

Peru: A Milestone in the Struggle for Justice

Fujimori is sentenced to 25 years in prison for crimes against humanity

By Gabriella Citroni



From 1980 to 2000, Peru was ravaged by a bloody internal armed conflict whose principal actors were on the one hand the two guerrilla movements known as Shining Path (*Sendero Luminoso*) and *Movimiento Revolucionario Tupac Amaru (MRTA)* and, on the other, the Peruvian government, backed by self-defense groups of peasants (*rondas campesinas*) and paramilitary groups created by the intelligence service, such as the notorious *Grupo Colina* and *Comando Rodrigo Franco*.

The conflict left a heinous balance of more than 69,000 people killed (79% of whom were peasants living in remote areas of the Andes, of indigenous origin and *quechua* mother tongue); 18,000 victims of enforced disappearance; 500,000 internally displaced people; the genocide of the *Asháninkas* indigenous ethnic group; more than 7,000 cases of torture and rape; about 4,000 people arbitrarily detained; 6,000 children forcibly recruited; and 4,600 common graves.

On 28 July 1990, Alberto Fujimori was elected president of Peru. Since his election, he based his fight against *Sendero Luminoso* and *MRTA* on the widespread use of intelligence agencies. Serious human rights abuses had been perpetrated even before Fujimori's presidency. However, after his election, there was an increase in the number of grave human rights violations committed. Further, on 5 April 1992, under the pretext that it was too slow to pass an anti-terrorism legislation, Fujimori dissolved the Congress of Peru and abolished the Constitution. He adopted a severe anti-terrorism legislation and set up military courts where those who were suspected of being terrorists were tried by judges "*sin rostro*" (whose faces were covered in order for them not to be identified) in the absence of any judicial guarantee.

Abimael Guzmán, the founder and leader of *Sendero Luminoso*, was captured by Peruvian police in 1992. He is currently in prison, facing a number of charges, including murder and terrorism. In 2006, together with other 11 prominent members of *Sendero Luminoso*, Abimael Guzmán was sentenced to life-imprisonment for the massacre of 63 people committed in 1983. The ranks of *MRTA* were decimated. One of its leaders (Víctor Polay Campos) was arrested in 1992 and is currently serving a 35-year sentence in prison, while the other leader (Néstor Cerpa Cartolini) was arbitrarily executed in 1997 by members of Peruvian armed forces.

In 2000, Vladimiro *Montesinos* Torres, the personal assistant of Alberto Fujimori, who acted as *de facto* head of intelligence services under Fujimori's government, was accused of bribery of a congressman. This generated a scandal, after which both *Montesinos* and Fujimori fled the country.

Montesinos was later found in Venezuela and extradited to Peru. At present, he is in a maximum security prison facing various charges which range from drug trafficking to murder and he is serving a 35-year sentence for corruption and illegal arms deal.

The *Barrios Altos* Massacre

On 3 November 1991, at approximately 11.30 p.m., 6 heavily-armed men burst into a popular building located in the neighborhood known as *Barrios Altos* in Lima, the capital of Peru. When the eruption occurred, a party to collect funds in order to restore the building was being held. The assailants covered their faces and obliged the people present at the party to lie on the floor, after which, they fired indiscriminately for about 2 minutes, killing 15 people (including an 8-year old boy) and seriously injuring another 4. The assailants fled with the same speed with which they had arrived.



Judicial investigations and newspaper reports revealed that those involved in the massacre worked for military intelligence and were members of the death squad known as *Grupo Colina*. Purportedly, the operation was carried out in reprisal against alleged members of *Sendero Luminoso* who may have been residing in the *Barrios Altos* area.

In December 1991, the Peruvian Senate set up an Investigation Committee to clarify the events and to establish responsibilities. However, the Senatorial Committee did not complete its investigation, because in April 1992, Fujimori dissolved the Congress and the investigation begun was neither resumed nor were the preliminary findings of the Senatorial Committee disclosed.

