

The Challenge of Impunity in Peru: The Significance of the Inter-American Court of Human Rights

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Introduction

When asked to contribute to this special edition of the Essex Human Rights Review, to celebrate the 25th anniversary of the Human Rights Centre, I thought it important to look at the significance of the Inter-American System of Human Rights (IASHR) on States Members of the Organisation of American States (OAS), in one of those areas where the system is recognised for its special contribution to the development of international human rights law: gross human rights violations. This year is the 20th anniversary of the groundbreaking decision on the merits of the *Velásquez Rodríguez* case.¹ For that reason it is worth taking this opportunity to look back at some of the achievements in the fight against impunity for gross human rights violations.

As the role played by the IASHR in the fight against impunity has been uneven across the Americas,² I will concentrate on the specific role of the Inter-American Court (IACtHR or Court) in Peru, and in particular on the role it played in bringing Alberto Fujimori to justice. Fujimori is the first former head of state to have been extradited to his home country to face justice for, among others, two cases of gross human rights violations: *Barrios Altos* and *La Cantuta*.³

During the period 1980-2000 Peru was ruled by three presidents: Fernando Belaunde (1980-1985), Alan Garcia (1985-1990, and current president of Peru), and

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¹ The case concerns the disappearance of Manfredo Velásquez Rodríguez in Honduras as part of a systematic practice carried out by the State. IACtHR, *Velásquez Rodríguez*, judgment on the merits, 29 Jul. 1988.

² Certainly, the IASHR has not had the impact expected in countries like El Salvador and Uruguay, both of which enacted amnesty laws to avoid investigation, prosecution and punishment of those involved in the perpetration of gross human rights violations. See, B. Cuéllar, 'El Salvador' in Due Process of Law Foundation (ed.), *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, (Washington: Due Process of Law Foundation, 2007) 33-70.

³ IACtHR, *Barrios Altos*, judgment on the merits, 14 Mar. 2001; *La Cantuta*, judgment on the merits, 29 Nov. 2006.

Alberto Fujimori (1990-2000). Although democratically elected, all three adopted authoritarian policies to fight Peru's internal armed conflict and to defeat two guerrilla groups, the Shining Path (*Sendero Luminoso*) and the Revolutionary Movement Tupac Amaru (MRTA). These bloody confrontations resulted in the deaths of approximately 69,280 persons, and also left behind innumerable surviving victims.⁴

Hopes for an end to Fujimori's authoritarianism were raised some months after his second re-election as President in 2000, when he and Vladimiro Montesinos were implicated in a serious corruption scandal. Montesinos was Fujimori's closest security adviser and *de facto* chief of the National Intelligence Service (SIN). Fujimori fled to Japan as his arrest was imminent. From Japan he faxed his resignation to congress and applied for Japanese citizenship to avoid extradition. The Peruvian congress declared him morally unfit for office. This scandal put an end to a decade of Fujimori's political power in Peru.

The interim President of Peru, Valentín Paniagua, and the newly democratically elected one, Alejandro Toledo, set the foundations for transitional justice in Peru. Those foundations included the establishment of a Truth and Reconciliation Commission (TRC); the prosecution of Montesinos, other members of the military and Fujimori for corruption related crimes and for serious human rights violations; and the re-trial of those who had been unfairly detained and condemned for the crime of terrorism or treason to the fatherland. Equally, Peru was committed to improving its relationship with the Organisation of American States (OAS), the Inter-American Commission on Human Rights (IACommHR, the Commission) and, more importantly, the IACtHR. In July 1999, due to several decisions taken by the IACtHR against Peru and its fight against terrorism, and some important ones that were pending - such as *Barrios Altos* - Peru had adopted a resolution authorising its unilateral withdrawal from the contentious jurisdiction of the Court.⁵ Thus one of the first things to be addressed during the transition was the re-establishment of the relationship between Peru and the OAS.

