpetuator

25

- Challenge of holding high state officials criminally responsible for crimes committed by state-sponsored organizations
- Application of theory of “indirect author” or “the perpetrator behind the perpetrator” as a more integrated approach to criminal accountability
  - Invoking Claus Roxin and the 1963 trial of Adolf Eichmann

# *Autor-Mediato* Theory: Fujimori and the *Colina* Group

26

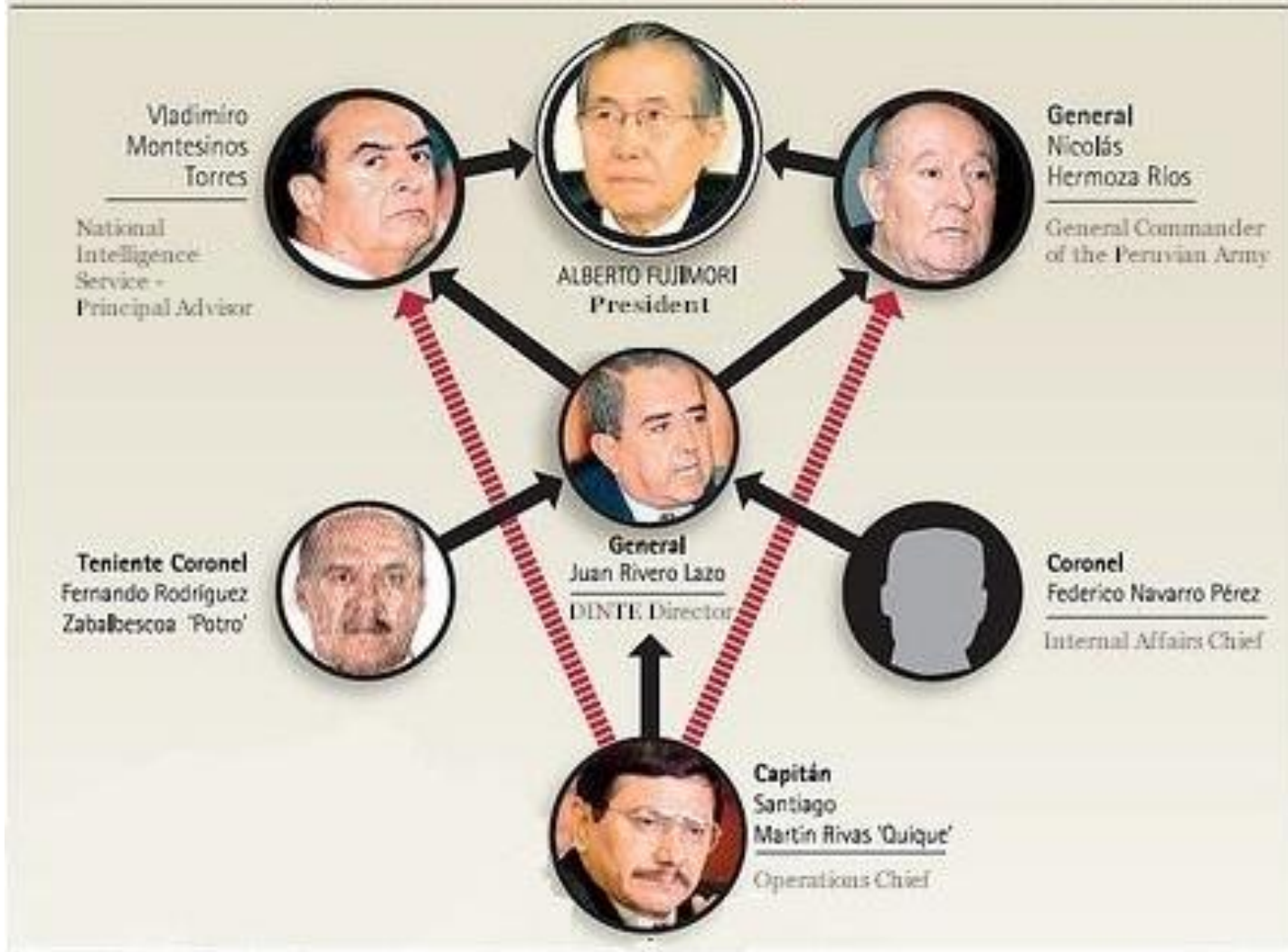
- Holding Fujimori liable for human rights violations because of his *leadership* of the *Colina* Group
- Proving ‘probable cause’ of Fujimori’s organization and direction of *Colina* Group activities
- Evidence used:
  - Testimonies, documents, Truth Commission Reports, IACHR judgments and reports, etc.

# Colina Group Structure

**LEGEND:**

→ Chain of command

▤ Irregular links through chain of command



Behind my back someone authorized the Colina group. They gave me false reports. That hurt me in my heart.

Who? Did you punish them?

I can't say his name, but I did punish him. Severely. I gave him \$15 million dollars.



# Successful Extradition of Fujimori

- ❑ December 2005: Peruvian Supreme Court and government approve the 'active extradition' request.
- ❑ January 2006: Official extradition request submitted to the Chilean Ministry of Foreign Affairs
- ❑ July 11 2007: Chilean Supreme Judge Orlando Alvarez rejects Peru's first request for extraditing Fujimori.
- ❑ September 21, 2007: Supreme Court of Chile finally finds in favor of the Peruvian government and extradites Alberto Fujimori.

# Extradition Cases Against Fujimori

30

ACCEPTED	REJECTED
1. Barrios Altos / La Cantuta	1. Faisal - Aprodev
2. Phone Tapping	2. Chinese Medicine
3. Unlawful Police Intrusion	3. Diversion of State Funds
4. Mass Media Case	4. Urgent Decrees
5. \$15 Million Case	5. Chinese Tractors
6. Bribes for Loyalty	6. Sunat - Borobio
7. SIE Basement Case	7. SIE Basement Case (Forced Disappearance)

# Trial of Fujimori

31

- December 2007: Trial of Fujimori begins in Lima
- April 2009: Fujimori is found guilty of human rights violations (Barrios Altos and Cantuta) and sentenced to 25 years.
- May 2009: Fujimori's lawyer submits an appeal over his conviction and sentencing.

# Part V: Importance of the Extradition

- A commitment to democratic values, political will, and strategic thinking throughout a long-term coherent strategy.
- The subsequent application of the extradition's legal strategy during Fujimori's trial in Lima
- Cooperation between victims, government, and civil society working together to end the historic cycle of impunity in Peru

# Lessons Learned

33

- State cooperation with civil society
- Peru's domestic anti-corruption system as a paragon of a successful transitional justice initiative
  - Importance of domestic instead of international prosecution
- Importance of international cooperation and assistance (inclusion of victims and treaty updating)
- Adoption of municipal or national legislation in conformity with international obligations
- Capacity of prosecutors and judges to understand and interpret criminal provisions

# Concluding Remarks

- A historic and unique extradition
- The strategic decisions and actions the Peruvian government took in 2005 and 2006 were the main reasons behind the successful extradition of Fujimori
- Raising awareness about the final outcome of the Fujimori sentence
- The Fujimori case has global implications and is of acute importance for the discussion of key issues in the 21st century.