The pursuit of justice within the context of civil war is ripe with challenges and contradictions. The 20-year Peruvian civil war, which symbolically began with the Shining Path’s burning of ballot boxes in May 1980 in defiance of an impending return to democratic rule 12 years after a military coup, is a tragic history colored by geographic, cultural, and linguistic divisions within Peruvian society. A war that largely took place in the Andean highlands in the 1980s before arriving most consequentially to Lima in the 1990s, the conflict highlights the creation of the disposable “other” – the consequential marginalization of Quechua-speaking indigenous peoples caught between the brutality of the Shining Path and the Peruvian state. Peruvians still grapple with defining justice and understanding its role within a reconciliation process that remains largely ineffectual to this day.

The ongoing Fujimori trial and the exhumation of the largest mass grave ever found in Peruvian history in Putis in May 2008 provide key insight into the complicated pursuit of social justice in Peru. Five years after the release of the final report of the Peruvian Truth and Reconciliation Commission in August 2003, the Fujimori trial and the Putis exhumation have renewed debate within Peruvian society over dual histories that many Peruvians still refuse to recognize as related or part of a shared history. Fujimori’s extradition from Chile to Peru in September 2007 marked the first time a former Peruvian president would be brought before the Peruvian legal system to stand trial for excesses committed during the country’s civil war. Many Peruvians who fled the Shining Path’s terror abroad consider Fujimori a hero for having presided over the capture of Shining Path leader Abimael Guzmán, questioning the legitimacy of trying a man credited by many with bringing peace to a war-ravaged country. Others describe the trial as
the defeat of impunity, as polemic figures such as Fujimori advisor Vladimiro Montesinos and ex-members of the Colina death squad are finally tried and sentenced for their indiscretions. While the trial has raised the visibility of abuses committed during the 1990s under Fujimori, news of the Putis exhumation in May 2008 filled Peruvian headlines and opinion editorials for months. Subsequent confirmation of the successful exhumation of 92 indigenous men, women, and children of a 1984 massacre placed the historic trial of a former head of state in instructive context – the reaffirmation that Fujimori’s transgressions represented only one decade of a two-decade conflict. Putis, one of 47 cases that were sent for investigation by the Peruvian Truth and Reconciliation Commission to the Peruvian Public Ministry in 2003, gripped the country and the international press amid the grandeur of Fujimori’s trial, highlighting a separate, much ignored history prejudicial to indigenous peoples that many Peruvians disavowed.

This research – conducted from May 2008 to August 2008 – was conducted while on assignment with the Peruvian Forensic Anthropology Team (EPAF) in Lima, Peru. This research examines more closely the nuanced lessons of Putis and Fujimori, probing their significance by examining the distinct legal systems in which they unfold. This pursuit of justice is unfolding under the umbrella of the Peruvian judicial system, yet significantly, within different venues – the specially-created Fujimori/Montesinos Anti-Corruption legal subsystem in charge of handling cases related to the excesses of the Fujimori administration, in one venue, and the normal, traditional legal system for cases of human rights violations, including the Truth Commission cases, in another venue. Through quantitative and qualitative means, this research seeks to answer the following questions: How do prosecutions within the Anti-Corruption legal subsystem compare with the prosecutions of Truth Commission cases? Are there disparities in the progress and success rate of cases filed for legal adjudication under these two systems? Is
“justice” being served for all victims of the Peruvian conflict? Secondary objectives include measuring the political and civil society climate surrounding the Fujimori trial and the Putis exhumation. Have these events galvanized the public in support of further clarifying the brutal events of the past? How has the public’s previous support for Fujimori affected their predisposition to reopening consideration of the past? How have human rights organizations viewed the potential impact of the Fujimori trial?

