

# Holding the Line on Human Rights Accountability: Explaining the Unlikely Judicial Overturn of the Pardon and Immunity Granted to Human Rights Violator Alberto Fujimori<sup>\*/\*\*</sup>

En defensa de la justicia: explicando la improbable  
inaplicación judicial del indulto y derecho de gracia  
del condenado por graves violaciones a los derechos  
humanos Alberto Fujimori

JAVIER A. DE BELAUNDE DE CÁRDENAS<sup>\*\*\*</sup>

University College London (United Kingdom)

—Vladimiro Montesinos (*chief of intelligence service*): «President Fujimori wins in 2000...  
What happens if we lose control of the Judicial Branch and the Public Ministry and have an  
opposing Judicial Council?».

—Luz Salgado (*congressperson*): «They kill us!».—Montesinos: «[...] There cannot be  
another coup. That is why we are working for the judicial reform to last indefinitely. It is the only  
way for the Government to keep control».

LUGAR DE LA MEMORIA, LA TOLERANCIA Y LA INCLUSIÓN SOCIAL (2016)

**Abstract:** Alberto Fujimori, Peruvian ex-president and perpetrator of human rights violations, was released from prison due to a presidential pardon in 2017. He was also granted immunity from prosecution. Although the political branches and the majority of the population supported these measures, as shown by public opinion polls, within months domestic courts overturned them completely relying on standards set by the Inter-American Court of Human Rights. This is the most unlikely result comparatively. The article examines what could explain this pro human rights accountability behaviour in the judiciary. It argues that the outcome could be the product of two processes initialised during the Peruvian transition: judicial empowerment (independence and power gains) and legal culture shift from positivism to neo-constitutionalism. Both are defined and analysed with reference to transitional justice and socio-legal studies scholarship. The article further

\* Based on the dissertation submitted in part-fulfilment of the Master Course in Human Rights at the Department of Political Science, School of Public Policy, University College London, September 2019.

\*\* To my parents Isabel and Javier, example of a lifelong commitment with a fairer Peru. I thank my supervisor Tom Pegrum for the interesting discussions and helpful feedback. I am grateful and have benefited from observations by Kate Cronin-Furman, Diego García-Sayán, Samuel Abad, Walter Albán, Úrsula Indacochea, David Lovatón and two anonymous reviewers.

\*\*\* Independent researcher. Lima, Peru. Lawyer (Pontificia Universidad Católica del Perú), Master of Laws (King's College London) and Master of Arts in Human Rights (University College London).  
ORCID number: 0000-0002-5345-8010. E-mail: jdebelaunde@gmail.com

seeks to identify the conditions under which Inter-American Conventionality Control Doctrine could have a strong domestic impact.

**Keywords:** Accountability; conventionality control; Fujimori; human rights; Inter-American Court of Human Rights; judicial empowerment; judicial independency; judicialization; legal culture; transitional justice

**Resumen:** El expresidente peruano Alberto Fujimori, condenado por graves crímenes contra los derechos humanos, fue liberado de prisión mediante un indulto presidencial en el año 2017. También se le otorgó el derecho de gracia respecto a otros procesos en curso. Estas medidas contaron con respaldo político y apoyo popular mayoritario, según las encuestas de opinión pública de la época. No obstante, en pocos meses, el Poder Judicial peruano las inaplicó basándose en los estándares fijados por la Corte Interamericana de Derechos Humanos. Fujimori fue arrestado y devuelto a la cárcel. Comparativamente, este resultado es singular. El artículo busca entender qué podría explicar el comportamiento resuelto a favor de los derechos humanos de los jueces peruanos que participaron en estas decisiones. Argumenta que éste podría responder a dos procesos iniciados en la transición democrática del año 2000: empoderamiento judicial (aumento de independencia y poderes de los jueces) y un cambio en la cultural jurídica del positivismo al neoconstitucionalismo. Ambos procesos son definidos y analizados con referencia a doctrina destacada de los campos de la justicia transicional y los estudios sociojurídicos. Adicionalmente, el artículo busca contribuir a identificar las condiciones bajo las cuales el control de convencionalidad interamericano puede llegar a tener un impacto decisivo.

**Palabras clave:** Rendición de cuentas; control de convencionalidad; Fujimori; derechos humanos; Corte Interamericana de Derechos Humanos; empoderamiento judicial; independencia judicial; judicialización; cultura Jurídica; justicia transicional

CONTENT: I. INTRODUCTION.- II. EXPLAINING JUDICIAL BEHAVIOUR IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY.- II.1. ANTI-IMPUNITY NORM AND CHALLENGES TO JUSTICE BARRIERS.- II.1.1. CIVIL SOCIETY DEMAND.- II.1.2. VETO PLAYERS.- II.1.3. INTERNATIONAL PRESSURE.- II.1.4. JUDICIAL LEADERSHIP.- II.2. JUDICIAL EMPOWERMENT AND LEGAL CULTURE SHIFT.- II.2.1. JUDICIAL EMPOWERMENT.- II.2.2. LEGAL CULTURE SHIFT.- III. THE FAILED PACT WITH THE DEVIL: PERUVIAN COURTS OVERTURN FUJIMORI PARDON AND IMMUNITY DESPITE A HOSTILE ENVIRONMENT.- III.1. HISTORICAL AND POLITICAL CONTEXT.- III.1.1. FUJIMORI.- III.1.2. FUJIMORISMO AFTER FUJIMORI.- III.1.3. THE PARDON AND IMMUNITY.- III.2. THE VICTIM'S CHALLENGES AND THE COURTS' DECISIONS.- III.2.1. THE PATIVILCA MASSACRE'S COURT AND THE FIRST BLOW: THE OVERTURN OF THE IMMUNITY.- III.2.2. THE INTER-AMERICAN COURT OF HUMAN RIGHTS PREPARES THE GROUND FOR THE DOMESTIC OVERTURN OF THE PARDON.- III.2.3. BARRIOS ALTOS AND LA CANTUTA MASSACRES' ENFORCEMENT JUDGE OVERTURNS THE PARDON.- IV. EXPLAINING THE

OUTCOME: JUDICIAL EMPOWERMENT AND LEGAL CULTURE SHIFT IN PERU REGARDING HUMAN RIGHTS ACCOUNTABILITY.- IV.1. INDEPENDENCE GAINS AND POWERS EXPANSION IN PERU.- IV.1.1. CONVENTIONALITY CONTROL DOCTRINE IN PERU.- IV.2. LEGAL CULTURE SHIFT IN PERU.- V. CONCLUSION.-

415

## I. INTRODUCTION

On Christmas Eve 2017, Peruvians received an unexpected and, for many, unwanted present from the government. President Pedro Pablo Kuczynski announced through a brief press release that he had granted a «humanitarian» pardon to former dictator Alberto Fujimori citing health problems (Presidencia de la República, 2017). The measure released him from prison with immediate effect after serving 12 years of a 25-year sentence for human rights crimes (Table 1). It also granted him immunity (*derecho de gracia*) from prosecution in ongoing trials (Resolución Suprema N° 281-2017-JUS, 2017).

Fujimori was not an ordinary inmate. In 2009 he became the first democratically elected former head of state tried and condemned in his own country for crimes against humanity (Table 1). The ruling was widely praised by human rights organisations, observers, and scholars around the world for its fairness, transparency, thoroughness, analytical soundness, and contribution to the field of human rights. Some of the highlights of the decision were its use of international law, evaluation of circumstantial evidence, and assessment of the responsibility of high officials (Burt, 2009, p. 397, 401; 2018, p. 13; Ambos, 2011; Skaar, 2011, p. 1; Root, 2012, p. 121-124).

Furthermore, one of the criminal cases brought against Fujimori that led to his conviction was none other than the Barrios Altos massacre. A case subject of a landmark decision by the Inter-American Court of Human Rights (IACtHR) —described as a «game-changer»—, that set the anti-impunity norm that has since governed the region<sup>1</sup>, deeming amnesties for grave human rights abuses as contrary to the American Convention on Human Rights (ACHR) (*Barrios Altos v. Peru*, 2001; Root, 2012, p. 169-170; Burt, 2018, p. 89).

Not surprisingly then, the pardon caused great controversy. The outcry of victims' families was accompanied by thousands of Peruvians taking to the streets in five days of protests; government officials resigned from their posts (notably, ministers Basombrío, Nieto, and Del Solar) and also from Kuczynski's party benches (congresspersons De Belaunde, Zevallos, Costa); a damning Ombudsperson report was released; and domestic

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

<sup>1</sup> It is beyond the scope of this article to review the evolution of IACtHR's amnesty doctrine. A good summary can be found in Gurmendi (2017). For a more in-depth analysis, see: Mallinder (2016) and Engle (2016).

and international human rights organisations labelled as impunity (Inter-American Commission on Human Rights, 2017; Defensoría del Pueblo, 2018; J. A. De Belaunde, 2018; Diario Uno, 2017; La República, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f, 2017g, 2017h, 2017i, 2018g).

Yet, the pardon had robust support. Public opinion polls taken before and after the decision showed that most Peruvians believed that Fujimori deserved a humanitarian pardon. A month before its announcement, 65% of Peruvians was in favour and 31% was against the pardon; after the announcement, 56% of the public was in favour and 40% was against (IPSOS, 2018). Similar support was recorded by other pollsters (GFK, 2017; DATUM, 2018). Public preference for seeing Fujimori's release had been consistent in the years prior to the decision, which is arguably attributable in part to the perception that he was seriously sick, in contrast to earlier measurements closer to his conviction (IPSOS, 2017; El Comercio, 2018a; Burt, 2011b). Moreover, *Fujimorismo* was largely in control of the unicameral Congress. Fuerza Popular the party founded by Fujimori's offspring to, among other goals, fight for his freedom, held 73 of the 130 seats (Prensa Libre, 2008).

However, neither the force of the political branches nor popular support for the pardon were enough to sustain it. In February 2018, nearly two months after the pardon, Fujimori was ordered to stand trial for new charges of human rights violations in the case of the Pativilca massacre. Furthermore, in October 2018, less than nine months after the pardon, Fujimori was ordered to return to prison and serve the remaining years of his term. What happened? Following the victims' challenges, two different domestic courts ruled that the immunity and pardon of Alberto Fujimori were unconstitutional and violated ACHR. The judiciary was thus able to circumvent politics and overturn the decision. By January 2019, after a long stay in a private clinic, Fujimori was sitting again in his cell in Lima (El Comercio, 2019).

This article seeks to explain the successful outcome of the victims' challenge. Why did the Peruvian courts held the anti-impunity line so boldly in face of the legal obstacle posed by Fujimori's immunity and pardon and, arguably, a political climate unfavourable to seeking justice for past human rights violations?

Of the various the dimensions of transitional justice —the judicial and non-judicial measures implemented to deal with past grave human rights violations (Burt, 2018, p. vii; Abrão & Torelly, 2012, p. 153)—, this article focuses on justice and, particularly, the challenge to an impunity measure that prevented and undermined criminal trials in relation to Fujimori. Other dimensions will also factor into my analysis according to their connection to my inquiry's main question. In particular, my

analysis emphasises empowered, receptive, and willing judges as the key actors in challenging impunity.

The case of Fujimori's immunity and pardon is of interest, as a barrier to justice was completely overturned. This is the most unlikely scenario comparatively (Payne, Lessa & Pereira, 2015, p. 737; Lessa, Olsen, Payne, Pereira & Reiter, 2014b, p. 117), where «the vast majority of past amnesties remain in effect» (Mallinder, 2016, p. 673). Also, the speed of the process is singular. Whilst Peru was successful in a matter of months, in Argentina it took courts more than 15 years to quash the pardon of Jorge Rafael Videla granted by Carlos Menem (Engstrom & Pereira, 2012, p. 117). Finally, it is intriguing that a judiciary, long considered non-responsive and the «weakest branch» (Finkel, 2008, p. 6), was able to successfully defy the other branches of government and public opinion. To a certain degree, the overturning of the immunity and pardon challenges the claim that the «accountability agenda is vulnerable to shifts in the political winds» (Burt, 2011a, p. 309).

The «relatively understudied» (Burt, 2018, p. 3-4) Peruvian transitional justice experience is in many ways unique but can inform our understanding on certain human rights issues. Specifically, the case of Fujimori's immunity and pardon could be indicative under which conditions domestic judiciaries can assert themselves in hostile environments and play a key role in human rights accountability. Also, by offering a closer examination of the interaction of the Judicial Branch with the Inter-American System of Human Rights, this article analyses the «impact beyond compliance» effect of the system and its capacity to produce positive human rights outcomes in the region (Engstrom, 2019, p. 4-8). In the case of Peru, this effect manifested itself in the empowerment of some judges and a shift in their legal culture.

As it will be shown, the Inter-American Conventionality Control Doctrine (*control de convencionalidad*) was instrumental in the overturn of the immunity and pardon. This ambitious jurisprudential device created by IACtHR in 2006 requires domestic judges to apply national laws in conformity with ACHR, as interpreted by IACtHR rulings and advisory opinions. Moreover, it states that in cases of unavoidable conflict with domestic norms, ACHR should be given preference. Or, in other words, that when a norm violates ACHR, judges should not apply it to the concrete case. It seeks to turn national judges into partners of compliance and the first line of defence of the standards (*Almonacid-Arellano et al v. Chile*, par. 124; Binder, 2012, p. 307-311; Ferrer, 2015, p. 93-99; Dulitzky, 2015a, p. 100, 2015b, p. 50-54; Contesse, 2018, p. 1169-1174; Advisory Opinion OC-24/17, para. 26). The article helps identify some of the conditions under which this doctrine could have a strong domestic impact.

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

The argument proceeds as follows. Section II sets a theoretical framework to explain judicial behaviour in the age of accountability with reference to leading scholarship in the fields of transitional justice and socio-legal studies. Two processes are highlighted: judicial empowerment (independence and power gains) and legal culture shift from positivism to neo-constitutionalism. Section III provides a contextual and legal analysis of the court's decisions. For this purpose, it starts with an overview of Fujimori's government and *Fujimorismo* before discussing the pardon, the victims' challenge, and the courts' rulings. Section IV explains how these processes developed in Peru since the 2000 transition to democracy and how constitutional framework and practices strengthen the authority of IACtHR in Peru. This section further discusses conventionality control doctrine. Section V concludes.

## II. EXPLAINING JUDICIAL BEHAVIOUR IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY

«Accused Fujimori, I rule here! Order!»

—Judge César San Martín

PRENSA LIBRE (2007)

### II.1. Anti-Impunity Norm and Challenges to Justice Barriers

«The age of human rights accountability» is a period during which trials have spread around the world to hold perpetrators criminally liable for past human rights abuses following the emergence of an anti-impunity or accountability norm, generating Lutz & Sikkink «justice cascade» (2001). This phenomenon can be explained by global developments in the field of international human rights law, like the adoption of duties to prosecute or extradite for the most serious crimes, new interpretations of the scope of rights, or the development of «victims' rights» to truth and justice. Similarly, concurrent progress in international criminal law (including new definitions of crimes and criminal responsibility) gave rise to the creation of international criminal courts and notions of universal jurisdiction. The decade of the 1990s is often considered as the starting point of this period, and events in 1998 (like Pinochet's arrest in London and the creation of the permanent International Criminal Court by the Rome Statute) signal the norm's firm establishment, warranting its further diffusion. It transformed the perception of criminal liability (justice) as opposing truth and peace, and made it an integral part of transitional justice (Lutz & Sikkink, 2001, p. 2-6, 14-18; Laplante, 2009, p. 918-936, 982; Sikkink, 2012, p. 19-41; Payne et al, 2015, p. 729-730; Payne, 2015, p. 439-444; Burt, 2011a, p. 286-288, 2018, p. 3; Engle, 2016, p. 18-43).

419

Under this vision, measures like amnesties, pardons, and immunities are considered the antithesis of accountability when adopted to benefit perpetrators of serious human rights violations (Skaar, García-Godos & Collins, 2016a, p. 6). These barriers legally shield them from prosecution and reduce or eliminate their sanctions. Instead of reckoning with past atrocities, they promote «turning the page». They vary in their causes, form, scope, and legal effects (Mallinder, 2012, p. 76-78), but, in general, they contradict the expectation that violations will be investigated, prosecuted, and punished (Payne *et al*, 2015, p. 730). Those expectations are considered duties; and state failure to fulfil them, a violation of international human rights law (Engle, 2016, p. 15). Overall, they are seen as an affront to victims and weakening legal institutions and the rule of law (Freeman & Pensky, 2012, p. 42).

Despite the age of accountability, research has shown that such barriers are still imposed around the world and wield significant staying power (Payne *et al*, 2015, p. 745; Olsen *et al*, 2012, p. 344-347; Mallinder, 2012, p. 90-92; Lessa *et al*, 2014b, p. 106-109). Moreover, after analysing 63 of these measures in 34 transitional countries, scholars found that very few (16%) complied with human rights standards that prohibit them for gross violations (Lessa *et al*, 2014b, p. 110).