In Peru, as in any process of transitional justice, a variety of persons and institutions have played a role in seeking and achieving justice, peace, truth, reconciliation and reparations for past crimes. Among them, it is possible to distinguish between those that play a primary role as 'protagonists', such as the TRC, the Prosecutors Office or the Government of Peru, and those who, not being part of the day-to-day processes, complement the work carried out by those bodies/institutions and/or are able to produce lasting consequences for people working on the ground. These latter actors can be called 'participants'. This article is about the IACtHR, one of the participants in the process of transitional justice in Peru, and the significance of its judgments in *Barrios Altos* and *La Cantuta* to the fight against impunity in that country.

The article begins with a brief introduction to Fujimori's government, followed by an analysis of the role played by the IASHR, both Commission and Court, but primarily by the latter. This section also analyses the cases of *Barrios Altos* and *La Cantuta* and their relationship to the extradition of Fujimori and his prosecution in Peru. The article concludes with some remarks in relation to the decisive role that institutions such as the IACtHR, which are not acknowledged as protagonists of processes of transitional justice, can have in establishing their limits and possibilities and, more importantly, in seizing political opportunities to help in their development.

⁴ Peruvian Truth and Reconciliation Commission, 28 Aug. 2003, vol. 1, chap. 1, at 1.

⁵ IACommHR, *Second Report on the Situation of Human Rights in Peru*, 2 Jun. 2000, chapter III.c, available at: <http://www.cidh.oas.org/countryrep/Peru2000en/TOC.htm>

1. President Fujimori and the Human Rights Situation in Peru

At the time of Fujimori's presidency Peru had ratified several United Nations and OAS human rights treaties, accepting as a consequence a variety of international obligations. Peru ratified, for instance, the International Covenant on Civil and Political Rights (ICCPR) on 28 April 1978, the Convention against Torture (CAT) on 7 July 1988, the American Convention on Human Rights (ACHR) on 28 July 1978 and the American Convention to Prevent and Punish Torture (ACPPT) on 27 February 1990.

During the first few years of Fujimori's government, the 1979 Constitution was in force. That Constitution established, in Clause 16 of Title VII, that the ICCPR, the ACHR and the First Optional Protocol to the ICCPR were part of the Constitution of Peru,⁶ and Article 80 of that Constitution also established the duty of the state to guarantee the full enjoyment of human rights.⁷ After Fujimori's *coup d'état* in 1992, the 1993 Constitution was enacted. This constitution did not accord human rights the same status they had enjoyed under the 1979 Constitution, as it did not consider them part of the constitution. Nevertheless, it established that all articles of the Constitution relating to rights and liberties should be interpreted according to the Universal Declaration of Human Rights and the human rights treaties ratified by Peru.⁸

Despite the existence of this protective human rights legal framework, serious human rights violations began to take place in Peru well before Alberto Fujimori was elected President in 1990, and continued while he was in power. On arrival in office he reinforced the policies implemented to fight the armed conflict of his predecessors,⁹ and to gain full political control in Peru he closed the Congress on 5 April 1992, reorganized the judiciary and called for reform of the 1979 Constitution. Fujimori transformed the National Security System, increased the power of the SIN over the military forces, and facilitated the dirty work of death squads such as the famous Colina group.¹⁰

Fujimori enacted several decrees establishing a draconian system of law. For instance, the crime of terrorism was modified in several aspects: the minimum age of prosecution was reduced from 18 to 15 years old, it was to be punished with life imprisonment, it was to be prosecuted by faceless military tribunals,¹¹ and the length of criminal proceedings was severely reduced, thereby affecting the right to defence of the prosecuted person. Further, the independence and impartiality of judges was severely compromised. During the coup Fujimori removed the majority of Supreme Court judges, all of the judges of the Constitutional Court, the Public Prosecutor, and 134 other judges. Their replacements were appointed by the executive.¹² By the end of the 1990s almost 80 per cent of the judges in the country were provisional judges, meaning that they did not have security of tenure and could be removed from their jobs at any time.¹³

Repressive measures were reflected not only by the *coup d'état* and the newly established legal framework but, more importantly, by the gross and systematic human rights violations (such as arbitrary killings, disappearances, torture and massacres) that

⁶ Constitution of Peru (1979) <http://www.congreso.gob.pe/comisiones/1999/simplificacion/const/1979.htm>

⁷ Ibid.

