

**External Resources to Strengthen the Overseeing Duty:
The Investigative Commission's Experience on Vladimiro
Montesinos' Bank Accounts**

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BACKGROUND.

The discovery of million dollar bank accounts possessed by Vladimiro Montesinos – former advisor to the now fugitive ex president of Peru, Alberto Fujimori – poses two questions: how did this criminal political duo accumulate so much power and money and why was this phenomenon not investigated sooner? The answers to these questions will not only permit us to discover the background and the context under which all of this took place but will also allow us to identify the principal external players that support the parliamentary investigation which began last year: the independent press and the civil society as manifested within civic organizations.

Under this context we must point out that during Alberto Fujimori's regime the legislative power was dominated by an executive-controlled parliamentary majority. At the same time, the Judiciary and Public Ministry were controlled by the Executive and used as political instruments to persecute the government's opponents. Additionally, the Armed Forces were led by a corrupt few that promoted the violation of human rights.

During this time, the independent media was one of the few to reveal acts of corruption and crimes against fundamental rights within the government. We must also highlight the role played by the parliamentary opposition in Peru during the regime of authoritarianism and concealment, as it was this very opposition that demanded the formation of investigative commissions through legislative motions. These motions, however, were not admitted to debate, thus frustrating any type of official investigation.

Between 1995 and 2000, no less than 200 investigation proposals were rejected. The “cover up policy” of the executive’s parliamentary majority was evident and has been recorded in pioneer publications such as the book: “Montesinos’ Parliamentary Seats: Testimonies of an Unconditional Surrender,” written by the Peruvian journalist Guillermo González Arica.

In the year 2000 Fujimori was unconstitutionally elected President of the Republic for the third time, the result of elections widely considered to be fraudulent. Social protest began immediately, reaching its peak with the March of the Four Suyos, led by current Peruvian President Alejandro Toledo, that took place the very day that Alberto Fujimori was being sworn in as President. Local and international discrediting of the self-imposed regime advanced rapidly. In the middle of this grave political crisis, a videotape appeared that showed Vladimiro Montesinos bribing an opposition congressman with the purpose of allowing the government to obtain a majority parliamentary position. This videotape served as proof of

the presidential advisor's participation in acts of corruption and therefore hastened Fujimori's fall.

All of this occurred under a Congress that had been formed on the basis of blackmail and the purchase of legislators' consciences, individuals who betrayed their commitment to their voters, as demonstrated in the revealing videotape. However, from the moment that the political scandal became public, the government's coalition began to crumble. Following a decade of impunity, this, together with social pressure and citizen vigilance, allowed the formation of a first investigative commission on Vladimiro Montesinos' and Alberto Fujimori's involvement in the corruption of Peru's Parliament.

THE INVESTIGATIVE COMMISSION

We have started our exposition briefly highlighting the investigative commission on Montesinos' background. It is necessary, however, to define what we mean by investigative commission.

According to doctrine, an investigative commission is defined as a collective organism subjected to the will of the legislature and dependent upon its judgment. The essence of an investigative commission lies in its ability to request the presence of people foreign to the legislature itself. These individuals are destined to give evidence regarding certain events of public interest or even personal situations, supported by the requirement of testimony and documents, the use of public hearings, the gathering and detailed examination of documents, visual inspections and others.¹ The

Commission's optimum functioning depends on the powers conceded to it.

In Peru's case, the Rules of Congress state that this Power of the State has two principal functions: legislative power and political control. In the latter, we locate the Investigative Commissions.

These commissions are defined under the Peruvian Code of Law as charged with the study, investigation and judgment of all matters submitted to it, in application of the 97th Article of the Political Constitution of Peru.

Article 97. Congress can initiate investigations on any matter of public interest. It is obligatory to appear, if so required, in front of the commissions in charge of such investigations, under the same decree followed in judicial proceedings.

In order to carry out their duties, said commissions can access any and all information, including the lifting of bank secrecy and tax return confidentiality; with the exception of information that affects personal intimacy. Commission conclusions are not compulsory with jurisdictional agents.

Article 35. Investigative Commissions; in charge of the study, investigation and judgment of all matters submitted to them in application of the 97th Article of the Political Constitution. These commissions have the rights and

limitations pointed out in said constitutional norm and current Regulations.

Although according to doctrine there is no consensus as to where to locate investigative commissions within the functions of parliament, the Peruvian judicial system has placed them within the political control area.²

As we have seen previously, one of the legal rights that investigative commissions possess permits access to any and all information unless it affects personal intimacy, and that appearance before these commissions, when requested, is compulsory. For this reason, we do not include in our presentation those who were required by the commission to attend, but instead only those external actors who voluntarily cooperated with said commission.

PRINCIPAL EXTERNAL ACTORS THAT SUPPORTED THE COMMISSION'S WORK.

Due to methodological reasons we have divided the external actors that supported the work of the Commission into state and non-state actors.

I. STATE ACTORS

-MINISTRY OF THE INTERIOR

Appointed two members of the National Police to support the Commission's work, mainly in investigative tasks.

-BANKING AND INSURANCE INDUSTRY SUPERINTENDENCE-SBS

This institution appointed various specialists in bank account analysis who helped in the investigation of these issues.

II. NON-STATE ACTORS

1. THE ROLE OF THE INDEPENDENT PRESS

The media not only helped reveal corruption in Fujimori's regime, but, once the Commission began working, maintained a very close relationship with said commission. The media's investigators provided us with "raw material" that aided the Commission in its work, while sharing public information on the investigations that were carried out in parallel fashion, thus allowing for a climate of joint feedback.

The press also offered public opinion an independent and transparent picture of the Commission's work. Therefore, we can conclude that the press had an important role as an external support for the investigative commission.