Although the events occurred in 1991, judicial authorities did not commence a serious investigation of the incident until April 1995, when 5 army officials – members of the *Grupo Colina* – were accused of being responsible for the massacre. Military courts claimed jurisdiction in the case,

alleging that it related to military officers on active service. Before a decision could be taken on the matter of competence, on 14 June 1995, the Congress of Peru adopted Amnesty Law No. 26479, which exonerated members of the army, police force and also civilians who had violated human rights or taken part in such violations from 1980 to 1995 from responsibility. The effect of this law was to determine that the judicial investigations were definitively quashed and thus, prevented the perpetrators of the massacre from being found criminally responsible. The few convictions of members of the security forces for human rights violations were immediately annulled. On 28 June 1995, the Congress of Peru adopted a second self-amnesty provision (Law No. 26492) whose effect was to prevent judges from determining the legality or applicability of the first self-amnesty law. Further, the second self-amnesty law expanded the scope of the first one, granting a general amnesty to all military, police or civilian officials who might be the subject of indictments for human rights violations committed between 1980 and 1995, even though they had not been formally charged.

The enactment of these 2 self-amnesty laws granted impunity, among others, to those responsible for the *Barrios Altos* massacre.

***La Cantuta*: Disappearances and Extrajudicial Executions**

On 18 July 1992, at dawn, a group of soldiers of the Peruvian army together with members of the *Grupo Colina* burst in on the campus of the university *La Cantuta* and abducted 9 students and 1 professor. Allegedly, they were searching for terrorists hiding on the university campus. The relatives of the 10 disappeared people filed several *habeas corpus* writs and denounced the events to different authorities. However, no remedy proved to be effective and the highest authorities of the army denied that any operation had been ever carried out at *La Cantuta*. Almost 1 year after the disappearance of the 10 people, 2 common graves were located. Exhumations led to the identification of 2 of the 10 victims. Although other mortal remains and objects belonging to the other disappeared people were found at the site, no exhumation or process of identification was ever carried out. Accordingly, 8 people remain disappeared to date, as their bodies have not been located, exhumed, identified and returned to their relatives.

In 1994, 8 people were found guilty of homicide by a military tribunal (the same 8 people had been charged also for the *Barrios Altos* massacre). The relatives were not granted access to the proceedings. No one was investigated or charged with intellectual responsibility for the crime. As already mentioned, in 1995 the 2 self-amnesty laws were adopted: this determined that all those who were awaiting trial in the *La Cantuta* case were immediately relieved of their charges and those who were already serving their sentences were freed. It was only in 2001, after the fall of Fujimori's regime that the Peruvian Supreme Court declared the inapplicability of the amnesty laws and that domestic proceedings on the events could be resumed.

The Truth and Reconciliation Commission

After Fujimori fled the country, the transitional government led by President Valentín Paniagua Morales decided to set up a Truth and Reconciliation Commission (*Comisión de Verdad y Reconciliación*, CVR). The CVR was established by decree on 2 June 2001 and mandated to investigate and elucidate gross violations of international human rights and humanitarian law committed during the conflict. The CVR was composed of 12 members (all Peruvian nationals, pertaining to different sectors of the society). On 28 August 2003, the CVR released a final report 1, which contains findings regarding thousands of abuses, including arbitrary killings; massacres;

enforced disappearances; torture and other acts of inhumane and degrading treatment; rape and sexual violations; violations against indigenous communities; violations against children; forced recruitment; forced displacement and kidnappings. The CVR attempted to ascribe responsibility to the different perpetrators concerned, maintaining that all victims were entitled to receive reparations for the violations suffered, aside from the identity of the perpetrators or their family relationships.

In its final report, the CVR provided a general overview of the root causes of the Peruvian conflict and of its peculiar features and afterwards analyzed in depth 73 cases of outstanding human rights violations or crimes committed by all actors involved in the conflict. The CVR conducted investigations over those cases, collected evidences and examined witnesses. Accordingly, it referred the 73 cases to the Public Prosecutor, calling for the criminal indictment of those involved. The Peruvian Ombudsman (*Defensoría del Pueblo*) was charged with the monitoring of the implementation of such recommendations.