This phenomenon has generated different explanations in the literature. Some consider that the «cascading» of trials might have maintained or increased the incentives for protecting perpetrators in front of a higher risk of prosecution (Mallinder's «cascade paradox»). Others see that impunity measures are necessary in every political toolbox for bringing warring parties to the negotiation table or for forcing repressive leaders to step down from power and prevent further violence (Freeman's «necessary evils»). Finally, still other scholars argue that impunity measures maintain continuous appeal for fragile democracies transitioning from conflict or authoritarian rule as a guarantee for peace and stability, thus providing time to acquire the resources necessary to prosecute abuses («late justice» or «delayed accountability»). Sometimes these measures succeed in blocking justice; sometimes they do not (Payne, 2015, p. 453; Payne *et al*, 2015, p. 730-738, 742; Méndez, 2012, p. xxvi-xvii; Slye, 2012, p. 310-312; Skaar *et al*, 2016b, p. 42-44).

Transitional justice scholars have focused on understanding the circumstances in which trials are possible. They have analysed the legal challenges to the obstacles, namely, the attempts to reduce their scope or annul them in courts, ballot boxes, and parliaments. Specifically, the factors governing the success (removal or erosion) or failure (validation) of the challenges to impunity measures. Four key factors have been identified: demand from civil society, veto players, international pressure, and judicial leadership. They are all considered

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

to be important but not sufficient (Payne et al, 2015, p. 738, 743; Lessa et al, 2014a, p. 76, 2014b, p. 111).

The relative strength or weakness of each factor and the dynamic combination between them would explain the different outcomes in a theoretical continuum: (i) total removal of barriers allowing full accountability; (ii) creative circumvention of barriers permitting high degrees of accountability; (iii) an accountability impasse, where most trials are effectively blocked and justice is limited to some exceptions; and (iv) full impunity, where there is no room for trials (Olsen et al, 2012, p. 347; Lessa et al, 2014a, p. 83-84, 95; Payne et al, 2015, p. 743-745; Skaar et al, 2016b, p. 33-43).

The region displays this variation. A perduring amnesty has produced no trials in Brazil. Some trials have surfaced in El Salvador. Chile has secured many trials through creative circumvention. And Argentina experienced full accountability, due to barriers to justice being annulled (Lessa et al, 2014a, p. 86-92; Lessa et al, 2014b, p. 117-125; Skaar et al, 2016c, p. 276-285).

The acquisition of relevant characteristics over time accounts for reversals or progression. In that vein, the same state would most likely have occupied different positions on the accountability continuum at different times, progressing toward or regressing from full accountability (Skaar et al, 2016b, p. 36-38). As Olsen et al put it «the pathways to accountability are not easy, linear or inexorable» (2012, p. 356).

This has aptly been described as the «ebb and flow» of the process of accountability for grave human rights violations by Engstrom and Pereira (2012) in their case study of Argentina. An initial opening of the possibility for trials in the country was foreclosed with amnesties and pardons for more than twenty years, after which unrestricted prosecutions resumed. Olsen et al posit that from 1983 to 2006, Argentina demonstrated all possible scenarios (2012, p. 349), which runs contrary to Clark's interpretation of the justice cascade as a linear, inexorable trajectory (2012, p. 211).

The four key factors that explain the success of challenges to impunity barriers merit explanation.

#### II.1.1. Civil Society Demand

This refers to the mobilisation for justice by victims and other societal actors like NGOs, press, unions, student organisations, individual activists, lawyers, etc. Civil society demand creates some of the necessary conditions for attaining justice by pressing for trials, claiming rights, and challenging barriers to justice. Victims' strength is proportionate to their capacity to resonate domestically, which in turn hinges on the resources



for mobilisation, its framing, and the strategies of their campaigns (Payne et al, 2015, p. 746; Lessa et al, 2014a, p. 77-78; Engstrom & Pereira, 2012, p. 120).

Some scholars, like Burt (2018), consider victims as «the single-most important element of the transitional justice process», noticing that the focus of their demands change according to shifting circumstances and opportunities (p. 66-67, 105). Together with NGOs, are credited with pushing the process forward.

The concept of legal opportunity structure offers hypotheses on the likelihood of groups to mobilise the law. When legal stock (arguments and claims that can be made according to the body of law, standards, precedents, etc.) and access to courts (rules of legal standing and affordable costs) are available, there is an incentive for legal mobilisation (Vanhala, 2018, p. 384). But, when domestic opportunities are perceived as blocked, these groups have sought to bring international pressure on their governments (Keck & Sikkink «boomerang pattern»; Engstrom & Low, 2019, p. 25-28).

#### II.1.2. Veto Players

Actors that oppose and resist transitional justice are expected to be strong in divided societies. These actors are often members of the old regime, their supporters, and/or the security forces. Their strength depends on the capacity to generate impunity policies or to contain further advancement of transitional justice through formal or informal channels, whether holding public office or not (Payne et al, 2015, p. 739, 747-748; Lessa et al, 2014a, p. 78-80).

#### II.1.3. International Pressure

International pressure weakens barriers from the outside and promotes accountability. Most relevant to international pressure is the capacity of international human rights organisations, NGOs and courts to advocate and legitimise the domestic use of human rights standards, as well as to amplify, support, and sustain the domestic demand (Payne et al, 2015, p. 739, 747; Lessa et al, 2014a, p. 81-83). Binder (2012) has observed that international courts can «facilitate» the work of national authorities where internal resistance is present, by giving moral and legal authority to their decisions (p. 318, 323).

The effect of international pressure will be more direct and stronger where legal obligations embed human rights standards in the domestic legal space (Lessa et al, 2014a, p. 82). Sikkink (2005) considers that this aspect incentivises NGOs and victim groups to action (a «political opportunity structure») (2005, p. 265-266, 269-271). This was the case in Argentina with the legal challenges to impunity measures, where the incorporation of human rights treaties in the 1994 Constitution with

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

constitutional hierarchy is deemed as the «single most important event in broadening the legal scope for judicial action» (Skaar, 2011, p. 76), it «turned courts into key arenas for human rights politics» (Engstrom & Pereira, 2012, p. 109).

One of the main differences of Latin America in comparison to other regions in the success of challenging impunity barriers is the active, significant, and leading role of the Inter-American system of human rights. It framed transitional justice in terms of human rights and set standards that could be used domestically (Mallinder, 2016, p. 658-660; Skaar *et al*, 2016a, p. 12-14). Binder (2012) explains that IACtHR's amnesty doctrine had an impact not only over the states party to the proceedings and directly bound to comply with the judgment, but over those that were not party to the dispute that had constitutions that grant ACHR high rank («spill-over effect») (p. 314-324). Furthermore, the creation of the conventionality control doctrine by IACtHR —defined in the Introduction— made «national judges the guardians of the human rights guarantees enshrined in the ACHR» (Binder, 2012, p. 309). The fulfilment of these standards is overseen by IACHR, the other human rights organ of the system, which constantly issues statements promoting human rights, by celebrating, or expressing concern regarding concrete situations. Furthermore, IACHR refers cases from the individual complaints procedure to IACtHR for adjudication. Ninety percent of the challenges to impunity barriers, and seven of the eight countries that successfully overturned or circumvented them, are in Latin America (Lessa *et al*, 2014b, p. 112-113, 128).

#### II.1.4. Judicial leadership

This factor refers to the responsiveness of domestic courts to the demand for justice. The extent that judges advance the possibility of prosecutions through their decisions by circumventing, deeming void of effects, or annulling impunity barriers (Lessa *et al*, 2014a, p. 80-81). It relates to the horizontal accountability function that courts are expected to fulfil in democracies by ensuring transparency, by guaranteeing the answerability of institutions, agencies, and officials, and by imposing checks on relevant parties when they violate rights, compromise democracy, cross the limits of their powers, or neglect their functions. Part of those checks includes criminal responsibility (O'Donnell, 1998a, p. 114, 117-119; 1998b, p. 7-8, 13-14, 20; Glopen *et al*, 2004, p. 1).

Although other state agencies fulfil horizontal accountability roles, O'Donnell (1998a) considers that «their ultimate effectiveness depends on decisions by the courts» (p. 119). As such, courts have the potential to become the most important partners for human rights compliance (Hillebrecht, 2012, p. 284). It has been noted that «ultimately the capacity to overcome impunity and promote accountability is in the

hands of the judiciary» (Payne *et al*, 2015, p. 747). Where often «judges rather than politicians have taken the lead in the quest to obtain justice for past wrongs» (Skaar, 2011, p. 11-12). Courts, therefore, represent a «necessary factor close to be sufficient» (Lessa *et al*, 2014b, p. 126).

Scholars have cautioned that explaining judicial behaviour is difficult and different factors could be at play. Two plausible common conditions that lead to strong independent judges willing to challenge impunity are judicial empowerment and shifts of legal culture.

## II.2. Judicial Empowerment and Legal Culture Shift

### II.2.1. Judicial Empowerment

Judicial empowerment refers to gains in the judiciary's independence and expansion of its legal powers (Hirschl, 2004; Finkel, 2008, p. 5; Helmke & Ríos-Figueroa, 2011, p. 22). It implies that judges have space and tools to decide cases. In other words, that the influence of politics on courts gets reduced and the ability of courts to affect politics is expanded (Brinks & Blass, 2017, p. 297).

Literature highlights that the following factors must be taken into consideration when measuring judicial powers (Finkel, 2008, p. 4-5; Landau, 2010, p. 321-325, 338; Hirschl, 2011, p. 263-271; Skaar, 2011, p. 22-24; Helmke & Ríos-Figueroa, 2011, p. 6-10, 15, 18; Brinks & Blass, 2017, p. 299-311):

- *Factors that affect independence*: rules of appointment, discipline, and promotion; economic resources; and length of tenure. Attention focuses on the introduction of due process of law guarantees and limits to political branches influence in all procedures that determine the career of judges.
- *Factors that define Courts strength*: rules of standing and access to courts, effects of rulings, and «thick constitutions», this is that cover a large number of topics, contain a bill of rights, embed human rights, grant judicial review, and, in general, mark the capacity to intervene decisively in a broad range of issues.

Socio-legal scholars have found that independent and strong courts contribute to the phenomenon of «judicialization of politics». This occurs when aspects that used to be addressed by the executive branch, legislature, and social forces («political questions») are increasingly framed as constitutional issues, brought to courts, and decided by judges (Sieder *et al*, 2005, p. 1-6; Hilbink & Woods, 2009, p. 746; Hirschl, 2011, p. 253-256, 261-262).

Providing checks on power and eliminating barriers to holding perpetrators accountable represents another aspect of the judicialization

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

of politics. Scholars argue that «the absence of independent legal institutions is a sure-fire way to guarantee that impunity systems remain in place» (Burt, 2018, p. 90), and that «courts cannot shape, influence, or constrain political outcomes unless judges are able to assert themselves in politically salient cases» (Hilbink & Woods, 2009, p. 747).

Democracies in Latin America are fertile ground for «juristocracy» (Hirschl, 2004), because no strong constitutional culture permeates the actions of the executive or parliament. Moreover, political institutions do not work well. Dysfunctional parliaments leave the executive to dominate policymaking without check. New courts and constitutionalism have had to step in to fulfil that role (Landau, 2010, p. 338, 346).

### II.2.2. Legal Culture Shift

*Law and the interests and normative preferences of its practitioners cannot be simply reduced to politics*

PAR ENGSTROM & GABRIEL PEREIRA (2012, p. 120)

Legal culture encompasses the ideas, theories, values, knowledge, discourses, and routines of the legal sphere (Hilbink & Woods, 2009, p. 746; Pásara, 2014, p. 88). In his compelling study of human rights trials in Latin America, González-Ocantos (2016) posits that, for the establishment of a large-scale process of human rights accountability, it is not enough that an anti-impunity norm has risen in the international level, that there is a favourable political environment, or that judiciaries have been empowered through judicial reforms. Developments must be embedded in the legal culture of justice operators. These developments must be seen as valid, legitimate, professional, preferable courses of action and, importantly, the judiciary's ability to operationalise them in concrete scenarios must be acquired (p. 6-21, 27-36, 269-276, 288-289).

Effective changes in legal culture are especially important for the justice process because legal culture mediates judicial outcomes (González-Ocantos, 2016, p. 26-33; Torelly, 2019, p. 134). Otherwise, judges will be «geared to reproduce routines that [allow] them to dispose cases quickly» (González-Ocantos, 2016, p. 183).

More specific to human rights accountability, a shift in legal culture should dismantle legal positivism and replace it with neo-constitutionalism. The former is defined as a formalistic, conservative culture strongly attached to the principles of legality and sovereignty, literal interpretation, and restrained courts, mostly deferent to political power. The latter refers to a legal culture that privileges strong readings of constitutional principles and human rights, and an active interpretative role of courts in accountability (Sieder *et al.*, 2005, p. 12-13; Finkel, 2008, p. 6-8;

Helmke & Ríos-Figueroa, 2011, p. 1-2, 17; Skaar, 2011, p. 34; Pásara, 2014, p. 88-104; Huneus, 2016, p. 180-187; González-Ocantos, 2016, p. 5-7, 40-54).

Lessa (2012) describes the lack of training and expertise in human rights in Uruguay's judiciary as playing a defining role in upholding impunity for more than 15 years (p. 145). Abrão & Torelly (2012) argue that the Brazilian judicial interpretation of the amnesty law—that understands it as impunity and oblivion—is the product of a conservative judicial culture that gives continuity to the «authoritarian legality» (p. 165-166, 169, 172-177). Similar cultures have been observed in Spain (Aguilar, 2012, p. 331) and Mexico (González-Ocantos, 2016).

The advantage of bringing judicial empowerment and legal culture into the analysis is that judges and prosecutors are taken seriously. Alternatively, placing too much emphasis on civil society, international pressure, and shifting balances of power between pro-accountability and pro-impunity sectors, renders the judiciary almost invisible and underestimates the potential of law to produce its own dynamics (Skaar, 2011, p. 26; González-Ocantos, 2016, p. 30-32, 272-274). Additionally, an analytical focus on shifts in legal culture can facilitate plausible explanations of norm internalisation (at least in the judiciary), which theoretical frameworks on the age of accountability tend to lack (Pegram, 2014, p. 611).

### III. THE FAILED PACT WITH THE DEVIL: PERUVIAN COURTS OVERTURN FUJIMORI'S PARDON AND IMMUNITY DESPITE A HOSTILE ENVIRONMENT

*Vile acts unfortunately form part of political life in almost all nations, but there are not many cases in which a ruler has perpetrated so many in such a short time*

MARIO VARGAS LLOSA (2017)

#### III.1. Historical and Political Context

##### III.1.1. Fujimori

Alberto Fujimori's regime (1990-2000) has been characterised by political scientists as «autocratic democracy» (Maucery, 1997), «delegative democracy» (O'Donnell, 1998a, p. 120), «neo-populist» (Crabtree, 1998, p. 22), «hybrid» (Crabtree, 2001), «competitive authoritarianism» (Levitsky & Way, 2002, p. 52-54), and «electoral authoritarianism» (Carrión, 2006b, p. 299-313). But the victims of its abuses prefer to call it a dictatorship.

Democratically elected in 1990, he allied with the military and performed a «self-coup» in 1992, shutting down parliament and

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

concentrating power (Crabtree, 2001, p. 290-291). The Attorney-General, Supreme Court, and hundreds of judges and prosecutors were sacked and replaced by un-termed justices, leaving the Judicial Branch 80% composed of provisional judges (Ledesma, 1999, p. 35). Fujimori claimed that an «obstructionist» parliament and a corrupt, partisan, and terrorist-allied judiciary justified the self-coup (Moura, 2012). However, his real motivation was to set in motion an authoritarian project. International pressure forced him to call for a constitutional assembly, resulting in the 1993 Constitution, which is still in effect (Abad & Garcés, 1993).

The Constitution introduced neo-liberalism to Peru and included institutional innovations (Abad, 2006). Among them were a human rights ombudsperson and the Judiciary School (Academia de la Magistratura - AMAG). Moreover, revamped provisions for the Judicial Branch, Public Ministry, the Judicial Council (Consejo Nacional de la Magistratura - CNM) and Constitutional Court secured on paper relevant gains in judicial independence and powers (J. De Belaunde, 1998, p. 179, 190; Dargent, 2005, p. 141).

Following the justification for the coup, Fujimori launched a judicial reform. But, as Finkel explains, judicial reform implies a two-step process: initiation and implementation. The reform's success or failure depends largely on the latter (2008, p. 2). After appeasing international pressure with the new constitution, achieving the power to sell public goods, obtaining the right to re-election, and diminishing parliamentary authority *vis-à-vis* the executive; Fujimori had no interest in implementing stronger checks (Finkel, 2008, p. 12-14, 32-36, 112-117). His 1995 re-election by a substantial majority set free his «natural skill for disrupting horizontal accountability networks» (O'Donnell, 1998a, p. 120). He initiated judicial reform, but not the reform expected.