**The Fujimori Trial and Putis: The Collision of Two Histories**

**The Fujimori Trial**

While Argentina’s “dirty war” from 1976-1983 and military general Augusto Pinochet’s repressive reign in Chile from 1973-1990 are often cited as Latin America’s most high-profile civil conflicts, neither experience ultimately led to the kind of legal proceedings that are taking place against Fujimori. Fujimori’s reign as president from 1990-2000 is remembered largely for its authoritarian tendencies, as Fujimori aggressively used the Peruvian military to eliminate the Shining Path. From 1990 to 2000, Fujimori increasingly militarized the counterinsurgency effort relative to past administrations: “To curtail political violence, among other things, Fujimori unleashed the military and intelligence service, created ‘faceless’ military tribunals to try guerrilla suspects, and expanded armed self-defense communities … to fight guerrillas in the countryside and shantytowns.”

Part of his hard-line approach included the alleged creation of the *La Colina* death squad, responsible for the killing of more than two dozen people in 1991 and 1992, including nine students and one professor killed at La Cantuta University.

The Fujimori trial is without doubt an important process being watched by international scholars, jurists, and the human rights community. The trial is the apex of a pivotal effort made

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by the Peruvian state shortly after 2000 to deliver justice after the Fujimori administration crumbled under evidence of rampant corruption and alleged human rights violations. The extradition of a former head of state was an unprecedented development in international law, as articulated by Chilean lawyer Alfredo Etcheberry, who represented Peru’s government in the extradition case: “This is a breaking point in international law. It is the first time Chile grants delivery of a former head of state by way of extradition to the country where he is wanted.” The trial remains front page news, gracing the front pages of Lima’s magazines and newspapers frequently. Since the trial began in December 2007, Fujimori has been found guilty of one charge of illegal entry and is now facing three human rights charges, two of which include prominent massacres committed by the Colina death squad under Fujimori’s watch – the massacres of Barrios Altos and La Cantuta. Since the trial began, former Colina members have testified as well as former government officials under Fujimori, including his top advisor Vladimiro Montesinos; Benedicto Jiménez, ex-chief of the Special Intelligence Unit of the counterterrorism police force under Fujimori and mastermind of the capture of Shining Path leader Abimael Guzmán; and former Peruvian Vice-President Máximo San Román.

Understanding the broader significance of the Fujimori trial can only be done by first recognizing the trial as the pinnacle accomplishment of a legal subsystem created after the fall of Fujimori. When Fujimori fled Peru in late 2000 after the release of the infamous “Vladivideos” – a video showing Fujimori’s closest advisor Vladimiro Montesinos bribing opposition congressman to support Fujimori – incoming interim Peruvian President Valentín Paniagua, under a previous recommendation of the Inter-American Commission on Human Rights, created the Fujimori/Montesinos Anti-Corruption legal subsystem to exclusively try cases related to

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Fujimori, Montesinos, and other members of the Fujimori government. The Anti-Corruption subsystem, staffed by attorneys specialized in corruption, was created given the massive amount of cases expected to be funneled through the Peruvian judicial system. The regular judicial system could not support such an ambitious endeavor, and the Anti-Corruption subsystem was seen as a mechanism through which Peru could strengthen its judicial protections by infusing into the system greater accountability and transparency. The Anti-Corruption subsystem is centrally based in Lima, and has its own prosecutors and courtrooms. How successful has this subsystem been? Can this model be replicated under other circumstances? How well does this system work? The data section of this paper will explore these questions.

The Putis Exhumation

The exhumation of the largest mass grave in Peruvian history competed for the daily headlines in Lima newspapers and magazines for months after its completion in May 2008. While the Fujimori trial places significant attention on the Spanish-speaking victims of Fujimori’s alleged Colina death squad during the early 1990s, the Putis exhumation shifts focus to the Quechua-speaking indigenous peoples of the Andean highlands and the bloodiest decade of the civil war – the 1980s.