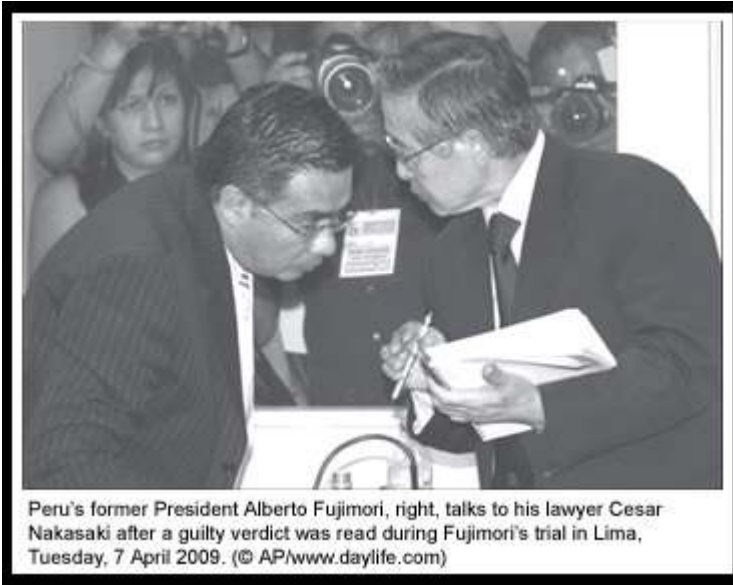
Barrios Altos and *La Cantuta* were among the 73 cases investigated by the CVR 2. Regarding *Barrios Altos*, the CVR affirmed that members of the *Grupo Colina* were responsible for the massacre and that they were acting with the authorization and under the direction of the highest Peruvian authorities. The CVR found that the same people were responsible also for *La Cantuta* case. In both cases, the CVR recommended to Peruvian judicial authorities to resume the proceedings against those allegedly responsible (including those who ordered, solicited or induced the commission of the crimes).

The CVR attached to its final report some general conclusions 3, where it summarized its findings and recommendations. Limiting the analysis to the conclusions concerning Fujimori's responsibilities, the CVR found that he always acted in open disregard of democracy and, in particular, after the *coup* of 5 April 1992, he intentionally determined the collapse of the rule of law. Since then, Fujimori adopted a counter-insurgency strategy based on the use of the intelligence, aiming at selectively eliminating those suspected of being terrorists. The CVR held that it had gathered sufficient evidence to affirm that Fujimori, *Montesinos* and high rank officials of the intelligence services were "criminally responsible for the killings, massacres and enforced disappearances perpetrated by members of the death squad, *Grupo Colina*". 4

Although devoid of any judicial power, this finding of the CVR was a first blow against Fujimori and represents one of the pillars on which domestic judicial proceedings have subsequently been based.

The Judgments of the Inter-American Court of Human Rights on the Cases *Barrios Altos* and *La Cantuta*

The judgments on Peruvian cases rendered by the Inter-American Court of Human Rights before and after the experience of the CVR have proven to be of crucial importance in the struggle for justice in Peru.



The application concerning Barrios Altos massacre was submitted to the Court while Fujimori was still in power and he pretended to withdraw the acknowledgement of the competence of the Court to escape international scrutiny. Such withdrawal was rejected by the Inter-American Court. While the case was pending before the latter, Fujimori fled the country. The transitional government declared null the attempt of withdrawal of the competence of the Court and recognized its international responsibility for the violation of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to fair trial), 25 (judicial protection) in

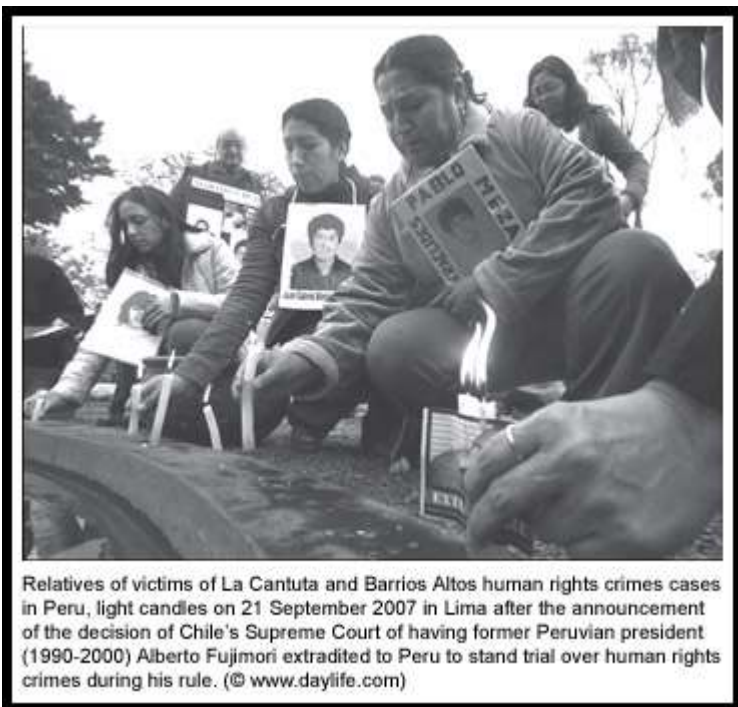
conjunction with Article 1.1 (obligation to respect rights) of the American Convention on Human Rights. On 14 March 2001, the Inter- American Court rendered a landmark judgment, accepting the acknowledgement of international responsibility and, at the same time, affirming a key principle in the struggle against impunity.⁵ Referring to the enactment of the 2 self-amnesty laws, the Court considered that:

“[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.”⁶

“[...] Self-amnesty laws lead to the defencelessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the Convention. This type of law precludes the identification of the individuals who are responsible for human rights violations, because it obstructs the investigation and access to justice and prevents the victims and their next of kin from knowing the truth and receiving the corresponding reparation.”⁷

“Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated.”⁸

Exceptionally, the judgment of the Inter-American Court was considered to be directly applicable at domestic level and determined the loss of effects of the 2 self-amnesty laws, allowing the resumption of criminal proceedings for violations perpetrated during the conflict. The Court awarded measures of reparation including pecuniary compensation, free medical and psychological rehabilitation and scholarships. It also ordered the establishment of a memorial monument to honor the victims and the organization of a public event where the highest authorities of the State were to offer their apologies and to acknowledge international responsibility of the State.



Relatives of victims of La Cantuta and Barrios Altos human rights crimes cases in Peru, light candles on 21 September 2007 in Lima after the announcement of the decision of Chile's Supreme Court of having former Peruvian president (1990-2000) Alberto Fujimori extradited to Peru to stand trial over human rights crimes during his rule. (© www.daylife.com)

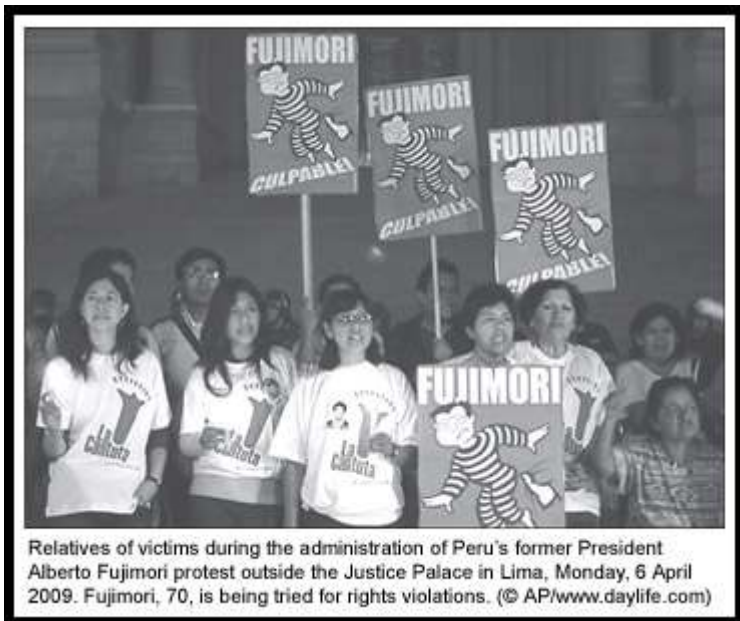
On 29 November 2006, the Inter-American Court rendered a judgment on *La Cantuta* case which was based to a large extent on the findings of the CVR.⁹ The representatives of Peru partially acknowledged the international responsibility of the State for the violation of Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment, with regards to the material victims of the case), 7 (right to personal liberty) in conjunction with Article 1.1 (obligation to respect rights) of the American Convention. The Court deemed it appropriate to further clarify certain aspects of the case. First, it found that Article 5 of the Convention had been violated not only with regards to the direct victims of the case but also to their relatives, whose mental and moral

integrity were impaired as a direct consequence of the events. The Court found also a violation of Articles 8 (right to a fair trial) and 25 (right to judicial protection) in connection with Article 1.1 of the Convention. It declared that the proceedings before the military jurisdiction did not respect the international standards of the fair trial and that the application of the 2 self-amnesty laws to the case was contrary to the American Convention and, in particular, amounted to a violation of Article 2 (domestic legal effects) of the American Convention. While expressing appreciation for the resuming of trials before ordinary courts on the case of *La Cantuta* in 2001, the Court found that Peru had exceeded any reasonable delay. The Court pointed out that the facts of *La Cantuta* were to be seen as part of a systematic practice of enforced disappearances and extra-judiciary executions perpetrated by State agents and paramilitary groups. This amounted to a crime against humanity and a gross violation of *ius cogens*.