Through parliament —recomposed with a *Fujimorista* majority— and informal channels (bribes and threats), Fujimori neutralised or captured the electoral system, CNM, AMAG, and almost all institutions with accountability powers over the executive. Magistrates at the Judicial Branch and Public Ministry were intentionally kept un-termed to ensure their allegiance to the government's will or their easy removal. A notorious case against judicial independency was the 1997 impeachment of three Constitutional Court judges that had ruled against a law granting Fujimori the possibility for a third unconstitutional term (J. De Belaunde, 1997, 2008; Gonzales, 2000; Dargent, 2005, p. 141-147). This setting produced a state of «permanent coup» (Conaghan, 2005), which fastened Fujimori's hold on power and released him from accountability.

Courts were not only neutralised for impunity, they «were openly used both to curb political opposition and as a tool of repression» (García-Godos & Reátegui, 2016, p. 229). For instance, the government seized control of five out of six private TV channels through the judiciary. The support of the remaining channel was secured through monthly bribes (*Ivcher Bronstein v. Peru*, 2001; J. De Belaunde, 2008, p. 136 fn31).

The country still faced the internal armed conflict (1980-2000)—during which two terrorist organisations (the Maoist Shining Path and the Guevarist Tupac Amaru Revolutionary Movement) confronted the state and society, ultimately leaving 69,280 dead (Comisión de la Verdad y Reconciliación, 2014)—, and Fujimori championed the strong handed governance. In parallel to the official counter-insurgency strategy, his regime created a military death-squad called Colina Group. Between 1991 and 1993, Colina was responsible for kidnapping, torturing, executing, and disappearing around 50 people. In 1995, two broad amnesty laws protected Colina from criminal responsibility for the Barrios Altos and La Cantuta massacres. In these two operations, Colina executed or disappeared 15 people including a child (Barrios Altos), as well as nine students and a university professor (La Cantuta) (Comisión de la Verdad y Reconciliación, 2014, p. 226-240; Laplante, 2009, p. 949-953; Gonzales, 2011; Vílchez, 2016; García-Godos & Reátegui, 2016, p. 233; Burt, 2009, p. 387, 397-398).

In 1999 Fujimori attempted to retract Peru's recognition of IACtHR's jurisdiction. Although IACtHR dismissed the withdrawal as inadmissible —on the basis that there is no provision in ACHR allowing for that possibility—, for the rest of the period the government ignored IACtHR (*Ivcher Bronstein v. Peru*, 1999, paras. 39-55). The government justified the act by criticising an IACtHR's ruling that questioned Peru's anti-terrorist legislation and the trial of 4 members of MRTA by faceless military courts. Nevertheless, the real drive behind withdrawing from IACtHR was to prevent it from deciding the case of Baruch Ivcher and the cases of the impeached Constitutional Court judges. Keeping the Constitutional Court neutralised and Ivcher's TV-channel under control was key for Fujimori's 2000 *re-re-election* plans (Soley & Steininger, 2018, p. 244-248).

After winning the third term in dubious elections, the regime collapsed amidst a corruption scandal. Videos surfaced of Montesinos, Fujimori's right hand, bribing congresspeople, judges, electoral authorities, businesspersons, and other officials (Lugar de la Memoria, la Tolerancia y la Inclusión Social, 2019). Fujimori fled to Japan and resigned in November 2000. His government is considered amongst

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

the most corrupt in Peruvian history. Quiroz (2008) estimates that the corruption of the 1990s accounted for 50% of the public expenditures and 4.5% of GDP (p. 450). In 2007 Peru extradited him from Chile, and he returned handcuffed to face a different justice system than the one he had left (Burt 2009, p. 395-396; Vélchez, 2016). To this date, he has received 4 convictions for corruption and human rights crimes (Table 1). His conviction for the Barrios Altos and La Cantura massacres bears the longest sentence: 25 years. The verdict found him guilty of aggravated kidnapping, assault, and homicide within the context of human rights violations, carried out through a power structure under his control. Although, Peru did not regulate international crimes, the Court that tried him qualified his actions as crimes against humanity (Gamarra, 2009). At least, two hundred and seven of his former associates have also been sentenced for different crimes (La República, 2011).

	Cases	Crimes	Conviction	Reparation Owed to the State
1	Illegal search and seizure of documents, boxes and suits from the house of Montesinos' wife.	i. Abuse of power.	6 years	S/ 400 000,00
2	Barrios Altos massacre, La Cantuta massacre, Gorriti and Dyer kidnappings.	ii. Aggravated homicide (qualified as crimes against humanity). iii. Aggravated assault (qualified as crimes against humanity). iv. Aggravated kidnapping.	25 years	S/ 300 800,00
3	Congressional bribes, illegal phone tapping of opposition and illegal media funding for <i>re-re-election</i> .	v. Embezzlement. vi. Corruption of public officials. vii. Violation of the secrecy of communications.	6 years	S/ 27 060 216,00
4	Diversion of public funds for irregular payment in favour of Montesinos.	viii. Embezzlement and ix. Ideological falsehood.	7 years, 6 months	S/ 3 000 000,00

Source: J. A. de Belaunde (2012).

\* Peruvian prison sentences do not accumulate. Currently the only pending term is for the human rights cases (25 years).

\* Fujimori has not paid the reparations he owes to the state. With legal interests, his outstanding debt is more than S/. 51 000 000 (around £12 331 902) (La República, 2018k). Victims have been repaired by the State.



### III.1.2. *Fujimorismo* after Fujimori

Fujimori's regime collapsed, but he remained popular (Carrión, 2006a; Root, 2012, p. 95-96). He is widely credited with ending economic chaos and the internal armed conflict (Cornejo, Pérez-León & García-Godos, 2019, p. 332-333).

Imprisoned, his political capital passed to his children, Keiko and Kenji, who founded Fuerza Popular. The party was formed to fight for the freedom of Fujimori, reclaim his legacy, and give continuity to his policies. It embraces a right-wing ideology that combines political authoritarianism —with a strong stance against human rights and transitional justice—, economic neoliberalism, and clientelism (Prensa Libre, 2008; Vélchez, 2016; Zapata, 2016). To these traditional *Fujimorismo* ingredients, Keiko added moral conservatism by linking the party to the agenda of the most reactionary sectors of the Catholic and Evangelical churches (J. A. De Belaunde, 2019).

The party's apparent lack of economic constraints —an observation, which has prompted investigations of money laundering and organized crime (Associated Press, 2016; The Guardian, 2018)— has produced membership, structure, capacity for mobilisation, constant presence in the media, and clientelist practices. For all the weaknesses of the Peruvian party system (Cornejo et al, 2019, p. 330-331), Fuerza Popular has become the most organised party, having taken the place that the APRA party previously held. This was reflected in the seats obtained in parliament in the last three general elections: 13 in 2006, 37 in 2011, and 73 in 2016 (Tuesta, 2019).

Between 2006 and 2011, *Fujimorismo* entered an informal coalition with the ruling party APRA. From a human rights perspective, this period represented a reorganisation of impunity forces and the first hostile environment for accountability after Fujimori's regime. President Alan García and his vice-president Luis Giampietri were seriously implicated in human rights abuses from García's first term in office (1985-1990). This set the tone for the administration (Burt 2011a, p. 308, 2014, p. 149, 163; Root, 2012, p. 116).

Some pessimistic predictions for transitional justice in Peru were based on the policies of those years. Nevertheless, most of the measures adopted in this time were eventually defeated (Table 2). Furthermore, González-Ocantos showed in his study that, despite the hostile environment, the judiciary continued to deliver human rights convictions (2016, p. 147-150, 172).

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

Table 2. Impunity Coalition Measures Status

Measure	Intended Effect	Reaction	Status
2006 «Anti-NGO Law»  Law N° 28925	Extend executive powers over NGOs funding and activities through a disciplinary regime. The main targets were human rights and environmental organisations.	Domestic NGO's challenged the constitutionality of the law at the Constitutional Court.	Annulled in 2007. The Constitutional Court held the law partially unconstitutional and the remaining part was «amended» through interpretation, according to the terms of the NGO's challenge.
2008 Provision of free legal defence to security forces personnel, in activity or retired, accused of human rights violations  Executive Decree N° 022-2008-DE-SG	Benefit human rights perpetrators by providing them with private legal counsels. A type of legal aid usually not available for victims or their families (mostly from historically marginalised groups).		Still in effect.
2009 Rejection of German Funding to Build a Memory Museum	Prevent the Truth and Reconciliation Commission interpretation of the conflict to get disseminated.	Writer Mario Vargas Llosa spearheaded a protest that made president García reverse and accept the project.	Reversed in 2009. The museum was built and is in operation since 2015.
2010 «Amnesty in disguise»  Legislative Decree N° 1097	Shelve most human rights trials based on the excess of formal terms of procedure. Prevent the application of the Convention of non-applicability of statutes of limitations for crimes against humanity.	Public protests. Domestic and international NGOs and human rights organisations condemned it through statements. Opposition congresspeople challenged the constitutionality of the law at the Constitutional Court.	The government reversed. Repealed by congress in 2010.  Furthermore, declared unconstitutional by the Constitutional Court based on IACtHR caselaw standards in 2011.

## 431

<p>2012 Javier Villa Stein Supreme Court Chamber's Ruling on Montenosinos and Colina Group for the Barrios Altos massacre, that acquitted 4 perpetrators by applying the statute of limitations and reduced the terms of the others.</p>	<p>Offer a new framework of interpretation against justice and in favour of impunity. Indirectly benefit Fujimori by providing him a tool to question his conviction. The ruling considered Barrios Altos massacre a common crime, not a crime against humanity, and stated that the victims were terrorists.</p>	<p>Challenged domestically by an amparo claim filed by the Justice Ministry.</p> <p>Challenged internationally by the families of the victims and human rights organisations through a supervision request brief at the IACtHR.</p>	<p>IACtHR found that the ruling contradicted its caselaw and, if not corrected, would generate impunity.</p> <p>Following the ruling of IACtHR, the Supreme Court annulled its own decision in 2012 and issued a new judgment in 2013 that complied with inter-American standards.</p>
<p>2013 El Frontón Massacre Ruling</p> <p>STC N° 01969-2011-PHC</p>	<p>Declare that the case was not a crime against humanity to presumably benefit García, and Giampietri. This contradicted IACtHR previous decisions on the case.</p>	<p>Challenged with a correction brief (<i>subsanción</i>) filed by the Ministry of Justice and domestic human rights NGOs.</p>	<p>In 2016, the Constitutional Court, with a new conformation, partially annulled the ruling.</p>

Source: Self-elaboration. (Crabtree, 2006; *Sirumbal Ramos v. Congreso de la República*, 2007; Decreto Supremo N° 022-2008-DE-SG; BBC, 2009; Burt, 2009, 2014; *Congresistas v. DL 1097*, 2011; Roots, 2012; *Barrios Altos v. Peru*, 2012; Rivera, 2013; *Bocanegra Chávez v. Poder Judicial*, 2013, 2016; González-Ocantos, 2016; J. A. De Belaunde, 2017).

In 2016, after running with a considerable advantage, Keiko Fujimori lost the election to Pedro Pablo Kuczynski by 0.24% (42,597 votes). However, as parliamentary elections occur in the first round, *Fujimorismo* obtained control of the parliament with a majority of 73/130. The President's party finished third with 18 seats (Tuesta, 2019). From day one, Fujimorism embarked on a political war to obstruct, if not overthrow, the government using its parliamentary majority. This expressed in an abusive and, sometimes, unconstitutional use of congressional prerogatives (J. A. De Belaunde, 2017, 2019; A. De Belaunde, 2018; Cornejo *et al*, 2019, p. 332).

The final showdown occurred in December 2017. *Fujimorismo* filed a motion impeaching Kuczynski for «permanent moral incapacity» for allegedly receiving money from the corrupt Brazilian construction company Odebrecht (El Comercio, 2017e). At the eleventh hour, the motion failed to be supported with the required supermajority and Kuczynski saved his head momentarily. It obtained 79 votes of the 87 required. Ten Fuerza Popular congresspeople under the command of Kenji Fujimori abstained from voting (El Comercio, 2017d). The mystery of such vote in defiance of the party line would be solved two days later.

HOLDING THE LINE ON HUMAN RIGHTS ACCOUNTABILITY: EXPLAINING THE UNLIKELY JUDICIAL OVERTURN OF THE PARDON AND IMMUNITY GRANTED TO HUMAN RIGHTS VIOLATOR ALBERTO FUJIMORI

EN DEFENSA DE LA JUSTICIA: EXPLICANDO LA IMPROBABLE INAPLICACIÓN JUDICIAL DEL INDULTO Y DERECHO DE GRACIA DEL CONDENADO POR GRAVES VIOLACIONES A LOS DERECHOS HUMANOS ALBERTO FUJIMORI

### III.1.3. The Pardon and Immunity

The humanitarian pardon and immunity came in the form of a two-page presidential decision published on the night of 24 December (Resolución Suprema N° 281-2017-JUS, 2017). The decision was justified by the «grave non-terminal, advanced, progressive, incurable disease» from which Fujimori suffered, as well as the alleged serious risk that the prison posed to him. It refers to four secret reports as the basis for the decision, including one by a medical board headed by Fujimori's personal doctor since 1997 (Ojo Público, 2017). After restating the constitutional and legal norms that recognise the power of the president to grant pardons and immunities, the decision declares that 79 year-old Fujimori was no longer a menace to society, that the decision does not imply an acceptance or validation of his acts, and that the Constitution recognises his rights to dignity, life, and health.

The next day, prompted by protests, Kuczynski provided further justification for his act through a read televised statement. With the unusual setting of a religious image in the background, repeating and stressing that his decision was within the powers granted by the Constitution, Kuczynski said that «justice was not vengeance» and that «democrats should prevent Fujimori from dying imprisoned». He said that, although Fujimori committed «mistakes and serious excesses», Peruvians should not forget that he took office under a dire crisis and contributed to national progress. Addressing protestors, Kuczynski acknowledged that he had promised in his campaign not to pardon Fujimori, but that parliament subsequently rejected his proposed alternative of a house arrest bill. Moreover, he framed the measure in terms of reconciliation: «open wounds can only heal if we commit ourselves to a serious effort for reconciliation, we must reach the bicentenary [2021] united in peace and prosperity». Of «young voters» he pleaded «not to be carried away by negative emotions and hate from the past [...]». He continued, «Let us turn the page, don't paralyse our country, and work together for the future and for the defeat of poverty». He finished by wishing all a merry Christmas and hoping that families were reunited in the festivities (Harada, 2017).

The government started a campaign to quiet questioning voices. Following a curious Peruvian tradition, it named 2018 «the year of national dialogue and reconciliation», a label to be included in all official documents (La República, 2018j). Also, it used the visit of the Pope in January to emphasize pardon, unity, and reconciliation (El Comercio, 2018d). And even reshuffled the cabinet, naming it «reconciliation cabinet», hoping that members of Fuerza Popular would agree to integrate it and work on a common agenda (El Comercio, 2017b). Nevertheless, after saluting the freedom of Fujimori, *Fujimorismo* refused

to enter into an agreement with the Government (Fuerza Popular, 2018; El Comercio, 2018f).

When addressing the nation, Kuczynski submitted to the «courts» of history. It did not take that long for his actions to be checked.

### III.2. The Victims' Challenges and the Courts' Decisions

The government neglected the victims when taking the decision of the pardon and the immunity. Previously, it had ignored their requests for a meeting when rumours started to spread months before the decision (El Comercio, 2017c, 2018c). Only after the decision, and when facing mobilised opposition, the government recalled them. First, it offered them new reparations (El Comercio, 2017a, 2018b, 2018c). Then, when refused, labelled them as leftist extremists (La República, 2018a), mimicking an old «politics of fear» used in the 1990s to demobilise civil society (Burt, 2007, p. 189-211). Fujimori himself produced a video asking «for forgiveness from the bottom of [his] heart» from those «let down by the results of [his] government» (Fujimori, 2016). These efforts were in vain. Within days, the victims set in motion the legal challenges that lead to the pardon and immunity's overturning.

The victims of Barrios Altos and La Cantuta were experienced in fighting against impunity in domestic and international legal forums. Backed by lawyers of IDL and APRODEH, two of the most prominent Peruvian NGOs and members of *Coordinadora Nacional de Derechos Humanos* (Youngers, 2006; Engstrom & Low, 2019, p. 36-41), the victims were able to formulate sophisticated legal strategies and strong challenges first to the immunity, and then to the pardon. Peru has the highest number of cases decided at IACtHR and petitions filed at IACHR (Burt, 2018, p. 90; Bernardi, 2019, p. 224), which speaks of the capacity to engage the regional system in the human rights defence (Burt, 2009, p. 386).

#### III.2.1. The Pativilca Massacre's Court and the First Blow: The Overturn of the Immunity

The Pativilca massacre was a Colina operation. In January 1992, six persons were executed in the north of Lima. Fujimori is accused on a similar ground than Barrios Altos and La Cantuta. Shortly after Kuczynski's decision, Fujimori's lawyer demanded the Court in charge of the case (*Sala Penal Nacional*) to abide the powers of the president and exclude Fujimori from trial due to his new immunity. The victims replied with a request for a conventionality control (Resolución N° 09, 2018, p. 18-20).