2. FEDERAL BUREAU OF INVESTIGATION-FBI

The Commission was also supported by a team from the FBI, institution that mainly cooperated with the Commission in the investigation of the bank accounts that Vladimiro Montesinos' corruption network had established abroad.

3. CITIZEN PARTICIPATION

-CITIZEN TELEPHONE HOTLINE

The investigative Commission set up a free telephone hotline for citizens, enabling it to receive information linked to Vladimiro Montesinos' alleged participation in illicit activities. During the first few months they received between 8 to 10 phone calls daily, allowing the Commission to discover some facts related to the former adviser.

The contents of the telephone complaints were handed over to the Congressmen who then decided the course each complaint should take.

-RECEPTION OF TESTIMONY

The Commission also received complaints from many people who offered information voluntarily, some of them in a reserved fashion to guarantee their personal security. In many instances, these individuals were military or police force members who offered helpful information to the Commission; however, other cases involved lower

rank employees who had information on Montesinos' corruption network.

The Commission has entered a new stage and now we can add to this list the National Security Archive, which is an NGO involved in the declassification of intelligence documents on Montesinos' corruption network currently in the hands of the United States Government.

BALANCE OF THE PARTICIPATION OF CIVIL SOCIETY IN SUPPORT OF THE COMMISSION

As stated in the background section of this report, we asked ourselves a few questions about how Montesinos was able to obtain million dollar bank accounts. Viewing the evolution of the roles of those external actors that supported the work of the Commission, we see that said support from non-state actors was mainly individual, given that Peruvian civil society is disorganized. Examples of this can be found in the disintegration of political parties and unions. This is why it was not difficult for Fujimori's government to terminate the rule of law. If we now wish to rebuild it, civil society must play a very important role in this task.

LESSONS DRAWN FROM THE INVESTIGATION OF MONTESINOS' CASE

These are the lessons following the investigation of the Montesinos case:

1. The former president of Peru, Alberto Fujimori, and his adviser, Vladimiro Montesinos, established an unlawful political system based on impunity. There are two sides to this coin: one embodies corruption, and the other the violation of human rights.
2. Vladimiro Montesinos, together with Alberto Fujimori, was able to organize a huge corruption network that transversely crossed the entire Peruvian state. One of the key events, which granted Montesinos this power, took place after Alberto Fujimori's coup d'état on the 5th of April 1992. It was then that Montesinos was able to make the National Intelligence Service – entity which he dominated – into the governing organism of the National Intelligence System, through which flowed and in which was concentrated the largest amount of information available from the different sectors of the Peruvian government. Using as excuses the fight against terrorism, drug trafficking as well as national security and defense necessities, Montesinos manipulated this information for personal interests to subjugate and co-opt bureaucrats from different levels to his plans and his configuration of diverse illicit activities.
3. Following the coup of April 5, 1992, Alberto Fujimori's concentration of political power, together with Vladimiro Montesinos and military institutions, confirm the fact that the authoritarian government of the past ten years coined the development of a social and political anomaly where the only

element institutionalized was corruption in diverse sectors of the State apparatus, the public sector and private activities. As an example we can use the fact that Alberto Fujimori and Vladimiro Montesinos, together with their partners in corruption and the misuse of public resources, created a fund destined to pay for and “kidnap” editorial columns and various sources of social communication. Along this line of action, which violated the fundamental norms of a country, we must mention the State’s financing of paramilitary groups created from the Intelligence Service.

4. If the elements related to drug trafficking activities and money laundering, initiated by the parliamentary investigation are confirmed, we will be faced with the fact that Alberto Fujimori’s regime might have placed Perú in a Narco State category, providing as such structured support networks for drug traffic organizations at a local and international level. It now seems a paradox that Montesinos was precisely, for the official ends of the government, an adviser on security issues and in the fight against drug trafficking.
5. This case, which will be recorded in Peruvian history, indicates that all public acts carried out in the sphere of government, as well as the resources used to execute them, must be of public domain and knowledge. It is necessary that the Public Sector be governed by a legal framework of transparency and real access to public information by citizens and public opinion. This is the first natural control space of the actions of public administration. Taxpayers, in other

words all Peruvians, have the right to know – without secret norms- the way and in which their taxes are spent.

6. It is necessary that the State contribute in aiding civil society to organize itself so that it can be an effective mechanism of control of State powers.
7. It is important that parliament investigate all public interest acts because this will allow us to find the causes of these acts and prepare mechanisms to avoid recurrences in the future.
8. The work of the independent press constitutes an important aid to the Investigative Commission's work given that it not only provides information but also informs public opinion about the Commission's work.

CHALLENGES SET FORTH BY THE PARLIAMENTARY INVESTIGATION

1. Stimulate the creation of efficient fulfillment mechanism for the American Convention Against Corruption in our search to establish a clear and joint task by the OAS member countries in their efforts to moralize the region's governments.
2. Promote the necessary legislative changes in the laws that regulate the banking system in developed countries, countries in which we were able to corroborate that the Peruvian corruption network had deposited dirty money.

3. Recommend to international NGOs like International Transparency, which organizes this event, to include the private sector in their investigations or measurements of corruption levels in all countries around the world, given that in the Latin-American context, and particularly the Peruvian case, the private sector has proven a regrettable accomplice to widespread corruption.
4. Establish a strategic alliance between parliament members and social organizations in developed countries and those of developing countries in order to facilitate the effective repatriation of funds linked to corruption that have been detected in international accounts. Once the funds have been repatriated, promote that their use in public administration be oriented towards investment in social and human development.
5. Begin an international democratic campaign to dismantle the wall of impunity behind which Japan protects a former president like Alberto Fujimori who must answer to justice on acts of corruption and crimes against humanity.