In a civil war that saw both sides of the conflict engage in horrific acts, Putis is one of the most tragic events to befall Quechua-speaking indigenous peoples during the war. To enlist the support of the poor, the Shining Path often engaged in forced displacement of people in rural areas across Ayacucho. Groups of predominantly indigenous peoples were forced to leave their homes and obligated by the Shining Path to serve them - cooking, cleaning, etc. The objective was to evade the Peruvian military and collect a "mass" of people that the Shining Path would make lead their contingent when traveling to protect insurgent leaders that followed behind. In
the case of Putis, the Shining Path went to a handful of surrounding communities near Putis and displaced hundreds of Quechua-speaking peoples by pushing them up higher into the mountains. When the Peruvian military set up a base near Putis in September 1984, they started searching for senderistas, or followers of the Shining Path. When the Shining Path learned of the army's activities, they abandoned the people they had displaced. The army arrived, promising to provide safe refuge to the people if they returned to Putis. Dividing the group into two groups, the military brought one group of 123 people back to Putis. When everyone arrived, the military asked some to dig what they were told would be a community pond. Once the pit was dug, the military had 92 people enter the pit, and all were killed by gunfire for being suspected senderistas - men, women, and a staggering number of children, some as young as one year old. The rest were purportedly killed in nearby locations.

**Data**

To address this paper’s multiple research questions, this research conducts a comparison of Truth Commission cases currently processed under Peru’s traditional legal system with the Fujimori cases currently processed under the Anti-Corruption legal subsystem. Information regarding Truth Commission cases was obtained from the Public Defender’s office annual reports, and information collected regarding Anti-Corruption cases was collected from the second highest prosecutor within the Anti-Corruption subsystem Pedro Gamarra and his staff within the Ministry of Justice. Data collected regarding these cases include: 1) number of cases opened and number of legal cases filed, 2) the progress of these cases through the judicial system, 3) number of cases with sentences and executed sentences, and 4) location of cases. Under the radiant glow of Fujimori’s trial, its celebrated implications for the fight against impunity across the world, and the significant progress made within the Anti-Corruption
subsystem, the alarmingly slow processing of Truth Commission cases largely involving human rights violations against indigenous peoples juxtaposed with the smoother-functioning Anti-Corruption subsystem threaten to once again divide Peruvians by the very justice system purported to serve all equally.

**Truth Commission Cases**

In August 2003, the Truth Commission sent 47 representative cases of human rights violations to the Public Ministry for investigation. Five years later, almost half of these cases are still under preliminary investigation. Most are within the criminal prosecutor’s office in Ayacucho – massacres that took place deep in the removed Andes, where 40 percent of all victims, mostly Quechua-speaking indigenous peoples, were killed.

Of the 47 cases, 25 legal cases have been opened, and of these 25, only five cases have sentences as of August 2008 – proportionally, 20 percent of filed legal cases and 11 percent of cases overall. One year after the Truth Commission released its final report, the Public Defender’s office reported that there had been an “insufficient advancement in the investigations,” citing that 34 of the 47 cases remained in prejudicial investigation. The report attributed the scant progress to a lack of computers, telephones, and fax machines; few financial resources; and a lack of a uniform criterion among provincial prosecutors to develop a credible investigation of cases involving human rights violations. Two years after the Truth Commission report’s release, the Public Defender’s office reported that 25 of the 47 legal cases remained in prejudicial investigation, citing the Armed Forces’ unwillingness to provide information; the

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7 Ibid.
funneling of many cases to military courts; the absence of an efficient system to protect
witnesses and victims; and a lack of sufficient resources to conduct exhumations of mass
graves. Only one case had an actual sentence. The Public Defender’s 2006 report echoed
concerns in previous versions, citing the lack of protection of witnesses and the persistence of
military justice to investigate human rights violations as contributing factors to the delay in
processing of Truth Commission cases. After three years, approximately 50 percent of all cases
remained in preliminary investigation; 29 percent had received some form of judicial instruction;
8 percent were awaiting oral argument; 3 percent in oral argument; 5 percent with sentence; 3
percent had been tabled; and 2 percent had perpetrators serving an executed sentence.

