



Transitional Justice Bulletin

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The Experience of Peru: An Interview with Francisco Soberon

Between May 1980 and November 2000, Peru experienced what would be described by the Truth and Reconciliation as the most violent period in its history as a republic. In this period a three-way internal armed conflict was waged by the communist Party of Peru, also known as the Shining path, the Tupac Amaru Revolutionary Movement (MRTA), and the state intelligence services and military. These twenty years of Peru's history were marked by systematic violations of human rights and international law. The violence ended when the dictatorship of former-President Fujimori collapsed amid allegations of corruption in 2000.

Francisco Soberon is the founder of the Asociación Pro Decheros Humanos (APRODEH) and current Director of Institution Projection of APRODEH. Between 2002 and 2006 he served as Executive Secretary in the National Coordination for Human Rights, a Peruvian coalition of 63 national human rights organizations. He has served as vice President of the International Federation of Human Rights (FIDH) between 1997 and 2001. He is member of several boards, including the Board of Directors of the International Coalition of NGOs for the International Criminal Court (1998 – present). He has been recognized as one of "50 World Human Rights Advocates" in the Kerry Kennedy's book.

Between 12 and 15 December 2007, Francisco Soberon was a guest of HLC in Belgrade and participated in the Seminar: Reparations – legal and moral obligations of the state, which HLC organized on 14 December in cooperation with the International Center for Transitional Justice with the financial support of the Swedish Helsinki Committee for Human Rights.

HLC: Peru experienced 20 years of internal armed conflict between 1980 and 2000, in which there were as many as 70,000 victims of all crimes, including enforced disappearance, illegal detention, torture, sexual abuse and extrajudicial killings. In this context, what mechanisms of transitional justice have been applied?

FS: I would like to say that in terms of truth and memory, because I want to link both, the big step was the truth commission and report because they established at least one important issue. That is, crimes against humanity, systematic violations of human rights, were committed by the armed forces, by security agents, and not only by the Shining Path as Fujimori had presumed in the established official history. It is true that Shining Path was responsible for a lot of victims, but Fujimori tried to say that the military in the twenty years of internal armed conflict did not commit systematic violations, but isolated incidents...



Until now this was not accepted by the armed forces though it was established in the report of the truth commission, and not only in the report but the Inter American Commission of Human Rights, evaluating the disappearances and the period of political violence, also established that there was a pattern of generalized disappearances. So that is the first important contribution of the report of the truth commission. And, of course, history does not end with the truth commission. New information is still being gathered in different regions, especially in the highlands of Peru. In two years the truth commission gathered some documentation but it could not research everything. It used the documentation gathered by human rights organizations in the twenty years prior to





the establishment of the commission, some other official documents from the prosecutor, from the ombudsman, not from the military – unfortunately; it does not give too much information - till now still. So truth is an important pillar of this process.

HLC: And in terms of justice?

FS: In the first twenty years before the collapse of the Fujimori regime the judicial system was under the influence, or control, of the politicians. They were told not to conduct investigations, or to conduct partial investigations, which did not result in indictments. So there were few cases before the judiciary. And some cases arrived before the military courts, which were an impunity mechanism in favour of the military. So it was impossible to achieve justice in those twenty years. So we decided to use international mechanisms, and fortunately in our region we have the Inter-American system of human rights – the Commission and the Court. Peru, in fact, has more commission reports on cases, 156, than any other Latin American country, and more juridical decisions in the court of human rights violations. What is important is that the decisions of the cases that reached the Inter-American court established the responsibility of the state. And although those decisions and commission reports are only recommendations to the state, it is supposed that the government should make a good faith effort to implement them.

HLC: Of the cases that went before the Inter-American Court which has had the greatest impact?

FS: There is one big case, the Barrios Altos case, concerning the massacre of fifteen people in Lima.¹ Based on that case, for the first time in its history the Inter-American court established that the amnesty laws given by Fujimori and Montesinos in 1995 do not have legal effect. So all amnesty given should be rescinded. And now we have the chance of opening investigations once more for cases in the past. And this happened before the establishment of the truth commission. So we can say that the truth commission, in terms of justice, started in a context with a possibility to support, or help, the attorney's office, and the judicial system, with their investigations. And that is why our truth commission has linkage with the judiciary. At least 48 reports

¹ The Barrios Altos massacre took place on 3 November 1991, in the Barrios Altos neighbourhood of Lima, Peru. Fifteen people, including an eight year old child, were killed, and four more injured, by assailants who were later determined to be members of *Grupo Colina*, a death squad made up of members of the Peruvian Armed Forces.

were elaborated and presented to the attorney for investigation by the truth commission. It is not a huge number of cases but it was the first truth commission that ended with files for justice.

HLC: So has some degree of justice been achieved?