After 37 days of its granting, and with Kuczynski still in power, the Pativilca Massacre's Court circumvented the immunity and ordered Fujimori to stand trial (Resolución N° 09, 2018). In a thorough 103-page decision

433

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

largely grounded on human rights and constitutional principles, the Court ruled that the justification given to the immunity was insufficient and that it was incompatible with the duty to investigate, prosecute, and punish those responsible for grave human rights crimes. The Court used 21 different Constitutional Court rulings to argue the decision. Furthermore, it explicitly carried out a conventionality control and used 18 different IACtHR decisions to apply human rights standards and dismiss the immunity (Table 3).

The decision was upheld on appeal by the Supreme Court. It ratified the argumentation of the Pativilca Massacre's Court to circumvent the immunity, stressing that «it is a judicial duty to evaluate the constitutionality and conventionality of discretionary acts, so to defend the Constitution and protect rights» (Resolución N° 46, 2019, para. 3.5). Currently, Fujimori continues to be tried for the Pativilca massacre.

III.2.2. IACtHR Prepares the Ground for the Domestic Overturn of the Pardon  
Just a day after the pardon, the victims informed IACtHR and requested a supervision hearing for Barrios Altos and La Cantuta. IACtHR had previously charged Peru with the obligation to investigate, prosecute, and punish those responsible for the massacres and left open the monitoring procedure of compliance (*Barrios Altos v. Peru*, 2001; *La Cantuta v. Peru*, 2006). The victims presented the pardon as an infringement of Peru's obligation to punish perpetrators.

In June 2018, IACtHR delivered its awaited supervision decision (*Barrios Altos y La Cantuta vs. Perú*, 2018). To the victims disappointment, it did not annul the pardon directly. Nevertheless, it provided them with a strong tool to petition the Peruvian courts. IACtHR restated its case law prohibiting impunity for grave human rights violations and reiterated its interpretation of punishment and its enforcement as pertaining to victims' right of access to justice (para. 30). In this regard, it considered that decisions of this type should take into account not only the health of the prisoner or the conditions of their incarceration, but also the victims' rights, the gravity of the crimes, and the conduct of the perpetrator regarding reparations, remorse, and collaboration with truth. All these factors should be considered in a proportionality test that pays special attention to less intrusive means than releasing the perpetrator (paras. 45-57, 68). Considering some Peruvian precedents, IACtHR deemed that such evaluation should be done first by domestic courts. And announced it would oversee the outcome (paras. 59-64). It further reminded Peruvian courts of their duty to carry out the conventionality control and provided a list of «serious questionings» on the validity of the pardon (paras. 65, 69). It set a date in October 2018 for victims and the government to inform on the progress on the issue.

The decision to take the pardon directly to IACtHR demonstrates the sophistication of the legal defence available to the victims. For lawyers commenting in media, Fujimori's defence, and even state representatives, the pardon was a novel act, differing from the actions that generated the previous cases at IACtHR. As such, the victims were under the obligation to (i) exhaust domestic remedies before filing a petition to IACHR and, (ii) wait for IACHR to refer it to IACtHR. All this would have taken several years, increasing the risk of a second runaway. Victims were aware of the risk and, relying on previous knowledge of «new» complaints successfully filed directly to IACtHR, they proceeded (La República, 2017g).

### III.2.3. Barrios Altos and La Cantuta Massacres' Enforcement Judge Overturns the Pardon

IACtHR ruling put the legal creativity of the victims' lawyers into work again. Although «manifestly supported a declaration of incompatibility of Fujimori's pardon» (Cornejo et al, 2019, p. 340), it left the decision to domestic courts. The clear legal option for the victims was an amparo claim, but such claims take 3-5 years to reach a final decision. Instead, they went directly to the Supreme Court that convicted Fujimori and requested a conventionality control to quash the pardon (La República, 2018c, 2018d).

In October 2018, the Supreme Court Enforcement Judge (*Juzgado Supremo de Investigación Preparatoria de la Corte Suprema*) considered the pardon a form of impunity and ruled it was devoid of effects regarding the implementation of Fujimori's sentence for Barrios Altos, La Cantuta, Gorriti and Dyer (human rights cases), issuing an arrest warrant (Resolución N° 10, 2018). The decision found the pardon unduly affected the right of the victims to access justice through the enforcement of the punishment of perpetrators of crimes against humanity. It is based heavily on IACtHR standards, and the judge appeared comfortable with his role «as an Inter-American judge» (para. 90). He carefully summarised IACtHR supervision decision (paras. 36-58) and went to great lengths to defend his authority in carrying out the conventionality control (paras. 86-113) in response to Fujimori's formal questioning of his competence (paras. 12, 198). His 222-page decision is soundly argued with reference to 18 different rulings of the Constitutional Court and an impressive 63 different IACtHR decisions (Table 3). Mindful that he was running against popular and political support, he stated that «the will of the people cannot transform the unconventional into conventional; that is, democracy must be subject to human rights and not vice versa» (para. 88).

The decision was upheld on appeal by a Supreme Court Panel (Nulidad N° 793-2018, 2019). Fujimori based his appeal on formal grounds,

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

repeating the argument of the lack of competence and legal basis for the judge to carry out conventionality control (p. 7-14). The Court, however, considered the control to be included within the judicial review powers of all the judges of the republic (p. 32-36).

Table 3. The Peruvian Courts Decisions on the Immunity and the Pardon

	Pativilca Massacre's Court (Sala Penal Nacional)	Barrios Altos and La Cantuta Massacres' Enforcement Judge ( <i>Juzgado Supremo de Investigación Preparatoria de la Corte Suprema</i> )
Decision	The immunity lacks legal effects in this trial. Therefore, Fujimori will not be excluded from the case and will continue to be prosecuted.	The pardon lacks legal effects regarding the fulfilment of the sentence for the Barrios Altos, La Cantuta and SIE basements cases. Therefore, Fujimori shall serve the rest of the term. An arrest warrant was issued.
Ratio decidendi	<p>The immunity lacks proper justification and is unconstitutional and unconventional. Concretely, it is incompatible with the duty to investigate, prosecute and punish those responsible for grave human rights crimes.</p> <p>Additionally, it is against the domestic limits established for immunities (the trial has not extended for more than 24 months and Fujimori was not under restraining orders arising from this trial).</p>	The pardon granted constitutes a form of impunity, therefore is unconstitutional and unconventional. Concretely, it unduly affects the right of the victims to access justice (in the form of the enforcement of the punishment imposed to perpetrators of crimes against humanity). Additionally, the procedure breached due process of law (partiality of medical council named: inclusion of Fujimori's general practitioner since 1997; extreme celerity: all mandatory steps were fulfilled in 13 days; lack of adequate and qualified motivation: contradictory medical reports, lack of justification of the measure and its relationship with the health diagnosis and the excellent prison conditions and continuous medical attention available; lack of consideration of the gravity of the crimes perpetrated, null payment of reparation, null collaboration with justice, null repentance) and failure to perform a proportionality test that takes in consideration the victim's rights and possible less intrusive alternative measures to protect Fujimori's health.
Constitutional and Human rights considered	Truth, equality before law, effective remedy, due process (adequate and qualified justification needed in human rights cases).	Effective remedy, equality before law, access to justice (enforcement of decisions), due process of law (procedure regulation, adequate and qualified justification needed in crimes against humanity cases), health.



437

HOLDING THE LINE ON HUMAN RIGHTS ACCOUNTABILITY: EXPLAINING THE UNLIKELY JUDICIAL OVERTURN OF THE PARDON AND IMMUNITY GRANTED TO HUMAN RIGHTS VIOLATOR ALBERTO FUJIMORI

EN DEFENSA DE LA JUSTICIA: EXPLICANDO LA IMPROBABLE INAPLICACIÓN JUDICIAL DEL INDULTO Y DERECHO DE GRACIA DEL CONDENADO POR GRAVES VIOLACIONES A LOS DERECHOS HUMANOS ALBERTO FUJIMORI

JAVIER A. DE BELAUNDE DE CÁRDENAS

Constitutional principles applied	Separation of powers, check and balances, prohibition of arbitrariness, constitutional supremacy, constitutionality control, duty to guarantee human rights, constitutional status and direct effectiveness of international human rights obligations, proportionality.	Rule of law, constitutionality control, constitutional supremacy, check and balances, constitutional status and direct effectiveness of international human rights obligations, separation of powers, prohibition of arbitrariness, duty to guarantee human rights, impartiality, proportionality.
Constitutional Court Caselaw cited?	<p>Yes, 21 different rulings regarding the rights and principles considered by the decision. Moreover, referencing two cases (Jalilie Awapara and Crousillat Lopez Torres) were the Constitutional Court held that immunities and pardons were subject to constitutional review.</p> <p>STC N° 02488-2002-HC STC N° 01230-2002-HC STC N° 00023-2003-AI STC N° 02798-2004-HC STC N° 00294-2005-PA STC N° 05854-2005-PA STC N° 08125-2005-HC STC N° 03285-2006-PA STC N° 06204-2006-HC STC N° 00005-2007-PI STC N° 00009-2007-PI STC N° 00010-2007-PI STC N° 04053-2007-HC STC N° 02047-2009-HC STC N° 03509-2009-HC STC N° 05350-2009-PI STC N° 05377-2009-HC STC N° 05923-2009-PA STC N° 00012-2010-PI STC N° 03660-2010-HC STC N° 03891-2011-PA</p>	<p>Yes, 18 different rulings regarding the rights and principles considered by the decision. Moreover, referencing three cases (Jalilie Awapara, Crousillat Lopez Torres and 00012-2010-PI) were the Constitutional Court held that immunities and pardons were subject to constitutional review and that pardons were prohibited for crimes against humanity, and a case were the Court considered Fujimori crimes as crimes against humanity (01460-2016-HC).</p> <p>STC N° 00010-2002-AI STC N° 00030-2004-AI STC N° 00090-2004-PA STC N° 03778-2004-AA STC N° 00091-2005-PA STC N° 00294-2005-PA STC N° 00763-2005-AA STC N° 05514-2005-PA STC N° 08495-2006-PA STC N° 04053-2007-HC STC N° 00012-2010-PI STC N° 00024-2010-PI STC N° 00197-2010-PA STC N° 03660-2010-HC STC N° 02775-2011-HC STC N° 04123-2011-PA STC N° 04579-2012-PA STC N° 01460-2016-HC</p>
Conventionality Control Doctrine expressly mentioned and carried out?	Yes (pp. 58, 70, 74-87).	Yes (paras. 86-113, 128, 130-131, 141-148, 152-197, 282-288, 299).

IACtHR  
Caselaw and Ad-  
visory Opinions  
cited!

Yes, 18 different rulings regarding human rights considered by the decision, the duty to investigate, prosecute and punish serious violations of human rights, and the unconventionality of impunity barriers:

1988 Velásquez Rodríguez v. Honduras, 1999 Castillo Petrucci v. Peru, 2000 Durand and Ugarte v. Peru, 2001 Barrios Altos v. Peru, 2005 Moiwana Community v. Suriname, 2005 Huilca Tecse v. Peru, 2005 Serrano Cruz sisters v. El Salvador, 2005 Gutierrez Soler v. Colombia, 2006 Baldeon Garcia v. Peru, 2006 Almonacid Arellano v. Chile, 2006 La Cantuta v. Peru, 2011 Gelman v. Uruguay, 2011 Contreras v. El Salvador, 2012 Barrios Altos v. Peru (supervision), 2012 El Mozote Massacre v. El Salvador, 2014 Tarazona Arrieta v. Peru, 2015 Santa Barbara v. Peru, 2016 Tenorio Roca v. Peru.

Yes, 63 different rulings regarding human rights considered by the decision, the duty to carry out the conventionality control, the duty to investigate, prosecute and punish serious violations of human rights and crimes against humanity, and the unconventionality of impunity barriers:

1982 Advisory Opinion OC-2/82 [reservations and the effect of the entry into force of the ACHR], 1987 Advisory Opinion OC-9/87 [judicial guarantees during state of emergency], 1988 Velásquez Rodríguez v. Honduras, 1997 Loayza Tamayo v. Peru, 1998 Paniagua Morales v. Argentina, 2000 Bama-ca Velasquez v. Guatemala, 2001 Baena Ricardo et al v. Panama, 2001 Barrios Altos v. Peru, 2003 Myrna Mack v. Guatemala, 2004 Tibi v. Ecuador, 2004 Gomez Paquiyauri brothers v. Peru, 2004 Molina Theissen v. Guatemala, 2004 Plan de Sanchez Massacre v. Guatemala, 2004 19 Merchants v. Colombia, 2005 Gomez Palomino v. Peru, 2005 Moiwana Community v. Suriname, 2005 Huilca Tecse v. Peru, 2005 Serrano Cruz sisters v. El Salvador, 2005 Gutierrez Soler v. Colombia, 2006 Lopez Alvarez v. Honduras, 2006 Dismissed Congressional Employees v. Peru, 2006 Almonacid Arellano v. Chile, 2006 La Cantuta v. Peru, 2007 Rochela Massacre v. Colombia, 2007 Boyce et al v. Barbados, 2007 Myrna Mack v. Guatemala (supervisión), 2008 Heliodoro Portugal v. Panama, 2009 Rosendo Radilla Pacheco v. Mexico, 2010 Cabrera Garcia and Montiel Flores v. Mexico, 2010 Cepeda Vargas v. Colombia, 2010 Xamok Kasel Indigenous Community v. Paraguay, 2010 Fernando Ortega v. Mexico, 2010 Rosendo Cantu v. Mexico, 2010 Ibsen Cardenas and Ibsen Peña v. Bolivia, 2010 Velez Looor v. Panama, 2010 Gomez Lund v. Brazil, 2011 Chocron Chocron v. Venezuela, 2011 Idovo v. Ecuador, 2011 Operation Genesis v. Colombia, 2011 Lopez Mendoza v. Venezuela, 2011 Fontevecchia and D'Amico v. Argentina, 2011 Gelman v. Uruguay,

439

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

		<p>2012 Atala Riffo and daughters, 2012 Furlan v. Argentina, 2012 Barrios Altos v. Peru (supervisión), 2012 Rio Negro Massacres v. Guatemala, 2012 El Mozote Massacre v. El Salvador, 2012 Gudiel Alvarez v. Guatemala, 2012 Santo Domingo Massacre v. Colombia, 2013 Mendoza et al v. Argentina, 2013 Gelman v. Uruguay (supervision), 2013 Garcia Cruz and Sanchez v. Mexico, 2013 J. v. Peru, 2013 Gutierrez and family v. Argentina, 2014 Liakat Ali Alibux v. Suriname, 2014 Case of Expelled Dominicans and Haitians v. Dominican Republic, 2014 Norin Catriman et al v. Chile, 2014 Rochac Hernandez v. El Salvador, 2014 Rodriguez Vera et al (The Disappeared from the Palace of Justice) v. Colombia, 2014 Advisory Opinion OC-21/14, 2016 Hacienda Brazil Verde Workers v. Brazil, 2017 Acosta et al v. Nicaragua, 2018 Barrios Altos v. Peru (supervision),</p>
<p>Other international law references included (treaties, soft-law, decisions or reports)</p>	<p>Yes: 13.</p> <p>1932 Extradition Treaty Peru-Chile, 1969 Vienna Convention on the Law of Treaties, 1945 Charter of the United Nations, 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 1948 Universal Declaration of Human Rights, 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985 Inter-American Convention to Prevent and Punish Torture, 1994 Inter-American Convention on The Forced Disappearance of Persons, 1998 Rome Statute of the International Criminal Court, 2007 International Convention for the Protection of All Persons from Enforced Disappearance, 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Human Rights Committee Reports on Argentina and Algeria (1995 and 2007).</p>	<p>Yes, 10</p> <p>1948 Universal Declaration of Human Rights, 1969 Vienna Convention on the Law of Treaties, 1992 IACHR Report 28/92, 1993 UN Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), 1994 UN Statute of the International Criminal Tribunal for Rwanda, 1996 ICTY Prosecutor v. Erdemovic, 1997 ECtHR Hornsby v. Greece, 1998 Rome Statute of the International Criminal Court, 2011 Abdülşamet Yaman v. Turkey, 2012 ECtHR Eski v. Turkey,</p>

Source: self-elaboration (Resolución N° 09, 2018; Resolución N° 10, 2018)

#### IV. WHAT EXPLAINS THE OUTCOME? JUDICIAL EMPOWERMENT AND LEGAL CULTURE SHIFT IN PERU REGARDING HUMAN RIGHTS ACCOUNTABILITY

*A new era is born. A period of Peruvian history closes, and another opens today. A sentiment of hope is alive in the spirits of the nation and illusion moves all Peruvians [...] these feelings are born from a deep conviction: the need to raise, affirm, and consolidate the Constitution as the law that governs our daily life*

VALENTÍN PANIAGUA (2000)

Judicial empowerment and legal culture shift regarding human rights accountability in Peru are ongoing, incomplete, uneven processes that began during the transitional government of the highly regarded Constitutional Law professor Valentin Paniagua following the collapse of the Fujimori regime in the year 2000.