It is worth noting that, while the Inter-American Court was rendering its judgment over the case of *La Cantuta*, Fujimori had already been arrested and was awaiting a decision concerning his extradition.¹⁰ The Court referred to such issue, noting that:

“[...] States have the duty to investigate human rights violations and to prosecute and punish those responsible. In view of the nature and seriousness of the events, all the more since the context of this case is one of systematic violation of human rights, the need to eradicate impunity reveals itself to the international community as a duty of cooperation among states for such purpose. Access to justice constitutes a peremptory norm of International Law and, as such, it gives rise to the States’ erga omnes obligation to adopt all such measures as are necessary to prevent such violations from going unpunished, whether exercising their judicial power to apply their domestic law and International Law to judge and eventually punish those responsible for such events, or collaborating with other States aiming in that direction. [...]”¹¹

The considerations expressed by the Inter-American Court constitute an important reference regarding the obligation of States to judge or extradite people accused of grave human rights violations who are in the territory under their jurisdiction.



The Court ordered Peru to investigate, judge and sanction those found to be responsible for the violations, to pay pecuniary compensation to the relatives of the victims, to carry out the exhumations and to identify and deliver to the relatives of the eight disappeared people their mortal remains, to issue an apology in a public ceremony and to honor the memory of the victims, to provide free medical and psychological treatment to the relatives of the victims, to publish relevant abstracts of the judgment in the official gazette of the country and to establish a program of education on human rights and international humanitarian law for public officials.

The Trial of Alberto Fujimori

In 2001, Fujimori was charged with corruption and crimes against humanity and he was banned from holding public offices in Peru until 2010. On 7 November 2005, he left Japan and travelled to Chile, where he was arrested. Peru immediately lodged an extradition request, which was initially rejected and then accepted on appeal by the Chilean Supreme Court. In September 2007, Fujimori was extradited to Peru and his trial begun on 10 December 2007 before a 3-judge panel of the Peruvian Supreme Court (*Sala Penal Especial de la Corte Suprema*). Regarding human rights abuses, Fujimori was accused for Barrios Altos massacre and *La Cantuta* case, as it was alleged that the *Grupo Colina* death squad was under his direct command. Further, Fujimori was charged with ordering the illegal detention and interrogation of a prominent journalist, Gustavo Gorriti, and businessman Samuel Dyer, also in 1992. Since the beginning of the trial, Fujimori rejected entirely the charges and claimed to be innocent.

On 7 April 2009, the Chamber of the Peruvian Supreme Court delivered an extremely detailed judgment¹³ where Fujimori was found guilty of command responsibility (*autoría mediata*) for aggravated murder of 25 people, serious bodily harm and kidnapping.¹⁴ Given that the offenses were materially perpetrated by intelligence officers that operated in the *Grupo Colina*, and that they were committed in the context of a widespread practice, they were qualified as crimes against humanity. In its judgment, the Court collected a significant number of testimonies and the findings of the CVR as well as the judgments of the Inter-American Court were taken as evidences.

The Court meticulously reconstructed the origin of the *Grupo Colina*, which was set up in August 1991 and operated until the end of 1992. It was composed of high-ranking intelligence officials (some of whom appointed by Fujimori), who responded directly to *Montesinos*, whom, in his turn, responded exclusively to Fujimori, meeting with him daily and reporting to him about all details of intelligence operations. The constitution of *Grupo Colina* must be contextualized in the overall counter-insurgent strategy conceived by Fujimori (who, as a president, was also the commander-in-chief of the army and the absolute head of the intelligence services): he consciously decided to abandon the rule of law and to selectively annihilate those deemed to be members of *Sendero Luminoso* and *MRTA* instead of regularly arresting and giving them a fair trial. In fact, *Grupo*

Colina's mission was not to arrest suspected terrorists: the squad was meant to physically eliminate pre-selected targets, by means of arbitrary killings, enforced disappearances and massacres.