⁸ Constitution of Peru (1993), 4 final clause, <http://www2.congreso.gob.pe/sicr/RelatAgenda/constitucion.nsf/constitucion?OpenView&Start=1&Count=30&Expand=7#7>

⁹ E. González, 'The Peruvian Truth and Reconciliation Commission and the Challenge of Impunity' in N. Roht-Arriaza and J. Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, (Cambridge: Cambridge University Press, 2006) 70-93 at 72.

¹⁰ TRC, n. 4 above, vol. III, chap. 2.3.

¹¹ TRC, *ibid.*, 2.3.6.2.

¹² IACommHR, *Second Report*, n. 5 above, chap. II, para. 11.

¹³ *Ibid.*

took place in Peru between 1989 and 1992, according to the IACtHR and the TRC.¹⁴ Indeed, some of the bloodiest cases brought before the IACtHR against Peru, such as *La Cantuta*,¹⁵ *Barrios Altos*¹⁶ and *Castro Castro Prison*,¹⁷ occurred during this period.¹⁸ After 1993, and due to international pressure, Peru was forced to change its human rights policy. The number of disappearances was reduced but new violations began to take place, including arbitrary detention, inhuman treatment and lack of due process of law.¹⁹

The Shining Path and the MRTA were equally authoritarian and cruel. According to the Peruvian TRC, the Shining Path is to be blamed for 53.68 per cent of the disappearances and arbitrary killings reported to it.²⁰ Such violence was felt in rural areas and in the main cities. Indeed, between 1989 and 1992, 907 attacks and threats took place in Lima, amounting to 47 per cent of the total attacks and threats that were reported in the country during that period.²¹ Fear that the Shining Path could seize power encouraged people to support Fujimori. Nevertheless, between June and September 1992, the two key leaders of the MRTA and the Shining Path, Victor Polay Campo and Abimael Guzmán respectively, were captured by the police. Their detentions marked the beginning of the end of these subversive movements. Yet, during the years to come, Fujimori maintained the idea that terrorism was being spread around the country.²²

1.1 Amnesty Laws and Impunity

In 1995, five members of the army were accused of the massacre of *Barrios Altos*, which took place on 3 November 1991.²³ One of the accused was Julio Salazar Monroe, Director of the SIN at the time of the events. The Prosecutor compelled the five accused persons to appear before the Court. They refused. So the Prosecutor filed charges against them before the Sixteenth Criminal Court of Lima. However, before ordinary criminal justice was able to proceed further, the military claimed jurisdiction over the case and asked the Supreme Court of Justice to adjudicate in the matter. Before that Court was able to make a decision as to which Court had jurisdiction, President Fujimori enacted Amnesty Law 26479, which exonerated from criminal responsibility any member of the military, the police, or a civilian who had taken part in a human rights violation between 1980 and 1995. This law entered into force on 15 June 1995, allowing convictions to be annulled and processes stopped.²⁴

The Judge of the Sixteenth Criminal Court of Lima declared the amnesty law in violation of the Constitution. Therefore, Fujimori enacted Amnesty Law 26492, establishing that the amnesty law could not be revised by any judge and that its implementation was compulsory. This latter law also extended the amnesty, stating that any person who fell into one of the categories established in Amnesty Law 26479 could not be prosecuted for human rights violations.²⁵ As a consequence, the proceedings in *Barrios Altos* and other cases were halted. After 1995, human rights violations and impunity continued. The military played a fundamental role in helping to avoid the prosecution of those said to be involved in serious human rights violations. It claimed

¹⁴ TRC, n. 4 above, vol. VI, chap. 1, and IACtHR, *La Cantuta v. Peru*, n. 3 above, para. 80.1 and 80.2.