Transitions following regime collapse instead of negotiated successions provide more leeway to adopt policies in sharp rupture from previous regimes (Burt, 2018, p. 76). *Fujimorismo* and its cronies (including notorious judges) were literally on the run, and the military was deeply discredited (Burt, 2018, p. 7, 101-102; Root, 2012, p. 66-68). Likewise, the judicial system had «an institutional desire to promote a new image of a reformed judiciary» (Burt 2014, p. 154).

The Paniagua administration (2000-2001) was committed to the rule of law and democracy. It worked towards laying legal foundations that would prevent autocracy from reoccurring. During the transition and, to a certain degree, the subsequent government of Alejandro Toledo (2001-2006), NGOs were granted unparalleled access to policymaking, and they staffed different key governmental posts, like in the Ministries of Justice, Interior, Foreign Relations, and the Truth and Reconciliation Commission (Laplante 2009, p. 944, 976; Burt, 2009, p. 392-394, 2018, p. 6-12, 84; Root, 2012, p. 159-161; González-Ocantos, p. 145-146).

Compliance with the judgements of IACtHR was raised from the beginning as a goal (Decreto Supremo N° 014-2000-JUS, 2000). The government sought to legitimize itself and restore Peru's credibility as a democracy by distinguishing itself from Fujimori. Among the first measures was the full restoration of the State under the jurisdiction of IACtHR. Likewise, the State, under the Ministry of Justice of Diego García-Sayán —future president of IACtHR— recognized its international responsibility and entered into friendly settlements with the organs of the Inter-American Human Rights System for more than 150 cases (Ministerio de Justicia, 2000; Laplante, 2009, p. 957-958; Burt, 2009, p. 388-389, 2014, p. 151).

Re-stating compliance with IACtHR proved to be a far-reaching decision. The degree to which the Barrios Altos ruling (2001) framed and influenced the Peruvian transitional justice process is thoroughly represented in the literature (García-Sayán, 2011, p. 1842-1844). However, it is worth highlighting a different aspect that played a key role in judicial empowerment and culture shift. Following Inter-American recommendations and decisions, Peru reinstated the judges and prosecutors sacked under Fujimori. Among them were the three Constitutional Court magistrates (Aguirre, Revoredo, and Rey) that opposed Fujimori's re-re-election (Burt, 2009, p. 388; Root, 2012, p. 62-63).

O'Donnell (1998a) highlights the importance of influential individuals that act according to rule of law injunctions. By doing so, these public figures set an example and encourage other individuals and agencies to follow (p. 122-123). The sacked judges experienced first-handed the pernicious effect of authoritarianism, the dearth of judicial independence, and the lack of a rights-respecting culture in the judiciary. Many of them litigated in vain for several years at the national level asking for their reinstatement. Their acquired sensitivity to international human rights law and constitutional limits was crucial for the affirmation of neo-constitutionalism in Peru. In particular, the Constitutional Court assumed leadership in deepening and developing the Constitution through its broad binding interpretation powers (Bernardi, 2019, p. 230-233).

#### IV.1. Independence Gains and Powers Expansion

In practical terms, institutional innovations of the 1993 Constitution entered into effect with the transitional government. All the Fujimori-era mechanisms and acts of parliament that had subordinated the judiciary were repealed (Dargent, 2005, p. 147; J. De Belaunde, 2008, p. 140-141). Alongside this key improvement to judicial independence, other relevant aspects of the Peruvian «constitutional architecture» (Torelly, 2019, p. 116) include:

- *Regulation of CNM as an independent institution* in charge of almost all aspects of the career of judges and prosecutors (appointment, promotion, ratification every seven years, and dismissal). CNM members were no longer elected by parliament or the executive, but by the Judicial Branch, Public Ministry, civil society professional associations, and universities (J. De Belaunde, 2019b). For the first time in history, CNM provided the state with judges and prosecutors that did not owe their appointment to party alliance or political favours but to their own experience, education, capacity, and ethical behaviour examined

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

in a competitive, open application process. Through continuous appointment procedures, CNM managed to dramatically reduce the number of untenured justices to 14% in the Judicial Branch and 21% in the Public Ministry by 2004 (J. De Belaunde, 2006, p. 72). The institutional balance was reasonably positive, until it increasingly deteriorated beginning in 2013 (Silva, 2016, p. 38). In 2018, CNM entered reorganisation after a corruption scandal (IDL-Reporteros 2017, 2018a; Peru Support Group, 2018). Nevertheless, CNM was an improvement from the past and managed to provide several competent and independent judges for many years to the system (J. De Belaunde, 2008, p. 152).

- *Constitutional Court appointed by a parliamentary supermajority*, which made the proposal of partisan candidates more difficult. From 2000 to 2007, the Constitutional Court was regularly among the institutions with higher public acceptance. In this period, the three reinstated magistrates (and later others like Alva, García, and Landa) issued landmark decisions that shaped the powers and the principles of the judiciary to check politics (Abad, 2006, p. 33-38; J. De Belaunde, 2008, p. 142-148; Dargent, 2009). As shown in Table 3, the two courts that overturned Fujimori's pardon and immunity relied heavily upon constitutional principles as interpreted by the Constitutional Court. Of the total case law cited by those decisions, 59.8% corresponds to the period of the reinstated justices.
- *Limitation of military courts*. During the conflict, these courts guaranteed impunity to human rights perpetrators within the armed forces. Through subsequent decisions in line with IACtHR, the Constitutional Court eroded their jurisdiction in human rights and terrorism-related cases. It simultaneously re-established the power of the Supreme Court to assert the jurisdiction of the Judicial Branch (Abad, 2006, p. 37; Root, 2012, p. 102-104).

The expansion of judicial powers in Peru was the product of:

- *A comprehensive system of judicial review*. All judges have the authority to disregard norms they interpret as incompatible with the Constitution for cases in their purview («concrete», «diffuse» or «decentralised» judicial review). Additionally, the Constitutional Court can annul acts of parliament with general effects («abstract» or «concentrated» judicial review).
- *A «thick» bill of rights*. The Constitution provides a long list of fundamental rights and an open clause that incorporates other rights not enumerated «based on the dignity of persons, the democratic rule of law and the republican form of government».

This has enabled, for instance, the integration of the right to truth (*Villegas Namuche v. Poder Judicial*, 2004).

- *Different types of claims available to enforce the Constitution in Courts*, with different rules of standing, effects of decisions, and a general waiver of legal fees. The process of Constitutionalization was strengthened by the Constitutional Procedural Code (CPCConst.), a norm of clearly neo-constitutionalist inspiration drafted by a prestigious commission of law professors in 2004 (Abad et al, 2008, p. 15-18). The main type of constitutional claims driving rights-based litigation and the judicialization of politics include:
  - Unconstitutionality, which reviews legislation and produces a judgement with general effects. Rules of standing include congressional minorities and rights-defending institutions like the Ombudsperson or Lawyers Bar Associations.
  - Amparo, which challenges all type of actions that violate rights (including judicial decisions, administrative decisions regarding the career of judges and Parliamentary decisions from procedures like impeachments, investigative committees, or discipline commissions). A finding in favour annuls the act or decision and issues orders for the restitution of the situation before the violation.
  - Habeas corpus, which seeks to protect individual freedom and related rights, works in a similar way to amparo, but is less formal and offers third-party standing. It has had an impact, for example, in the control of presidential immunity and pardons, in the search for disappeared persons from the internal conflict, or in criminal proceedings related to the conflict.
  - Competence conflict, which challenges acts of public institutions that affect, by action or inaction, other public institutions (e.g. Judicial Branch against Executive on judicial budget).
- *The Constitutional Court's capacity to set binding precedents*. All judges are obliged to follow its reiterated standards when interpreting constitutional rights or principles. Furthermore, it has the unusual power for a civil law country to set binding precedents.
- *The incorporation of human rights treaties with Constitutional status and direct effect*. As put by Binder (2012), a «radically monist understanding concerning the relationship between national and international law» (p. 316).

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

- *The obligation to interpret constitutional rights according to IACtHR case law.* This was crucial for embedding IACtHR standards in the Peruvian legal space. The origin is a rather laconic provision in the final section of the Constitution, which says that rights should be construed according to the Universal Declaration of Human Rights and international treaties ratified by Peru (Fourth Final and Transitory Provision). The reinstated Constitutional Court re-interpreted this provision to mean that rights should also be construed in line with the standards set by the institutions with the authority to interpret the treaties ratified by Peru, especially, IACtHR (*Crespo Bragayrac v. Ministerio de Defensa*, 2002). Later, the drafters of CPCConst. incorporated and firmly established this jurisprudential doctrine (article V) (*Abad et al*, 2008, p. 40-42). González-Ocantos analysed condemnatory human rights rulings in Peru between 2006 and 2014, finding an average of 15 references to international law. That ranked Peru second in his comparative database of 12 Latin American high courts, with Argentina —the country credited with a full accountability scenario— coming fourth (2016, p. 155, 276). It is worth noticing that the decisions that circumvented Fujimori's immunity and pardon largely exceed the average, with 31 and 73 international law references (18 and 63 to IACtHR caselaw), respectively (Table 3).
- *The self-executing character of IACtHR rulings.* CPCConst. affirmed IACtHR rulings' validity, effectiveness, and enforceability. This had already been a jurisprudential criterion since the transition (García-Sayán, 2011, p. 1843).

#### IV.1.1. Conventionality Control Doctrine in Peru

«*Breaking free of IACHR is really important*» —Keiko Fujimori

IDL-REPORTEROS (2018B)

The conventionality control doctrine —defined in the Introduction— resonates well with the Peruvian constitutional framework described in the previous section. Specially with its monist system, the constitutional status granted to human rights treaties, diffuse judicial review, and the obligation to interpret rights taking into consideration international human rights caselaw.

Nevertheless, some scholars have questioned this doctrine. Dulitzky (2015a; 2015b) and Contesse (2018; 2017) base their critiques on three grounds: (i) its weak or inexistent foundation on international law and Inter-American documents; (ii) its intrusive claim to define the powers of domestic judges; and (iii) its inability to generate a «dialogue» with



states by affirming a problematic top-down, hierarchical approach (this point also in: Torelly, 2019, p. 136). Contesse argues that all these aspects could delegitimise IACtHR in the eyes of governments, courts, and public (2018, p. 1169). Under the names of «bottom-up» conventionality control (Contesse, 2018, p. 1181-1183), «constrained deference» (Contesse, 2019, p. 574), «genuine dialogue» (Dulitzky, 2015a, p. 107), or «strategic partnership» (Dulitzky, 2015b, p. 83), alternative foundations for conventionality control have been advocated, based on a stronger version of the subsidiarity principle (Contesse, 2016, p. 141-144, 2017, p. 424-429, 433-434; Dulitzky, 2015a, p. 106-107, 2015b, p. 80-86).

Whilst raising interesting issues, these critiques are largely normative. There is an empirical gap in the expectations they would produce. Notwithstanding the need for further studies, the case study of Fujimori's immunity and pardon, rather, provides an example of the success of the conventionality control doctrine. The courts did not ignore or question it but seemed very comfortable in applying and defending it. Moreover, they largely argued their decisions with reference to IACtHR case law, citing 18 and 63 different cases (Table 3).

In 2014, Peruvian judges received a guideline from the president of the Supreme Court. It invoked them to prioritise cases under their jurisdiction that related with the Inter-American system. Moreover, it acknowledged the conventionality control doctrine, briefly summarised it, and reminded them that they were «obliged» to perform it. The decree believed it «will critically help to improve the domestic and international image of the judiciary and will strengthen the action of the state in relation to civil society and the international community» (Resolución Administrativa N° 254-2014-P-PJ, 2014). This seems to back Landau's annotation that judges «are embedded in transnational networks of judges and scholars who take constitutional law seriously» (2010, p. 317). Subsequently, the conventionality control was expressly recognized as part of the diffuse control in a judicial plenary session of the Supreme Court of 2015 (Abad, 2019, p. 181-182).

During the case of the pardon, both the presidents of the Judicial Branch and the Constitutional Court constantly reminded the public that, in a constitutional state, there are no unaccountable acts and that all judges decisions, including IACtHR «judges», should be abided and enforced (La República, 2018b, 2018i, 2018h, 2018f, 2018e; El Comercio, 2018e). From this discourse, the Peruvian judiciary appears to consider IACtHR as their colleagues and peers, entitled to the same respect they demand for themselves.

When evaluating the reach of the conventionality control doctrine then, it could be relevant to distinguish executive from judicial behaviour. It would be a mistake to focus compliance only in the actions (and

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

reactions) of the executive (Huneus, 2011, p. 511-514). The Fujimori's immunity and pardon case study suggests that a dynamic of its own has been building between IACtHR and certain domestic Peruvian courts, where compliance is no longer solely in hands of politicians.

#### IV.2. Legal Culture Shift

González-Ocantos (2016) observes that it was necessary for NGOs to engage in pedagogical and replacement strategies to achieve legal culture change. As part of their pedagogical strategy, NGOs addressed committed and indifferent judges in authoritative training efforts. Using universities and highly respected figures of the legal sphere, judges were socialised in the new culture through workshops and a series of documents (the bureaucratic nature of judicial decision-making requires templates). As part of their replacement strategies, recalcitrant judges (either for ideology or previous connections with perpetrators) became the targets of naming and shaming campaigns. NGOs also participated in these judges' evaluations for ratification and promotion to achieve their resignation or removal. The political environment enhanced or weakened these efforts (p. 8-9, 20, 34-35, 56-61, 67-70).

NGOs made important contributions to legal culture shift in Peru by providing prosecutors and judges with human rights materials and training during the window of opportunity that the transition offered (Burt, 2018, p. 92; González-Ocantos, 2016, p. 179-184). This filled a gap in legal education. Until the 2000s, international human rights law was not a generally available module in law schools and was not part of judges' formation (González-Ocantos, p. 179-180).

The legal education of judges can be a point of political contention. NGOs served as the «first-movers» before the impunity coalition reached power again during the period of 2006-2011 (González-Ocantos, 2016, p. 187-195). Their attempts to reverse the process, mimicking NGOs pedagogical strategies were largely unsuccessful. The new norm had taken root, and the new coalition could not sustain the effort nor present prestigious speakers (González-Ocantos, 2016, p. 189). Burt (2014) notes that they were, moreover, foolish enough to include military officials among the speakers and barracks as venues for conferences (p. 166-167).

The wave of IACtHR rulings on abuses during the period of 1990 to 2000 (stemming from the decision to reinstate IACtHR jurisdiction and recognise state responsibility) and the salient role played by the Constitutional Court with its increasing reference to IACtHR standards sparked the demand for legal education in constitutional law and international human rights law. CPCConst. further obliged all

educational institutions to include these subjects in their curricula (Six Final Provision).

Among the 1993 constitutional innovations, the creation of AMAG as an autonomous permanent academic institution within the Judicial Branch stands out. AMAG was conceived of as a mechanism to improve judges', prosecutors', and clerks' legal knowledge by providing permanent and decentralised training in theoretical and practical skills necessary to their special functions (San Martín, 1994, p. 74). AMAG offers different academic programmes. Some programmes are geared toward lawyers with ambitions to become judges or prosecutors; others focus on magistrates facing their ratification evaluation; and still others assist those seeking promotion. Participation in these programs was not compulsory, but it ended up having an important general weight in the evaluations made by the CNM in its competitions (J. De Belaunde, 2019a).

My analysis of AMAG's curricula for the period of 2007-2019 supports González-Ocantos (2016) findings on an ongoing process of legal culture shift towards neo-constitutionalism in the Peruvian judiciary. While initiated by NGOs, this culture shift is now part of the ordinary legal formation that AMAG provides. Part of the courses are specifically designed «so that judges, prosecutors and clerks are able to comply effectively with human rights obligations assumed by our country», which entails «upholding rights and checking the compatibility of domestic legislation and decisions with international human rights law» (Academia de la Magistratura, 2008, p. 54). Since 2015 the core programmes have included a module on IACtHR caselaw and conventionality control doctrine. Between 2017 and 2019 alone, at least 24 additional events on this topic took place. Furthermore, since 2007, AMAG has offered workshops, conferences, seminars, and modules on constitutional law, diffuse judicial review, precedents, human rights, constitutional interpretation, constitutional reasoning and arguing (Academia de la Magistratura, 2008, 2009, 2011, 2014, 2017, 2019).

In total, 12 judges—including nine from the Supreme Court—from 4 different courts were in favour of overturning the pardon or the immunity granted to Fujimori. Most of them had been enrolled in AMAG's programmes to pass CNM's evaluations and, therefore, were socialised in human rights standards and constitutional principles. For this research, I accessed the detailed public records at CNM's archive of the judges who had the role of drafting the two key initial decisions.

Judge Miluska Cano, drafter of the Pativilca Massacre Court's judgment that overturned the immunity, was appointed in 2002 and passed a promotion and a ratification evaluation, each time enrolling in

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

AMAG's programmes. Her record further shows attendance to more than 10 courses, workshops, and conferences regarding the application of human rights standards and constitutional principles and, specifically, on IACtHR caselaw and the Argentine experience in prosecuting crimes against humanity. Interestingly, her master's dissertation is titled «Application of International Standards in the Prosecution of Human Rights Violations of the Peruvian Armed Conflict (1980-2002)» (2017).