Fujimori planned such strategy of systematic human rights violations, authorized it and, once public opinion called for the clarification of the events, adopted all measures to grant impunity (through, for instance, the use of military tribunals and the enactment of the self-amnesty laws) to *Montesinos* and the members of *Grupo Colina*.¹⁵ As mentioned, Fujimori was constantly informed by *Montesinos* on the development of his ruthless intelligence strategy and, in particular, he knew all details concerning Barrios Altos and *La Cantuta* operations.

Of particular interest is the fact that the Peruvian judges agreed with the prosecutor in saying that Fujimori was responsible for the crimes as “*autor mediato*” and not as a principal or an instigator or an accomplice. This means that he bears primary active criminal responsibility, as a perpetrator who has acted through an intermediary and not as a superior whom, by omission, has failed to prevent the commission of crimes perpetrated by his subordinates. According to the judgment, the “*autor mediato*” actually commits a crime through another person, taking advantage of his position over his subordinates in the context of an organized power machinery. Fujimori was the apex of such organized power machinery and those who materially perpetrated the crimes were mere executors, who, in fact, were interchangeable (to Fujimori, it did not matter who committed the act of killing or forcibly disappearing his targets as long as the action was “successfully” finalized). Further, executors were not necessarily aware of the overall strategy of all details of the operations.

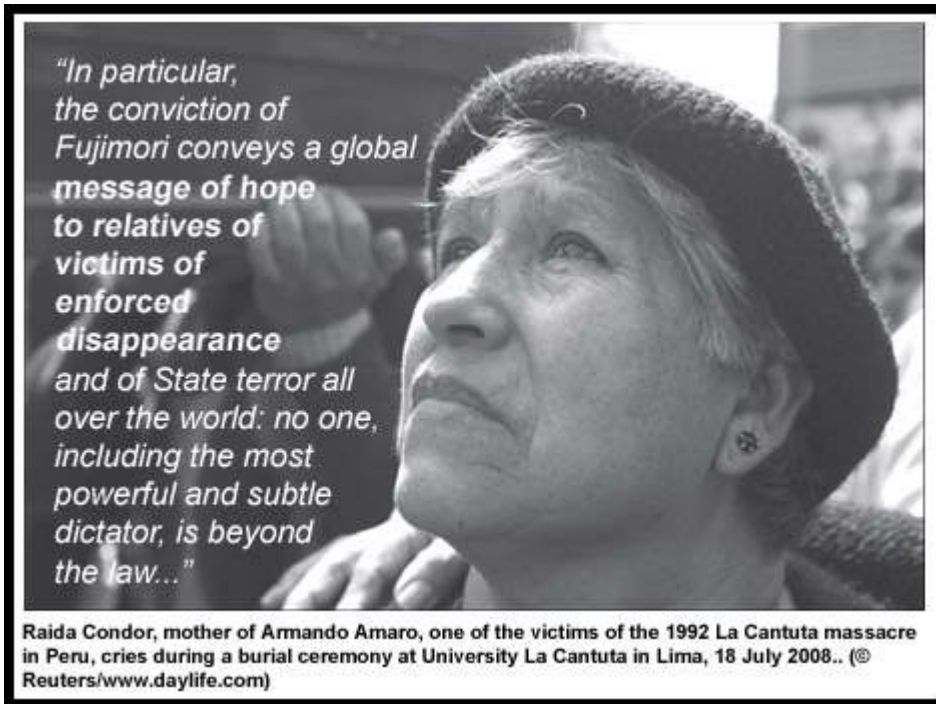
In order to reach such conclusions, the judges of the Supreme Court had to be persuaded that:

- such organized power machinery existed and Fujimori was at the top of it;
- Fujimori exercised absolute command over the said organized power machinery;
- the organized power machinery was placed and acted outside the control of the law;
- Fujimori could “use” different interchangeable material executors to serve his purposes; and
- Material executors were highly likely and fully available to commit the “necessary” crimes.

In the view of the jury, the testimony and documentary evidence presented corroborated all mentioned requirements and Fujimori was sentenced to 25 years in prison (until 10 February 2032, when he would be almost 95-year old) and to the payment of pecuniary compensation to cover damages caused to the victims and their relatives.