According to the 2006 report, difficulties include the inaccessibility of certain areas, the
overwhelming number of cases handled by local jurisdictions, and again, a lack of resources.
The case of Putis and the May 2008 exhumation is illustrative of these difficulties.
Conducted by the Peruvian Forensic Anthropology Team (EPAF), the exhumation had been
stalled since October 2007 after the state’s team of forensic anthropologists, Instituto de
Medicina Legal (IML), refused to conduct the exhumation. Citing security concerns and a busy
agenda, IML refused requests made by the local prosecutor in Ayacucho to be official experts on
the case. Per Peruvian law, local prosecutors can name a third party to conduct forensic
examinations. The local prosecutor subsequently named EPAF as official experts, and EPAF
completed the exhumation in less than three weeks. During this time, EPAF staff worked under
brutally cold conditions and faced relocation of their campsite after drug traffickers entered the
campsite early in the morning one evening. Since the original exhumation, EPAF has confirmed

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9 Ibid.
the successful exhumation of 92 skeletons, 42 of which belong to children. EPAF is now working to identify as many of the skeletons as possible with help from the relatives of those disappeared in the grave. The Ministry of Defense has refused to provide the local prosecutor with any information regarding the military officers stationed at the Putis base established in September 1984, two months before the massacre. For this reason, the case remains one of many cases stuck in prejudicial investigation.

**Anti-Corruption Legal Subsystem**

In contrast, the Anti-Corruption subsystem based in Lima has opened 440 cases since its creation in 2000. Of those 440, 245 legal cases have been opened as of August 2008, and approximately 30 percent of the 245 have sentences\(^\text{11}\). Few historical cases, if any, remain in preliminary investigation.

In 2000, shortly after the creation of the Anti-Corruption subsystem, 43 legal cases had been opened and remained pending\(^\text{12}\). From 2001-2003, the number of cases grew from 67 to 143 pending legal cases.\(^\text{13}\) Regarding the actual number of individuals processed under the subsystem, 195 were funneled through the system in 2000.\(^\text{14}\) By 2003, the figure had reached 1402 individuals; in 2008, approximately 1700 individuals have been processed.\(^\text{15}\) Of the 245 legal cases that have been processed under the subsystem, 71 have sentences, and individuals in 62 of these 71 cases are currently serving sentences. In its 2004 report, the Public Defender’s

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\(^{12}\) Ibid.

\(^{13}\) Ibid.

\(^{14}\) Ibid.

\(^{15}\) Ibid.
office asserted that the Anti-Corruption subsystem was an outfit specialized in criminal justice responding to the necessity of confronting a special and complex situation.\(^\text{16}\)

According to Pedro Gamarra, the second highest state prosecutor within the Anti-Corruption system, the higher sentence rate can be attributed to a more centralized legal apparatus; most if not all information requests to government entities are quickly returned within 15-30 days; almost all of the accused reside in Lima and are easily located; and a significant budget exists to handle new and pending cases\(^\text{17}\). Gamarra specifically emphasized the ease with which requested information is provided to prosecutors within the Anti-Corruption subsystem, given information requests are made directly by the state prosecutor’s office on behalf of the subsystem to the corresponding state institution.

Gamarra said the divergences in these two systems are significantly a question of what he terms “canalización,” or the disparate manner in which information is requested of state authorities by prosecutors within the traditional and Anti-Corruption subsystem channels. While the Anti-Corruption subsystem based in Lima easily makes information requests through the national prosecutor’s office in Lima, provincial prosecutors that work on Truth Commission cases that make information requests directly of these same authorities often must wait much longer for responses.\(^\text{18}\) Gamarra argued that provincial prosecutors should instead make direct information requests of state authorities via the national prosecutor’s office in Lima, improving the manner in which information is requested and consequently increasing the chances for a quick response. He also argued that the traditional legal system would work better if courts of final judgment based in Lima moved to distant local jurisdictions/provinces to hear cases in


\(^{18}\) Ibid.
locales where perpetrators on Truth Commission cases were hiding from justice. In this way, time would be saved by not having to transport alleged perpetrators to Lima to stand trial. A second option would be for the judicial branch to grant provincial courts the ability to handle Truth Commission cases, bypassing the difficulties in administering justice for those in the provinces in distant Lima. Gamarra also argued that more money should be invested to process more efficiently the Truth Commission cases, a problem the Anti-Corruption subsystem has never faced.