Judge Hugo Núñez, who issued the decision that overturned Fujimori's pardon acting as a Supreme Court Enforcement Judge for Barrios Altos, La Cantuta, Gorriti and Dyer case, was appointed in 1996. He passed a promotion and two ratification evaluations, each time enrolling in AMAG's programmes. His record also shows attendance to courses, workshops, and conferences regarding the application of human rights standards and constitutional principles and, specifically, on IACtHR caselaw. Additionally, it seems relevant to the deference his decision showed to the Inter-American system that, after being arbitrarily dismissed from the judiciary in 2003, he was reinstated in 2007 following a friendly settlement between IACHR and the state (IACHR, 2006).

## V. CONCLUSION

*Politics can change overnight, whereas judicial culture and legal precedents may take years  
—even generations— to shift*

ELIN SKAAR (2011, p. 93).

In 1995 prosecutor Ana Magallanes brought charges against Colina members and high-ranking officials of the intelligence service for the Barrios Altos massacre. The case was accepted by judge Antonia Saquicuray who started investigations into Montesinos himself. Nevertheless, within days, *Fujimorismo* passed a sweeping amnesty law benefiting all members of the security forces and civilians under investigation, prosecution, or conviction for human rights violations. Saquicuray did not submit. In a pioneer and brave move, she used her diffuse judicial review power to declare that the amnesty lacked effects, because it was not compatible with the Constitution and ACHR. This occurred six years before IACtHR set the anti-impunity norm and ten years before it adopted the conventionality control doctrine. How was this possible? It was not. The authoritarian regime imposed impunity. *Fujimorismo* passed a second bill «clarifying» that the amnesty was not material for judicial review. A Court of Appeals and a Supreme Court divided between puppet-judges and those coming from a positivist legal culture quashed her decision. Retaliation followed with formal investigations and threats (Landa, 1996; Abad, 2002; Laplante, 2009, p. 953-955).

Twenty-three years later, the history of the same country with the same legal texts has been starkly different. When politicians in power on Christmas 2017 threatened a return to past norms of impunity by granting a pardon and immunity to human rights violator Alberto Fujimori, Peruvian courts were able and willing to hold the line of accountability despite a hostile environment. Formalistic arguments (deference to presidential powers, exhaustion of remedies and lack of competence for conventionality control) were out of sync and were denied.

This article has tried to explain this result by defining and analyzing two processes: judicial empowerment and change of legal culture, both initiated during the democratic transition. Ultimately, it was possible for the Peruvian courts to overturn the pardon and immunity due to constitutional gains in judiciary's independence and expansion of legal powers vis-à-vis the political branches. The Inter-American Conventionality Control Doctrine was instrumental as it resonates well with the Peruvian constitutional framework (monist system, human rights treaties with constitutional status, all judges with judicial review power, and the obligation to interpret rights taking into consideration international human rights caselaw). Likewise, the shift towards neo-constitutionalism in legal education, with its strong readings of constitutional principles and human rights, made holding the line of human rights accountability look a valid, legitimate, and preferable course of action.

Contrary to some pessimist accounts of the Peruvian experience, it seems that transitional justice advocates managed to sow significant aspects of the process that have even survived hostile times. At least that seems to be the case regarding some of those charged with bringing justice.

## REFERENCES

Abad, S. B. (2002). 'Autoamnistías' vs. 'Derechos Humanos'. El rol de la Corte Interamericana de Derechos Humanos y de la Defensoría del Pueblo en la lucha contra la impunidad. *Derecho & Sociedad*, (18), 43-59. Available at <http://revistas.pucp.edu.pe/index.php/derechosociedad/article/view/16914>

Abad, S. B. (2006). Un Balance de la Constitución Peruana de 1993. *Foro Constitucional Iberoamericano*, (12). Available at <https://e-archivo.uc3m.es/bitstream/handle/10016/19560/Un%20balance%20de%20la%20Constituci%C3%B3n%20peruana....pdf>

Abad, S. B. (2019). *Manual de Derecho Procesal Constitucional*. Lima: Palestra.

Abad, S. B., Danós, J., Eguiguren, F., García Belaunde, D., Monroy, J., & Oré, A. (2008). *Código Procesal Constitucional: Estudio Introductorio, Exposición de Motivos, Dictámenes e Índice Analítico* (3ra edición). Lima: Tribunal Constitucional.

HOLDING THE LINE ON HUMAN RIGHTS ACCOUNTABILITY: EXPLAINING THE UNLIKELY JUDICIAL OVERTURN OF THE PARDON AND IMMUNITY GRANTED TO HUMAN RIGHTS VIOLATOR ALBERTO FUJIMORI

EN DEFENSA DE LA JUSTICIA: EXPLICANDO LA IMPROBABLE INAPLICACIÓN JUDICIAL DEL INDULTO Y DERECHO DE GRACIA DEL CONDENADO POR GRAVES VIOLACIONES A LOS DERECHOS HUMANOS ALBERTO FUJIMORI

Abad, S. B., & Garcés, C. (1993). El gobierno de Fujimori: antes y después del golpe. *Lecturas sobre Temas Constitucionales*, (9), 84-190.

Abrão, P., & Torelly, M. D. (2012). Resistance to Change: Brazil's Persistent Amnesty and its Alternatives for Truth and Justice. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 152-181). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.010>

Academia de la Magistratura. (2008). *Memoria 2007*. Lima. Available at [http://sistemas.amag.edu.pe/organizacion/pdf/memoria\\_2007.pdf](http://sistemas.amag.edu.pe/organizacion/pdf/memoria_2007.pdf)

Academia de la Magistratura. (2009). *Memoria 2008*. Lima. Available at [http://sistemas.amag.edu.pe/organizacion/pdf/memoria\\_2008.pdf](http://sistemas.amag.edu.pe/organizacion/pdf/memoria_2008.pdf)

Academia de la Magistratura. (2011). *Memoria Institucional 2009-2010*. Lima. Available at [http://sistemas.amag.edu.pe/organizacion/pdf/Memoria\\_Institucional\\_AMAG2009\\_2010.pdf](http://sistemas.amag.edu.pe/organizacion/pdf/Memoria_Institucional_AMAG2009_2010.pdf)

Academia de la Magistratura. (2014). *Memoria Institucional 2011-2012*. Lima. Available at [http://sistemas.amag.edu.pe/organizacion/memoria\\_2011\\_2012.pdf](http://sistemas.amag.edu.pe/organizacion/memoria_2011_2012.pdf)

Academia de la Magistratura. (2017). *Memoria Institucional 2015, 2016 y primer trimestre 2017*. Lima. Available at [http://sistemas.amag.edu.pe/organizacion/pdf/Memoria\\_2015\\_2016\\_primer\\_trimestre\\_2017.pdf](http://sistemas.amag.edu.pe/organizacion/pdf/Memoria_2015_2016_primer_trimestre_2017.pdf)

Academia de la Magistratura. (2019). *Memoria Institucional 2018*. Lima. Available at <https://sistemas.amag.edu.pe/memoria/Memoria-institucional-2018-AMAG.pdf>

Aguilar, P. (2012). The Spanish Amnesty Law of 1977 in Comparative Perspective: From a Law for Democracy to a Law for Impunity. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 315-335). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.016>

Ambos, K. (2011). The Fujimori Judgment. *Journal of International Criminal Justice*, 9(1), 137-158. <https://doi.org/10.1093/jicj/mqq059>

Associated Press. (2016). *Fujimori Hit by Money Laundering Probe Before Peru Election*. 20 de mayo. Available at <https://apnews.com/d847c596d6854e50869c987d1ab526ab>

BBC. (2009). *Peru U-turn on War Museum Funds*. 6 de abril. Available at <http://news.bbc.co.uk/1/hi/world/americas/7986180.stm>

Bernardi, B. B. (2019). Transitional Justice and the Inter-American Human Rights System in Peru: The Role of Anti- and Pro- Compliance Constituencies. En P. Engstrom (ed.), *The Inter-American Human Rights System: Impact Beyond Compliance* (pp. 221-246). Londres: Palgrave Macmillan. [https://doi.org/10.1007/978-3-319-89459-1\\_9](https://doi.org/10.1007/978-3-319-89459-1_9)

Binder, C. (2012). The Prohibition of Amnesties by the Inter-American Court of Human Rights. En A. von Bogdandy y I. Venzke (eds.), *International*

*Judicial Lawmaking. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht (Veröffentlichungen des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht)* (vol. 236, pp. 295-328). Berlin, Heidelberg: Springer. [https://doi.org/10.1007/978-3-642-29587-4\\_9](https://doi.org/10.1007/978-3-642-29587-4_9)

Brinks, D. M., & Blass, A. (2017). Rethinking judicial empowerment: The new foundations of constitutional justice. *International Journal of Constitutional Law*, 15(2), 296-331. <https://doi.org/10.1093/icon/mox045>

Burt, J. (2007). Political Violence and the Authoritarian State in Peru: Silencing Civil Society. Nueva York: Palgrave Macmillan. <https://doi.org/10.1007/978-1-137-06486-8>

Burt, J. (2009). Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations. *The International Journal of Transitional Justice*, 3(3), 384-405. <https://doi.org/10.1093/ijtj/ijp017>

Burt, J. (2011a). Challenging Impunity in Domestic Courts: Human Rights Prosecution in Latin America. En F. Reátegui (ed.), *Transitional Justice: Handbook for Latin America* (pp. 285-311). Brasília: Brazilian Amnesty Commission, Ministry of Justice.

Burt, J. (2011b). Indulto para Fujimori violaría la Ley y también la voluntad popular. *Coordinadora Nacional de Derechos Humanos*, 24 de junio. Available at <http://derechoshumanos.pe/2011/06/indulto-a-fujimori-violaria-la-ley-y-la-voluntad-popular/>

Burt, J. (2014). The Paradoxes of Accountability: Transitional Justice in Peru. En S. J. Stern y S. Stars (eds.), *The Human Rights Paradox: Universality and Its Discontents* (pp. 148-174). Wisconsin: University of Wisconsin Press.

Burt, J. (2018). *Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador*. Washington, D. C.: Due Process of Law Foundation.

Cano, M. (2017). *Aplicación de los estándares internacionales en el procesamiento de violaciones de derechos humanos en el Perú - producidas dentro del conflicto armado (1980-2002)* [Tesis de maestría, Universidad Nacional Mayor de San Marcos]. Available at <https://hdl.handle.net/20.500.12672/5361>

Carrión, J. F. (2006a). Public Opinion, Market Reforms, and Democracy in Fujimori's Peru. En J. F. Carrión (ed.), *The Fujimori Legacy: The Rise of Electoral Authoritarianism in Peru* (pp. 126-149). Pensilvania: The Pennsylvania State University Press.

Carrión, J. F. (2006b). Conclusion: The Rise and Fall of Electoral Authoritarianism in Peru. En J. F. Carrión (ed.), *The Fujimori Legacy: The Rise of Electoral Authoritarianism in Peru* (pp. 294-318). Pensilvania: The Pennsylvania State University Press.

Clark, P. (2012). Creeks of Justice. Debating Post-Atrocity Accountability and Amnesty in Rwanda and Uganda. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

(pp. 210-237). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.012>

Comisión de la Verdad y Reconciliación (CVR). (2014). *Hatun Willakuy: Abbreviated Version of the Final Report of the Truth and Reconciliation Commission*. Lima: Transfer Commission of the Truth and Reconciliation Commission of Peru. Available at [http://ictj.org/sites/default/files/ICTJ\\_Book\\_Peru\\_CVR\\_2014.pdf](http://ictj.org/sites/default/files/ICTJ_Book_Peru_CVR_2014.pdf)

Comisión Interamericana de Derechos Humanos (CIDH). (2017). *CIDH Expresa Profunda Preocupación y Cuestiona el Indulto Concedido a Alberto Fujimori*. 28 de diciembre. Available at <https://www.oas.org/es/cidh/prensa/Comunicados/2017/218.asp>

Conaghan, C. M. (2005). *Fujimori's Peru: Deception in the Public Sphere*. Pittsburgh: University of Pittsburgh Press.

Contesse, J. (2016). Contestation and Deference in the Inter-American Human Rights System. *Law and Contemporary Problems*, 79(2), 123-145. Available at <https://scholarship.law.duke.edu/lcp/vol79/iss2/6>

Contesse, J. (2017). The Final Word? Constitutional Dialogue and the Inter-American Court of Human Rights. *International Journal of Constitutional Law*, 15(2), 414-435. <https://doi.org/10.1093/icon/mox034>

Contesse, J. (2018). The international authority of the Inter American Court of Human Rights: a critique of the conventionality control doctrine. *The International Journal of Human Rights*, 22(9), 1168-1191. <https://doi.org/10.1080/13642987.2017.1411640>

Contesse, J. (2019). Case of Barrios Altos and La Cantuta v. Peru. *American Journal of International Law*, 113(3), 568-574. <https://doi.org/10.1017/ajil.2019.28>

Cornejo, L., Pérez-León, J. P., & García-Godos, J. (2019). The Presidential Pardon of Fujimori: Political Struggles in Peru and the Subsidiary Role of the Inter-American Court of Human Rights. *International Journal of Transitional Justice*, 13(2), 328-348. <https://doi.org/10.1093/ijtj/ijz010>

Crabtree, J. (1998). Neo-Populism and the Fujimori Phenomenon. En J. Crabtree y J. Thomas (eds.), *Fujimori's Peru: The Political Economy* (pp. 7-23). Londres: Institute of Latin American Studies, University of London.

Crabtree, J. (2001). The Collapse of Fujimorismo: Authoritarianism and Its Limits. *Bulletin of Latin American Research*, 20(3), 287-303.

Crabtree, J. (2006). Peru: Outing the NGOs. *Open Democracy*, 22 de noviembre. Available at [https://www.opendemocracy.net/en/peru\\_ngos\\_4117jsp/](https://www.opendemocracy.net/en/peru_ngos_4117jsp/)

Dargent, E. (2009). Determinants of Judicial Independence: Lessons from Three 'Cases' of Constitutional Courts in Peru (1982-2007). *Journal of Latin American Studies*, 41(2), 251-278. <https://doi.org/10.1017/S0022216X090005562>

Dargent, E. (2005). Judicial Reform in Peru (1990-2005). En J. Crabtree (ed.), *Making Institutions Work in Peru* (pp. 136-157). Londres: Institute for the Studies of the Americas.



DATUM. (2018). Indulto a Alberto Fujimori. *Pulso Perú*, 12 de enero, p. 14.

De Belaunde, A. (2018). Por Qué no Puedo Creerles: 30 Recuerdos de Fuerza Popular (2016-2018). *Medium*, 24 de octubre. Available at <https://medium.com/@AlbertoBelaunde/por-qu%C3%A9-no-puedo-creerles-30-recuerdos-de-fuerza-popular-2016-2018-7080f3c0c35>

De Belaunde, J. (1997). Entre el discurso oficial y la percepción ciudadana. Quehacer: *Revista Bimestral de DESCO*, (108), 4-9. Available at <http://www.desco.org.pe/recursos/sites/indice/304/1000.pdf>

De Belaunde, J. (1998). Justice, Legality and Judicial Reform. En J. Crabtree y J. Thomas (eds.), *Fujimori's Peru: The Political Economy* (pp. 173-191). Londres: Institute of Latin American Studies, University of London.

De Belaunde, J. (2006). *La Reforma del Sistema de Justicia. ¿En el Camino Correcto? Breve balance de su situación actual y de los retos pendientes*. Lima: Konrad Adenauer Stiftung. Available at <https://docplayer.es/43911190-La-reforma-del-sistema-de-justicia.html>

De Belaunde, J. (2008). El Poder Judicial: La Reforma Siempre Pendiente. En L. Pásara (ed.), *Perú en el Siglo XXI* (pp.117-153). Lima: Fondo Editorial PUCP

De Belaunde, J. (2019a). Academia de la Magistratura. En W. Gutiérrez (ed.), *La Constitución Comentada* (4ta edición). Lima: Gaceta Jurídica. Próxima publicación.

De Belaunde, J. (2019b). Junta Nacional de Justicia. En W. Gutiérrez (ed.), *La Constitución Comentada* (4ta edición). Lima: Gaceta Jurídica. Próxima publicación.