Another aspect of the judgment which vests great importance to honor of the victims and to restore their dignity and that caused genuine satisfaction among civil society and relatives of the victims, is that the judges officially declared that it had been established beyond reasonable doubt that none of the 29 people disappeared, killed, kidnapped or seriously harmed in the events under scrutiny was in any way related to the activities of *Sendero Luminoso* nor a member of the latter. After more than 17 years of infamous hints, the memory of 29 people was finally honored and truth re-established to the advantage of their relatives and of society as a whole.

Fujimori's representatives appealed the judgment, claiming for its annulment. The First Transient Criminal Chamber of the Supreme Court is in charge of handling the appeal and has a 4-month term to deliver its verdict.



Conclusions

The judgment sentencing Alberto Fujimori to 25 years in prison represents a historical victory of justice over impunity and it is highly instructive precisely because it has been flawlessly conducted by a domestic court. This shows that international tribunals must be considered a complementary support (in particular, international mechanisms of protection of human rights) and a last resort (international criminal tribunals) to combat injustice. The fact that a former dictator is judged by his country's own judicial system concretely reaffirms the primacy of law and brings cleansing and educational effects. All the more so when also the other prominent figures of all the parties to the conflict (with the notable exception of one of the leaders of *MRTA* that was arbitrarily executed by the army) have been captured, judged and sanctioned by means of domestic fair trials.

Indeed, the cogent conclusions reached by the 3-judge jury that condemned Fujimori come as a result of a long struggle and they are based on a number of other initiatives of domestic, international and transitional justice. In this case there has been a virtuous interaction among these different levels, which has led to the carrying out of a fair trial in its most appropriate venue and has also set a number of fundamental references:

- military tribunals are competent only over offenses of a military nature, committed by military personnel and can never judge over alleged gross human rights violations;
- people accused of grave human rights violations cannot benefit from amnesties or similar measures; and
- a State in the territory under whose jurisdiction a person alleged to have committed gross human rights violations is found, shall extradite or surrender that person or submit the case to its competent authorities for the purpose of prosecution.

In particular, the conviction of Fujimori conveys a global message of hope to relatives of victims of enforced disappearance and of State terror all over the world: no one, including the most powerful

and subtle dictator, is beyond the law. Civil society and the legal system are watching and are calling for ineluctable answers.

No matter how long this may take, truth must be disclosed, justice served and memory restored and preserved.

End notes:

1 For information on the CVR and the integral version of the final report (in Spanish), see <http://www.cverdad.org.pe/>.

2 See Final Report of the CVR, Lima, 2003, Tome VII, sections 2.22 (*La Cantuta*) and 2.45 (Barrios Altos).

3 The conclusions formulated by the CVR can be found, in the Spanish version at <http://www.cverdad.org.pe/ifinal/conclusiones.php>. For the findings concerning Fujimori, see paras.98-104.

4 *Ibid.*, para. 100.

5 Inter-American Court of Human Rights (IACHR), Case Chumbipuma Aguirre and others (Barrios Altos) v. Peru, judgment of 14 March 2001, Ser. C No. 75.

6 *Ibid.*, para. 41.

7 *Ibid.*, para. 43.

8 *Ibid.*, para. 44.

9 IACHR, Case *La Cantuta* v. Peru, judgment of 29 November 2006, Ser. C. No. 162.

10 *Infra*, para. 4

11 IACHR, Case *La Cantuta*, *supra* note 9, para. 160.

12 It is worth noting that 24 alleged members or accomplices of *Grupo Colina* have been arrested and are currently under trial. 13 have already been convicted for slaughter.

13 The integral version of the judgment, in Spanish, can be found at: <http://www.gacetajuridica.com.pe/noticias/sentencia-fujimori.php>.

14 Although the Court referred to “enforced disappearances” committed by *Grupo Colina* all through the text of the judgment, it did not find Fujimori guilty of such crime as, when the events took place, enforced disappearance was not codified as an autonomous offense under Peruvian criminal code.

15 The kidnappings of Gustavo Gorriti and Samuel Dyer were carried out as a part of the mentioned systematic practice as both were considered “troublesome” by Fujimori who, accordingly, ordered their abduction and their interrogation in the basements of the headquarters of the Military

Intelligence Service by members of the *Grupo Colina*. Both Gorriti and Dyer testified at the trial against Fujimori.



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