FS: Some improvements have come. Some decisions have been made by national courts. There are some delays in some cases of two or three years. In six first degree trials there have been decisions and one Supreme Court decision. We could not say that it is a lot, but at least, there are some. And we hope that in the next months some others could finish, positively. Among all these cases, the big cases are Fujimori, the General of the Intelligence Service Montesinos. Also certain generals and colonels are in prison facing trial for their alleged involvement in the Barrios Altos case, among others.

HLC: Has the judiciary trying these cases been at all reformed? Or are there still judges in place that were appointed during the Fujimori regime?

FS: Well, several of them were removed because they were involved in corruption – Magistrates of the Supreme Court, and the former General Attorney is in prison. So there have been some changes. But one of the failures in Peru and in South America is that Faculties of Law do not give information in international law – either human rights or humanitarian law. And that is something that brings difficulties in appointing attorneys. We, the human rights community, have made an effort to provide training in instruments, sharing legislation, and sharing the solutions from other experiences in Latin America and in the world from the ICTY, from cases in Argentina and Chile, and so on. Also, the decisions of the Inter-American court have helped my organization, APRODEH, and the National Coordination for Human Rights coalition to pressure judges and attorneys to apply international law. And we hope that the academy and the faculties of law will include these perspectives more and more in the training of future lawyers.

HLC: You mentioned a moment ago the amnesty law and the partial military courts. Are these still instruments of impunity?

FS: Now you have prosecutors and attorneys that have accepted the decisions of the Supreme Court and the constitutional tribunal that have rejected the use of the amnesty law, and in certain cases, double jeopardy – where military personnel have been previously tried before a partial military court. Defendants are still trying to use these defences. But in our experience more and more decisions are stopping these possibilities.





HLC: In terms of justice, or truth and memory, what sort of role has civil society had in the process of transitional justice in Peru?

FS: The truth commission became possible in 1998 when we started to see that the end of the dictator regime of Fujimori was coming. So our coalition of human rights organizations started to think that the political conditions for a truth commission were closer. And from then on we started to sensitize public opinion to the importance of this type of process as a trigger, a mechanism for justice, for truth, for reparation and for institutional reform. We didn't consider from the beginning that the truth commission is an end in itself. It is a means by which you promote all these other important pillars of this transitional justice process... So, yes, we started. And we started working with ICTJ in 2000. They brought us the experience of South Africa, Argentina, Chile, Guatemala and El Salvador at workshops with civil society in Lima and with some officials of the state because this was the time of the initial transitional regime. So we realized it was possible to promote a truth commission. After, we discussed what type of mandate this truth commission should have. With the experience that ICTJ brought, we could learn from others, and identify what could be improved. I think that each truth commission, each truth process has its own particularities but we have to learn from lessons from previous commissions. The mandate of our truth commission is not perfect but it assumes most of what we consider important in terms of the period that was investigated, in terms of the fact that it investigated crimes by both the Shining path and the armed forces, all type of crimes not just disappearances, but illegal detention, torture, massacres, and it tried to establish the causes of the political violence.

HLC: Do you think that the commission's mandate was too broad?

FS: The mandate had to be broad in order to include all types of crimes. For example, in Chile, the first truth commission was only for the disappeared. And the biggest crime in Chile was torture. So now they have got a new truth commission – two years ago, to deal with torture. 28,000 people were tortured, but illegally disappeared, no more than 3,000.

HLC: The incoming government of President Alejandro Toledo insisted that Peru's commission be not merely a truth commission but a truth and *reconciliation* commission. Given that reconciliation is admittedly a very controversial term, has Peru's commission brought about reconciliation in society?

FS: There is a belief that from truth you pass to reconciliation, directly. And I think that the only possibility of starting a process of reconciliation, or what I prefer to call a re-encounter between society, state, victims and perpetrators, is when not only truth is known, but also justice has been achieved in some way to guarantee non-repetition, and reparation programmes are implemented. After that we could just start to think of some type, some form, of reconciliation.

HLC: And where is Peruvian society in this process?

FS: We have just started. It is difficult to talk about reconciliation because we are only at the start. Still we have strong tensions because some people do not want to consider that in some cases members of the Shining path were also victims. Members of the Shining path were disappeared; they were tortured; they were summarily executed. Yet, victims of the Shining path consider that these types of crimes perpetrated against members of the Shining path are acceptable. And they think that the crimes committed by the armed forces were in favour of democracy.



HLC: So in this context, how is the Fujimori trial perceived by Peruvian society?

FS: At least most Peruvians consider, between 65 and 70 per cent, that the truth commission report was important, that justice is important, that the Fujimori trial is important. I know Fujimori still has some support but it is no more than 10 or 15 per cent in society. And I hope that, now he is facing his first condemnation for corruption, and now facing the human rights part, new conscience among his supporters will come. Because I think we have to build a common standard in citizens that democracy and human rights are linked.