De Belaunde, J. A. (12 de octubre de 2012). *¿Por qué Está Preso Fujimori? Cuadro Resumen de sus 4 Condenas* [Tweet]. Available at <https://twitter.com/jdebela/status/256790656461185026>

De Belaunde, J. A. (7 de noviembre 2017). De Tragedia a Farsa: La Nueva Amenaza del Fujimorismo al Tribunal Constitucional Peruano. *Justicia en Las Américas. Blog de la Fundación para el Debido Proceso*. Available at <https://dplfblog.com/2017/11/07/de-tragedia-a-farsa-la-nueva-amenaza-del-fujimorismo-al-tribunal-constitucional-peruano/>

De Belaunde, J. A. (2018). *Restricciones a la Protesta Social Reportadas por la Prensa o Ciudadanos Durante las Manifestaciones Contra el Indulto a Alberto Fujimori en Lima, Diciembre 2017 y Enero 2018 (compendio de tuits)*. Available at <https://wakelet.com/wake/b2ec2847-4b31-476c-8e99-cb346a7a8e14>

De Belaunde, J. A. (2019). Do You See the Rainbow? Struggle and Resistance to the Recognition of Equal Marriage for Same-Sex Couples in Peru. *International Public Policy Review*, 13(1), 17-26. Available at <https://ippr-journal.com/wp-content/uploads/2019/09/JavierdeBelaunde.pdf>

Defensoría del Pueblo. (Enero de 2018). Indulto y derecho gracia otorgados al expresidente Alberto Fujimori: evaluación normativa y jurisprudencial. *Informe Defensorial*, (177). Available at <https://www.defensoria.gob.pe/modules/>

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

Downloads/informes/defensoriales/Informe-Defensorial-177-18-Indulto-y-derecho-de-gracia.pdf

Diario Uno. (2017). *Ya se fueron Gino Costa, De Belaunde, Zeballos*. 26 de diciembre. Available at <http://diariouno.pe/ya-se-fueron-gino-costa-de-belaunde-zeballos/>

Dulitzky, A. E. (2015a). The Constitutionalization of International Law in Latin America. An Alternative Approach to the Conventionality Control Doctrine. *AJIL Unbound*, 109, 100-108. <https://doi.org/10.1017/S2398772300001252>

Dulitzky, A. E. (2015b). An Inter-American Constitutional Court? The Invention of the Conventionality Control by the Inter-American Court of Human Rights. *Texas International Law Journal*, 50(1), 45-93.

El Comercio. (2017a). *Gobierno insiste en dialogar con las víctimas*. 28 de diciembre, p. 6.

El Comercio. (2017b). *PPK evalúa con Aráoz un gabinete de reconciliación*. 28 de diciembre, p. 4.

El Comercio. (2017c). *En este caso ha sido un indulto político*. 27 de diciembre, p. 6.

El Comercio. (2017d). *El Congreso no aprobó la vacancia de PPK*. 22 de diciembre, pp. 4-6.

El Comercio. (2017e). *El camino hacia la vacancia*. 16 de diciembre, p. 4.

El Comercio. (2018a). *Opiniones sobre el Referéndum y la anulación del indulto a Fujimori*. 14 de octubre, p. 5.

El Comercio. (2018b). *Enrique Mendoza: "No tengo ninguna confianza en la CIDH"*. 4 de febrero.

El Comercio. (2018c). *El alto precio de la libertad*. 28 de enero, p. 8.

El Comercio. (2018d). *A través de diálogos sinceros se puede llegar a consensos*. 14 de enero, pp. 8-9.

El Comercio. (2018e). *En el Estado constitucional no hay ningún acto irrevisable*. 12 de enero, pp. 1, 8.

El Comercio. (2018f). *Luis Galarreta: "El papa no vino a decir que todos gobernemos juntos, de la mano"*. 21 de enero, pp. 1, 11-12.

El Comercio. (2019). *Fujimori recibe alta médica y vuelve a ser recluso en penal*. 24 de enero, p. 8.

Engle, K. (2016). A Genealogy of the Criminal Turn in Human Rights. En K. Engle, Z. Miller y D. Davis (eds.), *Anti-Impunity and the Human Rights Agenda* (pp. 15-67). Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781139942263.002>

Engstrom, P. (2019). Introduction: Rethinking the Impact of the Inter-American Human Rights System. En P. Engstrom (ed.), *The Inter-American Human Rights System: Impact Beyond Compliance* (pp. 1-22). Londres: Palgrave Macmillan. [https://doi.org/10.1007/978-3-319-89459-1\\_1](https://doi.org/10.1007/978-3-319-89459-1_1)

Engstrom, P. & Low, P. (2019). Mobilising the Inter-American Human Rights System: Regional Litigation and Domestic Human Rights Impact in Latin America. En P. Engstrom (ed.), *The Inter-American Human Rights System: Impact Beyond Compliance* (pp. 23-58). Londres: Palgrave Macmillan. [https://doi.org/10.1007/978-3-319-89459-1\\_2](https://doi.org/10.1007/978-3-319-89459-1_2)

Engstrom, P., & Pereira, G. (2012). From Amnesty to Accountability: The Ebb and Flow in the Search for Justice in Argentina. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 97-122). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.008>

Ferrer, E. (2015). Conventionality Control: The New Doctrine of the Inter-American Court of Human Rights. *AJIL Unbound*, 109, 93-99. <https://doi.org/10.1017/S2398772300001240>

Finkel, J. S. (2008). *Judicial Reforms as Political Insurance: Argentina, Peru and Mexico in the 1990s*. Notre Dame: University of Notre Dame Press. Available at <https://muse.jhu.edu/book/7326>

Freeman, M., & Pensky, M. (2012). The Amnesty Controversy in International Law. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 42-66). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.005>

Fuerza Popular. (4 de enero de 2018). *Comunicado del Comité Ejecutivo Nacional - CEN de Fuerza Popular* [Tweet]. Available at <https://twitter.com/PFuerzaPopular/status/949041678278475776>

Fujimori, A. (26 de diciembre de 2016). "Mi profunda gratitud por el paso complejo que ha tomado el presidente me compromete a apoyar decididamente su llamado a la reconciliación". *Alberto Fujimori Fujimori Presidente del Perú 1990-2000* [Video]. Available at <https://www.facebook.com/watch/?v=1856110717793334>

García-Godos, J., & Reátegui, F. (2016). Peru Beyond Paradigmatic Cases. En E. Skaar, J. García-Godos y C. Collins (eds.), *Transitional Justice in Latin America: The Uneven Road from Impunity Towards Accountability* (pp. 227-251). Abingdon: Routledge.

Gamarra, R. (2009). La sentencia del caso Fujimori y la calificación de los hechos de Barrios Altos y La Cantuta como crímenes de lesa humanidad. *Gaceta Penal*, 5, 349-368.

García-Sayán, D. (2011). The Inter-American Court and Constitutionalism in Latin America. *Texas Law Review*, 89, 1835-1862.

GfK. (29 de octubre de 2017). *Indulto Humanitario a Alberto Fujimori* [Twitter]. Available at <https://twitter.com/GfKPeru/status/924727554119835648>

Gloppen, S., Gargarella, R., & Skaar, E. (2004). *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. Londres: Frank Cass.

Gonzales, A. (2011). *La Cantuta in The Devil's Mouth* [Documental]. Lima: TV Cultura. Available at [https://youtu.be/\\_R8AZ-cmmS4](https://youtu.be/_R8AZ-cmmS4)

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

Gonzales, G. (30 de junio de 2000). No me vengan con el cuento de otra reforma. *Caretas*, (1625).

González-Ocantos, E. A. (2016). *Shifting Legal Visions. Judicial Change and Human Rights Trials in Latin America*. Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781316535509>

Gurmendi, A. (16 de noviembre de 2017). The Legality of Pardons in Latin America (Part I). *OpinioJuris*. Available at <http://opiniojuris.org/2017/11/16/the-legality-of-pardons-in-latin-america-part-i/>

Harada, C. (25 de diciembre de 2017). *Mensaje a la Nación de PPK: "El indulto a Fujimori ha sido la decisión más difícil que he tomado"* [Video]. Available at <https://youtu.be/8Jt8P5HAjNE>

Helmke, G., & Ríos Figueroa, J. (2011). Courts in Latin America: Introduction. En G. Helmke y J. Ríos Figueroa (eds.), *Courts in Latin America* (pp. 1-26). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9780511976520.001>

Hilbink, L., & Woods, P. J. (2009). Comparative Sources of Judicial Empowerment: Ideas and Interests. *Political Research Quarterly*, 62(4), 745-752. <https://doi.org/10.1177%2F1065912909350565>

Hillebrecht, C. (2012). Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights. *Human Rights Review*, 13, 279-301. <https://doi.org/10.1007/s12142-012-0227-1>

Hirschl, R. (2004). *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Cambridge, Massachusetts: Harvard University Press.

Hirschl, R. (2011). The Judicialization of Politics. En R. E. Gooding (ed.), *The Oxford Handbook of Political Science* (pp. 253-275). Nueva York: Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199604456.013.0013>

Huneus, A. (2016). Constitutional Lawyers and the Inter-American Court's Varied Authority. *Law and Contemporary Problems*, 79, 179-207. Available at <https://scholarship.law.duke.edu/lcp/vol79/iss1/7>

Huneus, A. (2011). Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights. *Cornell International Law Journal*, 44, 493-533. Available at <https://scholarship.law.cornell.edu/cilj/vol44/iss3/2>

IDL-Reporteros. (20 de diciembre 2017). *Conversación en Trinidad Morán*. Available at <https://idl-reporteros.pe/conversacion-en-trinidad-moran/>

IDL-Reporteros. (26 de julio de 2018a). "...Fujimori nos manda buscar". Available at <https://idl-reporteros.pe/cnmaudiosfujimori-nos-manda-buscar/>

IDL-Reporteros. (24 de octubre de 2018b). *Botica abierta*. Available at <https://idl-reporteros.pe/botica-abierta/>

IPSOS. (15 de mayo de 2017). Indulto a Fujimori. *Opinión Data*, 17(219), 3.

IPSOS. (12 de marzo de 2018). Indulto a Alberto Fujimori. *Opinión Data*, 18(229), 5.

Landa, C. (1996). Límites Constitucionales de la Ley de Amnistía Peruana. *Pensamiento Constitucional*, III(3), 151-208.

Landau, D. (2010). Political Institutions and Judicial Role in Comparative Constitutional Law. *Harvard International Law Journal*, 51(2), 319-346.

Laplante, L. J. (2009). Outlawing Amnesty: The Return of Criminal Justice Schemes in Transitional Justice. *Virginia Journal of International Law*, 49(4), 915-984. Available at <https://scholarship.law.marquette.edu/facpub/138>

La República. (2011). *Eran 207 los fujimoristas sentenciados por la justicia anticorrupción*. 15 de abril. Available at <https://larepublica.pe/politica/533588-eran-207-los-fujimoristas-sentenciados-por-la-justicia-anticorrupcion/>

La República. (2017a). *Decepción por PPK: ministros, congresistas y funcionarios que renunciaron por indulto*. 27 de diciembre. Available at <https://larepublica.pe/politica/1163149-renuncias-tras-indulto-los-ministros-congresistas-y-funcionarios-que-pierde-ppk/>

La República. (2017b). *Víctimas del Santa: Familiares no creen en el pedido de perdón de Fujimori*. 27 de diciembre. Available at <https://larepublica.pe/politica/1163219-victimas-del-santa-familiares-no-creen-en-el-pedido-de-perdon-de-fujimori/>

La República. (2017c). *Fujimori: Dura condena de expertos en derechos humanos de la ONU contra el indulto*. 27 de diciembre. Available at <https://larepublica.pe/politica/1163548-fujimori-dura-condena-de-expertos-en-derechos-humanos-de-la-onu-contra-el-indulto/>

La República. (2017d). *Amnistía Internacional: "Indulto a Alberto Fujimori debilita la lucha contra la impunidad"*. 25 de diciembre. Available at <https://larepublica.pe/politica/1162605-amnistia-internacional-indulto-a-alberto-fujimori-debilita-la-lucha-contra-la-impunidad/>

La República. (2017e). *Naciones Unidas rechaza indulto concedido a Alberto Fujimori*. 25 de diciembre. Available at <https://larepublica.pe/politica/1162597-naciones-unidas-rechaza-indulto-concedido-a-alberto-fujimori/>

La República. (2017f). *Deudos de La Cantuta solicitan nulidad del procedimiento de pedido de indulto a Alberto Fujimori*. 24 de diciembre. Available at <https://larepublica.pe/politica/1162040-deudos-de-la-cantuta-solicitan-la-nulidad-del-procedimiento-de-indulto-a-alberto-fujimori/>

La República. (2017g). *Los deudos de víctimas del fujimorato exigen anular el indulto por irregularidades*. 24 de diciembre. Available at <https://larepublica.pe/politica/1162169-los-deudos-de-victimas-del-fujimorato-exigen-anular-el-indulto-por-irregularidades/>

La República. (2017h). *Madre de niño que murió en Barrios Altos: se burlaron de mi dolor*. 24 de diciembre. Available at <https://larepublica.pe/politica/1162246-madre-de-nino-que-murio-en-barrios-altos-se-burlaron-de-mi-dolor-video/>

La República. (2017i). *Human Rights Watch califica de "vulgar negociación" del indulto a Fujimori*. 24 de diciembre. Available at <https://larepublica.pe/politica/1162261-human-rights-watch-califica-de-vulgar-negociacion-el-indulto-a-fujimori/>

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

La República. (2018a). PPK: “Hay un grupo de extrema izquierda que no está reconciliado con este indulto”. 2 de febrero. Available at <https://larepublica.pe/politica/1179360-ppk-hay-un-grupo-de-extrema-izquierda-que-no-esta-reconciliado-con-este-indulto/>

La República. (2018b). *Duberlí Rodríguez*: “La Corte IDH ha optado por una fórmula salomónica”. 19 de junio. Available at <https://larepublica.pe/politica/1263621-duberli-rodriguez-fallo-indulto-corte-idh-sacado-cuerpo/>

La República. (2018c). *Abogados de víctimas de Fujimori definirán recurso esta semana*. 16 de junio. Available at <https://larepublica.pe/politica/1262367-abogados-victimas-fujimori-definiran-recurso-semana/>

La República. (2018d). *Evalúan presentar acción de amparo para que Fujimori regrese a prisión*. 15 de junio. Available at <https://larepublica.pe/politica/1261612-corte-idh-evaluan-presentar-accion-amparo-alberto-fujimori-regrese-prision/>

La República. (2018e). *Tribunal Constitucional invoca al Congreso cumplir con fallo de la Corte IDH*. 13 de febrero. Available at <https://larepublica.pe/politica/1196809-tribunal-constitucional-invoca-al-congreso-cumplir-con-fallo-de-la-corte-idh/>

La República. (2018f). *Presidente del Poder Judicial: “Tenemos que respetar decisiones de la Corte IDH”*. 2 de febrero. Available at <https://larepublica.pe/politica/1179014-presidente-del-poder-judicial-tenemos-que-respetar-decisiones-de-la-corte-idh/>

La República. (2018g). *Gisela Ortiz: “No necesitamos hacer catarsis, se trata de justicia”*. 16 de enero. Available at <https://larepublica.pe/politica/1171878-no-necesitamos-hacer-catarsis-se-trata-de-justicia/>

La República. (2018h). *Duberlí Rodríguez: “Lo que Resuelva la Corte IDH Sobre Indulto Será Vinculante”*. 11 de enero. Available at <https://larepublica.pe/politica/1169562-duberli-rodriguez-lo-que-resuelva-la-corte-idh-sobre-indulto-sera-vinculante/>

La República. (2018i). *Presidente del Poder Judicial: el Estado tiene que “acatar” decisión de la Corte IDH*. 8 de enero. Available at <https://larepublica.pe/politica/1168194-presidente-del-poder-judicial-el-estado-tiene-que-acatar-decision-de-la-corte-idh/>

La República. (2018j). *Familiares de víctimas de Fujimori critican que 2018 sea año de la reconciliación*. 6 de enero. Available at <https://larepublica.pe/politica/1167589-familiares-de-victimas-de-fujimori-critican-que-2018-sea-ano-de-la-reconciliacion/>

La República. (2018k). *Deuda del exdictador Alberto Fujimori supera los S/ 51 millones*. 6 de enero. Available at <https://larepublica.pe/politica/1167570-deuda-del-ex-dictador-supera-los-s51-millones/>

Ledesma, M. (1999). *Jueces y Reforma Judicial*. Lima: Gaceta Jurídica.