**Findings: Interviews**

To better measure the political and civil climate surrounding the Fujimori trial and the Putis exhumation, interviews were conducted with five individuals: Ronald Gamarra, secretary general of the Coordinating Board of Human Rights in Peru; Jaime Urrutia, director of *Centro Regional Para la Salvaguardia del Patrimonio Cultural Inmaterial de América Latina* and historian on the Peruvian Truth Commission; Gisela Ortiz, sister of one of the nine students killed in the La Cantuta massacre; Jose Pablo Baraybar, executive director of the Peruvian Forensic Anthropology Team (EPAF); and Pedro Gamarra, the second-highest state prosecutor under the Anti-Corruption legal subsystem. The topics of these interviews included their experiences during the Peruvian civil war, their assessment of the general Peruvian panorama in regards to human rights, and their impression of the Fujimori trial and its potential role in pushing for additional investigations into Peru’s dirty war.

Many of interviewees agreed that the Fujimori trial is a watershed moment in Peruvian history. Ronald Gamarra (from hereby referenced as “R. Gamarra), no relation to Pedro Gamarra, said the Fujimori trial represents a critical moment in Peruvian history, and the country’s fight for human rights: “In Peru, we have either given absolute freedom to the violator
of human rights, or in the old days, we used to hang them. This time, though, the response of the state in the Fujimori trial is absolutely democratic. Here there is neither impunity nor vengeance.’”

Echoing R. Gamarra’s comments that Peru has been freed of what R. Gamarra defined as Peru’s “historical pendulum,” Gisela Ortiz said the Fujimori trial is Peru’s first attempt to hold the state responsible for the crimes committed by the Peruvian military – crimes that the Peruvian Truth Commission said accounted for 37 percent of all human rights violations that took place during the war: “It is the first time an ex-president has been brought to justice for any type of crime … What is most restorative for us is that this is a message to the country. This is a message to society, and to humanity that no one who dares to violate human rights will enjoy impunity.”

Jaime Urrutia, who was briefly disappeared by the Peruvian military in 1982 and later fled to France in 1990 after his name appeared on death lists posted by the Shining Path on poles in Ayacucho, said the Fujimori trial is more relevant in the fight against corruption instead of the fight for human rights: “The public primarily sees the Fujimori administration as corrupt, largely because of his advisor Vladimiro Montesinos who gave money to the Armed Forces.”

Urrutia added that the human rights charges against Fujimori are minor and “symbolic” cases in comparison to largely-ignored massacres that occurred in the 1980s, including the May 2008 exhumation of Quechua-speaking indigenous peoples in Putis. Nevertheless, Urrutia admitted the critical importance of a conviction against Fujimori on human rights charges if it did occur: “If there is a judgment sentencing Fujimori for the violation of human rights, it would be an

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22 Ibid.
important precedent. This would be the first time in Peru that the entire military leadership would be in jail. This has never happened before.”  

Could the Fujimori trial lead to further investigations into Peru’s dark past? Both Ortiz and Urrutia said they believe there is a lack of political will to bring to justice members of the Garcia and Belaunde Terry administrations. Urrutia said no political party or government has ever accepted responsibility for the violation of human rights given measures taken by the state were considered “necessary” in light of the Shining Path uprising. He also said the current Garcia government is led by individuals linked to the alleged violation of human rights, including the current Vice President Luis Giampietri Rojas, a Marine commander accused of responsibility for the killing of prisoners on the island of San Lorenzo – creating obstacles for a thorough investigation of human rights violations: “The political climate in Peru is against encouraging investigations into violations that happened 20, 25 years ago.” Ortiz said the Garcia government has failed to demonstrate its commitment to those who have suffered human rights violations, encouraging a politics of division: “[The lack of identification of Peruvians with the pain of the conflict] also has to do with the indifference of our public officials. If the message of our president and our ministers is, ‘We don’t know anything, there is no information, everything has been destroyed, they are not victims, they are terrorists,’ what is to be expected of the everyday person who does not see a sign of sensibility and solidarity from their leaders?”