¹⁵ *La Cantuta v. Peru*, *ibid.*

¹⁶ IACtHR, *Barrios Altos v. Peru*, n. 3 above.

¹⁷ IACtHR, *Castro Castro Prison*, judgment on the merits and reparations, 25 Nov. 2006.

¹⁸ See Appendix I for more information about cases decided by the IACtHR and their facts.

¹⁹ TRC, n. 4 above, vol III, chap. 2.3.6.2.

²⁰ TRC, n. 4 above, vol I, at 54.

²¹ *Ibid.*, vol III, at 2.3.7.

²² *Ibid.*

²³ IACtHR, *Barrios Altos v. Peru*, n. 3 above, at 2.g.

²⁴ *Ibid.*, para. 2i-2k.

²⁵ *Ibid.*, para. 2g-2n.

jurisdiction over many cases and most of the times considered that there was not sufficient evidence to incriminate persons in the crimes imputed.²⁶ On other occasions no investigations were conducted until after the fall of President Fujimori.²⁷

2. The Role of the IASHR

The IASHR has used its multifaceted functions to address the human rights situation in Peru, especially since Fujimori's rise to power. In fact, the IACommHR has helped to monitor the human rights situation in Peru and to investigate human rights violations in the country. Since Peru accepted the jurisdiction of the IACtHR on 21 January 1981, the Court has adjudicated in twenty-two cases where the international responsibility of Peru has been compromised. As a result of Peru's conduct, the Court has also rendered advisory opinions to clarify certain human rights obligations of States in the Americas under the ACHR.²⁸ The OAS has also been essential to the re-establishment of democracy in the country since the 1992 *coup d'état*.²⁹ The following sections provide a brief but detailed account of the role played by the Commission and the Court.

2.1 The IACommHR

Before 1988, the Commission dealt with the human rights situation in Peru in an incidental manner, as illustrated by its annual report 1979-1980.³⁰ This means, following Susana Villarán, that '...the Commission was not present during the years when the most egregious and massive human rights violations were committed.'³¹ Nevertheless, at the end of the 1980s the Commission began to receive many complaints against Peru related to gross human rights violations. As a result, between 1988 and 1991 the Commission adopted several reports on individual cases where it found that Peru had violated several rights of the ACHR in the fight against terrorism. In fact, the Commission adopted fourteen reports in 1988, two in 1989, and fifty-one between 1990 and 1991, all related to gross human rights violations.³²

This context prompted the Commission to visit the country in May 1989 and in September and October 1991. The Commission then published its first report on the human rights situation in Peru in 1993. Although the report does not acknowledge the existence of a general and systematic practice of gross human rights violations, it expresses serious concerns about the indiscriminate nature of violence and terror, affecting multiple rights of the ACHR.³³ The Commission published its second report on the human rights situation in Peru in 2000, after its visit to the country in 1998.³⁴

Due to the seriousness of the human rights situation, the Commission also included chapters on Peru in several of its annual reports to the General Assembly

²⁶ *La Cantuta*, n. 3 above, paras. 135-145.

²⁷ The case of *Castro Castro Prison* is illustrative in this sense. Here, investigations were initiated in 2005, 13 years after the events, n. 18 above, paras. 385-386.

²⁸ IACtHR, *Advisory Opinion 14/1994, International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention*, 9 Dec. 1994.

²⁹ IACommHR, *First Report on the Situation of Human Rights in Peru*, 12 Mar. 1993, chap. III.b. In this report the Commission explains the reaction of the Permanent Council and the Ad-hoc Meeting of Ministers of Foreign Affairs that was convened under Resolution 1080 of the General Assembly and the Santiago Commitment to Democracy in the region, as a result of the *coup d'état* in Peru.

³⁰ IACommHR, *Annual Report 1979-1980*, chap. IV.

³¹ S. Villarán, 'Peru' in Due Process of Law Foundation (ed.), *Victims Unsilenced*, n. 2 above, 95-126 at 97.