Lessa, F. (2012). Barriers to Justice: The Ley de Caducidad and Impunity in Uruguay. In F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*

(pp. 123-151). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.009>

Lessa, F., Olsen, T. D., Payne, L. A., Pereira, G., & Reiter, A. G. (2014a). Overcoming Impunity: Pathways to Accountability in Latin America. *The International Journal of Transitional Justice*, 8(1), 75-98. <https://doi.org/10.1093/ijtj/ijt031>

Lessa, F., Olsen, T. D., Payne, L. A., Pereira, G., & Reiter, A. G. (2014b). Persistent or Eroding Impunity? The Divergent Effects of Legal Challenges to Amnesty Laws for Past Human Rights Violations. *Israel Law Review*, 47(1), 105-131. <https://doi.org/10.1017/S0021223713000289>

Levitsky, S., & Way, L. A. (2002). Elections Without Democracy: The Rise of Competitive Authoritarianism. *Journal of Democracy*, 13(2), 51-65. <http://doi.org/10.1353/jod.2002.0026>

Lugar de la Memoria, la Tolerancia y la Inclusión Social. (2016). *Vladivideo 020A - Reunión Cambio 90 Nueva Mayoría y Vladimiro Montesinos* [Video]. Available at [https://youtu.be/kX\\_3f3vMKYY?t=5385](https://youtu.be/kX_3f3vMKYY?t=5385)

Lugar de la Memoria, la Tolerancia y la Inclusión Social. (2019). *Centro de Investigación y Documentación* [Data set]. Available at <https://lum.cultura.pe/cdi/palabrasclave/vladivideos>

Lutz, E., & Sikkink, K. (2001). The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America. *Chicago Journal of International Law*, 2(1), 1-33. Available at <https://chicagounbound.uchicago.edu/cjil/vol2/iss1/3>

Mallinder, L. (2012). Amnesties' Challenges to the Global Accountability Norm? Interpreting Regional and International Trends in Amnesty Enactment. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 69-96). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.007>

Mallinder, L. (2016). The End of Amnesty or Regional Overreach? Interpreting the Erosion of South America's Amnesty Laws. *International and Comparative Law Quarterly*, 65(3), 645-680. <https://doi.org/10.1017/S0020589316000166>

Maucery, P. (1997). *Return of the caudillo: Autocratic democracy in Peru*. *Third World Quarterly*, 18(5), 899-912. <https://doi.org/10.1080/01436599714650>

Méndez, J. E. (2012). Foreword. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. xvii-xxix). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.001>

Moura, J. (2012). *Autogolpe de Alberto Fujimori del 5 de abril del 1992* [Video]. Recuperado de <https://youtu.be/xmj4aAflzB4>

O'Donnell, G. (1998a). *Horizontal Accountability in New Democracies*. *Journal of Democracy*, 9(3), 112-126. <http://doi.org/10.1353/jod.1998.0051>

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

O'Donnell, G. (1998b). Polyarchies and the (Un)Rule of Law in Latin America [Paper]. Kellogg Institute, LASA. Available at [https://kellogg.nd.edu/sites/default/files/old\\_files/documents/254\\_0.pdf](https://kellogg.nd.edu/sites/default/files/old_files/documents/254_0.pdf)

Ojo Público. (23 de diciembre de 2017). *Doctor de Alberto Fujimori integra junta médica penitenciaria que pidió el indulto*. Available at <https://ojo-publico.com/574/doctor-de-alberto-fujimori-integra-junta-medica-del-inpe-que-recomienda-el-indulto-humanitario>

Olsen, T. D., Payne, L., & Reiter, A. G. (2012). Conclusion: Amnesty in the Age of Accountability. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 336-358). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.017>

Paniagua, V. (2000). *Mensaje a la Nación del señor Presidente Constitucional de la República, doctor Valentín Paniagua Corazao, ante el Congreso de la República*. 22 de noviembre. Available at <http://www2.congreso.gob.pe/Sicr/DiarioDebates/Publicad.e3052577f8007035b5/052564b400212fe1052569a10071c0fc?OpenDocument>

Pásara, L. (2014). *Una reforma imposible. La Justicia Latinoamericana en el Banquillo*. Lima: Fondo Editorial PUCP.

Payne, L. A. (2015). The Justice Paradox? Transnational Legal Orders and Accountability for Past Human Rights Violations. En T. C. Halliday y G. Shaffer (eds.), *Transnational Legal Orders* (pp. 439-472). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781107707092.017>

Payne, L. A., Lessa, F., & Pereira, G. (2015). Overcoming Barriers to Justice in the Age of Human Rights Accountability. *Human Rights Quarterly*, 37(3), 728-754. <http://doi.org/10.1353/hrq.2015.0040>

Pegram, T. (2014). Rebecca K. Root, *Transitional Justice in Peru* [Reseña de libro]. *Journal of Latin American Studies*, 46(3), 610-611. <https://doi.org/10.1017/S0022216X14000893>

Peru Support Group. (22 de julio de 2018). *Judicial Corruption Scandal Deepens and Brings Changes*. Available at <https://perusupportgroup.org.uk/2018/07/judicial-corruption-scandal-deepens-and-brings-changes/>

Prensa Libre. (10 de diciembre de 2007). "Ex dictador Fujimori lanza discurso político al inicio de su juicio" [Video]. Available at <https://youtu.be/BrCjmZIEkqM>

Prensa Libre. (15 de enero de 2008). Kenji: "Fuerza 2011 es el pasaporte a la libertad de Alberto Fujimori" [Video]. Available at <https://youtu.be/5qPeECpVzRA>

Presidencia de la República. (24 de diciembre de 2017). *Comunicado* [Tweet]. Available at [https://twitter.com/Agencia\\_Andina/status/945081253023436800](https://twitter.com/Agencia_Andina/status/945081253023436800)

Quiroz, A. W. (2008). *Corrupt Circles: A History of Unbound Graft in Peru*. Washington, D. C.: Woodrow Wilson Center Press.

Rivera, C. (2013). Barrios Altos: The Failed Attempt to Reverse Justice. *Aportes DPLF*, 6(18), 55-57.



Root, R. K. (2012). *Transitional Justice in Peru*. Nueva York: Palgrave Macmillan.

San Martín, C. (1994). La Carrera Judicial. *Derecho y Sociedad*, (8-9), 63-81.

Sieder, R., Schjolden, L., & Angell, A. (eds.). (2005). Introduction. En *The Judicialization of Politics in Latin America* (pp. 1-20). Nueva York: Palgrave Macmillan. [https://doi.org/10.1007/978-1-137-10887-6\\_1](https://doi.org/10.1007/978-1-137-10887-6_1)

Sikkink, K. (2005). The Transnational Dimension of the Judicialization of Politics in Latin America. En R. Sieder, L. Schjolden y A. Angell (eds.), *The Judicialization of Politics in Latin America* (pp. 263-292). Nueva York: Palgrave Macmillan. [https://doi.org/10.1007/978-1-137-10887-6\\_11](https://doi.org/10.1007/978-1-137-10887-6_11)

Sikkink, K. (2012). The Age of Accountability: The Global Rise of Individual Criminal Accountability. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (pp. 19-41). Nueva York: Cambridge University Press. <https://doi.org/10.1017/CBO9781139177153.004>

Silva, C. (2016). *Paren la farsa. Apuntes sobre la elección y la fiscalización a los consejeros del Consejo Nacional de la Magistratura*. Lima: IDL-Justicia Viva.

Skaar, E. (2011). *Judicial Independence and Human Rights in Latin America: Violations, Politics, and Prosecutions*. Nueva York: Palgrave Macmillan. <https://doi.org/10.1057/9780230117693>

Skaar, E., García-Godos, J., & Collins, C. (eds.). (2016a). Introduction: The Accountability Challenge. En *Transitional Justice in Latin America: The Uneven Road from Impunity Towards Accountability* (pp. 1-24) Abingdon: Routledge.

Skaar, E., García-Godos, J., & Collins, C. (eds.). (2016b). Analytical Framework. En *Transitional Justice in Latin America: The Uneven Road from Impunity Towards Accountability* (pp. 25-49). Abingdon: Routledge.

Skaar, E., García-Godos, J., & Collins, C. (eds.). (2016c). Conclusion. En *Transitional Justice in Latin America: The Uneven Road from Impunity Towards Accountability* (pp. 275-298). Abingdon: Routledge.

Slye, R. C. (2012). A Limited Amnesty? Insights from Cambodia. En F. Lessa y L. A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*. Nueva York: Cambridge University Press (pp. 291-314). <https://doi.org/10.1017/CBO9781139177153.015>

Soley, X., & Steininger, S. (2018). Parting ways or lashing back? Withdrawals, backlash and the Inter-American Court of Human Rights. *International Journal of Law in Context*, 14(2), 237-257. <https://doi.org/10.1017/S1744552318000058>

The Guardian. (1 de noviembre de 2018). *Keiko Fujimori, Peru's opposition leader, sent back to jail ahead of corruption trial*. Available at <https://www.theguardian.com/world/2018/nov/01/keiko-fujimori-perus-former-first-lady-sent-back-to-jail-ahead-of-bribery-trial>

HOLDING THE LINE  
ON HUMAN RIGHTS  
ACCOUNTABILITY:  
EXPLAINING THE  
UNLIKELY JUDICIAL  
OVERTURN OF  
THE PARDON AND  
IMMUNITY GRANTED  
TO HUMAN RIGHTS  
VIOLATOR ALBERTO  
FUJIMORI

EN DEFENSA  
DE LA JUSTICIA:  
EXPLICANDO  
LA IMPROBABLE  
INAPLICACIÓN  
JUDICIAL DEL  
INDULTO Y DERECHO  
DE GRACIA DEL  
CONDENADO  
POR GRAVES  
VIOLACIONES A  
LOS DERECHOS  
HUMANOS ALBERTO  
FUJIMORI

Torelly, M. (2019). From Compliance to Engagement: Assessing the Impact of Inter-American Court of Human Rights on Constitutional Law in Latin America. En P. Engstrom (ed.), *The Inter-American Human Rights System: Impact Beyond Compliance* (pp. 115-141). Londres: Palgrave Macmillan. [https://doi.org/10.1007/978-3-319-89459-1\\_5](https://doi.org/10.1007/978-3-319-89459-1_5)

Tuesta, F. (2019). Data Política. *Política: Blog de Fernando Tuesta Soldevilla*. Available at: <http://blog.pucp.edu.pe/blog/fernandotuesta/datapolitica/>

Vanhala, L. (2018). Is Legal Mobilization for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organisations in the United Kingdom, France, Finland and Italy. *Comparative Political Studies*, 51 (3), 380-412. <https://doi.org/10.1177%2F0010414017710257>

Vargas Llosa, M. (2017). La traición de Kuczynski. *El País*, 31 de diciembre. Available at [https://elpais.com/elpais/2017/12/28/opinion/1514462305\\_818635.html](https://elpais.com/elpais/2017/12/28/opinion/1514462305_818635.html)

Vílchez, F. (2016). *Su nombre es Fujimori* [Documental]. Lima: Bergman Was Right Films/Yachay. Available at <https://vimeo.com/168694171>

Youngers, C. A. (2006). Promoting Human Rights: NGOs and the State in Peru. En J. Crabtree (ed.), *Making Institutions Work in Peru* (pp. 158-184). Londres: Institute for the Studies of the Americas.

Zapata, A. (2016). *Pensando a la derecha: historia intelectual y política*. Lima: Planeta.

### Cases and other legal sources

Advisory Opinion OC-24/17. (2017). Inter-American Court of Human Rights. "Gender Identity, and Equality and Non-discrimination with Regard to Same-sex Couples". *Advisory Opinion OC-24/17*. 24 November. Available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf)

*Almonacid-Arellano et al v. Chile*. (2006). Preliminary objections. Merits. Reparations and costs. Judgment. Series C No. 154 (Inter-American Court of Human Rights, 26 September). Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_154\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_ing.pdf)

*Barrios Altos v. Peru*. (2001). Merits. Judgment. Series C No. 75 (Inter-American Court of Human Rights, 14 March). Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_75\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf)

*Barrios Altos v. Peru*. (2012). Monitoring Compliance with Judgment (Inter-American Court of Human Rights, 7 September). Available at: [http://www.corteidh.or.cr/docs/supervisiones/barrios\\_07\\_09\\_12.pdf](http://www.corteidh.or.cr/docs/supervisiones/barrios_07_09_12.pdf)

*Barrios Altos y La Cantuta vs. Perú*. (2018). Supervisión de Cumplimiento de Sentencia: Obligación de Investigar, Juzgar y, de ser el Caso, Sancionar (Inter-American Court of Human Rights, 30 May). Available at: [http://www.corteidh.or.cr/docs/supervisiones/barriosaltos\\_lacantuta\\_30\\_05\\_18.pdf](http://www.corteidh.or.cr/docs/supervisiones/barriosaltos_lacantuta_30_05_18.pdf)

*Bocanegra Chávez v. Poder Judicial*. (2016). Auto 01969-2011-PHC/TC (Tribunal Constitucional, 5 April). Available at: <https://tc.gob.pe/jurisprudencia/2017/01969-2011-HC%20Resolucion.pdf>

*Bocanegra Chávez v. Poder Judicial.* (2013). Sentencia 01969-2011-PHC/TC (Tribunal Constitucional, 14 June). Available at: <https://tc.gob.pe/jurisprudencia/2013/01969-2011-HC.pdf>

*Congresistas v. DL 1097.* (2011). Sentencia 00024-2010-PI/TC (Tribunal Constitucional, 21 March). Available at: <https://www.tc.gob.pe/jurisprudencia/2011/00024-2010-AI.html>

*Crespo Bragayrac v. Ministerio de Defensa.* (2002). Sentencia, 00217-2002-HC/TC (Tribunal Constitucional, 17 April). Available at: <https://www.tc.gob.pe/jurisprudencia/2002/00217-2002-HC.html>

*Decreto Supremo N° 014-2000-JUS* (2000). Establecen procedimientos a fin de propiciar el seguimiento de recomendaciones de órganos internacionales en materia de derechos humanos y constituyen Grupo de Trabajo que asumirá funciones del Consejo Nacional de Derechos Humanos (MINJUS [Perú], 22 September).

*Decreto Supremo N° 022-2008-DE-SG.* (2008). Normas Legales Diario Oficial El Peruano, XXV (10403), 382319-382320. 28 October.

Inter-American Commission on Human Rights. (2006). “Friendly Settlement Alejandro Espino Méndez et al. Peru”. Report N° 109/06: Petition 33-03 et al. 21 October. Available at: <http://www.cidh.oas.org/annualrep/2006eng/PERU.33.03eng.htm>

*Ivcher Bronstein v. Peru.* (1999). Competence. Judgment. Series C No. 54 (Inter-American Court of Human Rights, 24 September). Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_54\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_54_ing.pdf)

*Ivcher Bronstein v. Peru.* (2001). Merits, Reparations and Costs. Judgment. Series C No. 74 (Inter-American Court of Human Rights, 6 February). Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_74\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf)

*La Cantuta v. Peru.* (2006). Merits, Reparations and Costs. Judgment. Series C No. 162. (Inter-American Court of Human Rights, 29 November). Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_162\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf)

Nulidad N° 793-2018. (2019). *Expediente N° 01943-2018-0-5001-SU-PE-01.* Primera Sala Suprema Penal Transitoria. 2 July. Available at: <https://static.legis.pe/wp-content/uploads/2020/01/R.N.-N%C2%B0-793-2018-LP.pdf>

Resolución N° 09. (2018). *Expediente N° 00649-2011-0-5001-JR-PE-03,* Sala Penal Nacional. 9 February. Available at: [https://issuu.com/derechoshumanos.pe/docs/exp.\\_00649-2011-0-5001-jr-pe-03\\_-\\_t](https://issuu.com/derechoshumanos.pe/docs/exp._00649-2011-0-5001-jr-pe-03_-_t)

Resolución N° 10. (2018). *Expediente N° 000006-2001-4-5001-SU-PE-01,* Juzgado Supremo de Investigación Preparatoria. 3 October. Available at: <https://www.pj.gob.pe/wps/wcm/connect/4e0364804737a0f2b496ff5d3cd1c288/C%C3%83-CONTRO-CONVENCIONALIDAD-6-2001.pdf?MOD=AJPERES&CACHEID=4e0364804737a0f2b496ff5d3cd1c288>

Resolución N° 46. (2019). *Expediente N° 000006-2001-4-5001-SU-PE-01,* Sala Penal Especial. 13 February. Available at: <https://www.pj.gob.pe/wps/wcm/>

HOLDING THE LINE ON HUMAN RIGHTS ACCOUNTABILITY: EXPLAINING THE UNLIKELY JUDICIAL OVERTURN OF THE PARDON AND IMMUNITY GRANTED TO HUMAN RIGHTS VIOLATOR ALBERTO FUJIMORI

EN DEFENSA DE LA JUSTICIA: EXPLICANDO LA IMPROBABLE INAPLICACIÓN JUDICIAL DEL INDULTO Y DERECHO DE GRACIA DEL CONDENADO POR GRAVES VIOLACIONES A LOS DERECHOS HUMANOS ALBERTO FUJIMORI

connect/5c89f90048d075c0a538e553388de097/SPE-EXP-06-2001-FUJIMORI.pdf?MOD=AJPERES&CACHEID=5c89f90048d075c0a538e553388de097

Resolución Administrativa N° 254-2014-P-PJ. (2014). *Resolución Administrativa N° 254-2014-P-PJ*, Corte Suprema de la República. 15 August. Available at: <https://www.pj.gob.pe/wps/wcm/connect/234f45804521c0029d48df01a4a5d4c4/RA+N+254-2014-P-PJ+Exortaci%C3%B3n+a+los+Jueces+a+nivel+nacional.pdf?MOD=AJPERES&CACHEID=234f45804521c0029d48df01a4a5d4c4>

Resolución Suprema N° 281-2017-JUS. (2017). “Resolución Suprema N° 281-2017-JUS”. *Normas Legales Diario Oficial El Peruano* [extraordinary edition], Año XXXIV, N° 1433624. December 24. pp. 2-3.

*Sirumbal Ramos v. Congreso de la República*. (2007). Sentencia 00009-2007-PI/TC (Tribunal Constitucional, 29 August). Available at: <https://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%2000010-2007-AI.html>

*Villegas Namuche v. Poder Judicial*. (2004). Sentencia, 02488-2002-HC/TC (Tribunal Constitucional, 18 March). Available at: <https://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html>

Received: 31/05/2020

Approved: 04/09/2020