EPAF Director Jose Pablo Baraybar said an entirely different issue may actually prevent additional investigations into Peru’s past – money. Baraybar said the amount of money spent to prosecute Fujimori under the Anti-Corruption subsystem has been so large that the potential of

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23 Ibid.
24 Ibid.
25 Ibid.
replicating such a system to try crimes under the Garcia and Belaunde Terry administrations may be cost-prohibitive.\textsuperscript{27} R. Gamarra said the trial could open up an important space to revisiting transgressions occurred under Garcia and Belaunde Terry administrations.

Has the public embraced the Fujimori trial? It is truly difficult to say. As referenced above, many supporters of Fujimori and his contingent in the Peruvian Congress believe a war hero is being improperly tried. Some light poles across Lima are covered in pro-Fujimori propaganda, signaling the enduring loyalty some in the country still have to Fujimori. It is difficult to gauge the sheer numbers of Fujimori’s support, yet a recent disturbance\textsuperscript{28} in August 2008 at the 5th anniversary ceremony of the Truth Commission involving “Fujimoristas” disrupting an official ceremony honoring those who lost their lives during the conflict demonstrates how the country still grapples with what Fujimori represents – corrupt yet successful in capturing the leader of the Shining Path, Guzmán. This research also avails itself of information reflecting opinions from members of the Peruvian Diaspora via comments made on YouTube videos. While in Peru, I posted videos with all but two of my interviewees, as well as additional videos referencing EPAF’s work on behalf of the disappeared – principally the Putis exhumation and the Cantuta burial. Many of the comments hailed Fujimori as the best president of Peru, calling victims of Fujimori “terrorists,” and qualifying Fujimori’s trial as having occurred simply because the “inept elite” was unable to put on the trial who they deem are more significantly responsible for the disproportionate loss of life in the 1980s – Garcia and Belaunde Terry.\textsuperscript{29}

\textsuperscript{27} Ibid.
\textsuperscript{29} YouTube. EPAF19Channel. www.youtube.com/user/epafperu19.
Conclusion

The disparities between the results exhibited within the traditional legal system and the Anti-Corruption legal subsystem are striking and indicative of the difficulties of securing justice for all victims of the Peruvian civil war. While state officials claim the Anti-Corruption subsystem is not technically a “separate” system within the judicial system, its significant budget, resources, and success at soliciting key information shows that it clearly works more efficiently and is better suited to meet the needs of those seeking justice under its auspices. When the Anti-Corruption subsystem was set up in 2000, there was a clear desire on the part of diverse sectors of society and significant political will present to take Fujimori down for the excesses of his administration. This conviction does not exist when it comes to processing Truth Commission cases – and it is striking because this same lack of political will 10-20 years ago was the very reason why many Peruvians said nothing when indigenous peoples were massacred by the thousands in the highlands during the 1980s. Potential reconciliation of these disparate interests hinges upon the harmonization of two histories in Peru, which figuratively exhibit the properties of oil and water – one of large-scale genocide of poor, Quechua-speaking rural indigenous peoples in the 1980s and a second urban history, which witnessed the civil conflict’s ugly excess most visibly taint the city walls of Lima in the 1990s. Peru, confronted with the Fujimori trial and the Putis exhumation, must now decide whether it truly wants to remember or forget. While bold efforts made to punish the perpetrators of abuses committed under Fujimori represent a laudable victory in the fight for human rights, Peru’s elusive dream truly hinges upon the ability of Peruvians to reject the caustic notion of seeing Peru’s indigenous peoples as the disposable "other" and embrace the entire history of the Peruvian conflict as their own. The significant barriers to progress of Truth Commission cases through the legal system place the
Fujimori trial in necessary, instructive context. Pursuing justice means accounting for injustices committed during the entire conflict, and the successful execution of Fujimori’s trial should not supersede efforts being made through the traditional legal system to process cases largely related to abuses committed against Quechua-speaking indigenous peoples.