³² IACommHR, *Annual Report 1993*, chap. I.B.

³³ IACommHR, *First Report on the Situation of Human Rights in Peru*, chap. I, para. 28.

³⁴ IACommHR, *Second Report*, n. 5 above.

between the years 1992 and 2001.³⁵ All those reports contained important information in relation to the anti-terrorist measures adopted by Peru, and some illustrated human rights breaches with specific examples that later became cases before the IACtHR.

Despite the important information gathered by the Commission during more than a decade of work on Peru, it only addressed the systematic and general practice of gross human rights violations in reports on individual cases in the late 1990s.³⁶ For instance, in its report 51/99, the Commission decided to join five cases related to disappearances in Peru, as it considered that they all followed the same pattern of violations. The Commission stated that

...in the 1989-1993 period there existed in Peru a systematic and selective practice of forced disappearances, carried out by agents of, or at least tolerated by, the Peruvian State. That official practice of forced disappearances was part of the 'fight against subversion', although in many cases it harmed people who had nothing to do with the activities related to dissident groups.³⁷

Despite this late acknowledgment, the work of the IACCommHR became essential to the documentation of human rights violations in Peru, and to an understanding of their *modus operandi*. These records would later facilitate the work of the Court in a variety of cases.

2.2 The IACtHR

The majority of cases decided by the IACtHR in the exercise of its contentious jurisdiction have been against Peru. Between the years 1995 and 2007 a total of twenty-two cases have been decided, as illustrated in Appendix I. The majority of them, eleven in total, deal with disappearances, arbitrary killings, torture and massacres; six with arbitrary detention, unfair trial and inhuman treatment; and five with the unfair dismissal of justices of the Constitutional Court, the deprivation of nationality and freedom of expression and the right to property.

Most of the cases share a common denominator: they concern the abuse of power exercised by Alan Garcia (the cases of *Neira Alegria*,³⁸ *Cayara*,³⁹ *Durand and Ugarte* and *Cantoral Huamaní*) or Fujimori, and their anti-terrorist policies. Also, they illustrate breaches of the rights of other persons not connected to terrorist activities but perceived by the Government as a threat. Examples include the case of *Yvcher Bronstein*, whose nationality was withdrawn to stop him from releasing information about what was going on in the country to the public on his TV channel. It also includes the case of the *Constitutional Court*, which illustrated the lack of impartiality and independence of judges. When all twenty-two cases are considered together, an important progression can be

³⁵ IACCommHR, *Annual Report of the Inter-American Commission on Human Rights*, 1992-1993, chap. IV; Annual Report, 1993, chap. IV; Annual Report, 1996, chap. V; Annual Report, 1997, chap. V; Annual Report, 1998, chap. II.2; and Annual Report, 2001, chap. V.

³⁶ Before this explicit acknowledgment of the situation in Peru, the IACCommHR had referred in previous reports to 'the context of violence that existed in Peru in 1990', see for example Report 1/96, *Chumbivilcas v. Peru*, 1 Mar. 1996, para. 1, or to the practice of rape in emergency areas by military personnel, see for example Report 5/96, *Raquel Mejía*, 1 Mar. 1996, presumption of facts.

³⁷ IACCommHR, Report 51/99, *Anetro Castillo et al. v. Peru*, 13 Apr. 1999, para. 75. This approach was reiterated in other cases such as Report 111/00, *Pedro Pablo López et al. v. Peru*, 4 Dec. 2000, para. 31.

³⁸ This case was later decided by the IACtHR, *Neira Alegria et al. v. Peru*, judgment on the merits, 19 Jan. 1995. The Court found that there was a disproportionate use of force by the military forces in resisting the riot as a result of which the right to life of the three disappeared persons was violated. The Court also found violations of the right to habeas corpus and derogations under the ACHR.

³⁹ Due to procedural problems the case was declared inadmissible by the IACtHR. Nevertheless, the IACCommHR published as a report the complaint it filed with Court, 12 Mar. 1993. Available at: <http://www.cidh.oas.org/countryrep/Cayaraen/cayara.htm>

detected in the way the Court deals with their facts. This progression has implications for the adequate reconstruction of events of historical memory (an important element of transitional justice) but, more to the point, for the fight against impunity in Peru.

The first judgments of the Court against Peru dealt mainly with the particular facts of each case and not so much with the wider context in which those facts were occurring. This is true of *Neira Alegria* or *Loayza Tamayo*.⁴⁰ However, in *Castillo Páez*, the Court began to examine the context in which such violations were taking place and argued that such violations were part of a general practice.⁴¹ This was a response to the Commission's claim that in 1990, when Castillo disappeared, there was in Peru a *modus operandi* by the security forces to disappear persons considered to be terrorists. The Court concluded

...to have been proven that during the period in question, there existed in Peru a practice on the part of the forces of law and order which consisted in the forced disappearance of persons thought to be members of subversive groups, a practice well-publicized by the press.⁴²

Such recognition occurred before the establishment of the TRC. This indicates that, well before the establishment of the TRC, the Court was trying to define the nature of the practices carried out in Peru and the *modus operandi* of the Peruvian authorities.⁴³ This work was carried out in relation to different practices, not only disappearances. For example, in the case of *Cantoral Benavides*, in relation to the arbitrary detention, unfair trial and inhuman treatment suffered by Luis Alberto, the Court considered proven that: 'during the time [he] was under arrest, physical and psychological aggression against people being investigated for the crimes of treason against the fatherland and terrorism was a common practice.'⁴⁴

However, it was not until the case of the brothers *Gómez Paquiyauri*,⁴⁵ the first decided by the Court after the publication of the TRC report on 28 August 2003, that the Court made a strong argument linking the general practice of gross human rights violations with a military and police policy authorising such crimes.⁴⁶ Indeed, in this case, which concerned the brothers' arbitrary detention, inhuman treatment and arbitrary killing in June 1991, the Court began the section of proven facts with a subsection titled 'regarding the situation of the country', where it stated the following:

Between 1984 and 1993 there was a conflict in Peru between armed groups and agents of the police and military forces, in the midst of a systematic practice of human rights violations, including extra-legal executions, of persons suspected of belonging to armed groups. These practices were carried out by State agents following orders of military and police commanders.

The state of emergency was declared several times during this period, including the Province of El Callao.

⁴⁰ See Appendix I for a brief description of the cases.

⁴¹ IACtHR, *Castillo Páez v. Peru*, judgment on the merits, 3 Nov. 1997, para. 41.

⁴² *Ibid.*, para. 42.

⁴³ This approach can also be seen in cases heard by the Court against other countries. This implies that, as the Court exercised its contentious jurisdiction more extensively, it also refined its approach to the facts of the cases, contributing, in this manner, to the reconstruction of historical memory in countries undergoing processes of transitional justice, as with Colombia or Guatemala.

⁴⁴ IACtHR, *Cantoral Benavides*, judgment on the merits, 18 Aug. 2000, para. 63.t.

⁴⁵ IACtHR, *Gómez Paquiyauri*, judgment on the merits and reparations, 8 July 2004.

⁴⁶ Interestingly, the Court did not mention the report of the TRC at all in the judgment. The only mention found of this report is in the concurring opinion of the ad hoc judge Francisco Eguiguren Praeli.

Specifically, a plan known as the ‘Cercos Noventiuno’, designed to capture and execute the principals of terrorist acts, was carried out in 1991.⁴⁷

The TRC report only made its way into the jurisprudence of the Court in the case of *De la Cruz Flores*,⁴⁸ however it was only briefly mentioned. Yet in other cases the TRC report became an important tool with which to describe the modus operandi of the security forces in relation to particular violations such as enforced disappearances, as illustrated by the four paragraphs the Court dedicated to the topic in relation to the disappearance of *Gómez Palomino*.⁴⁹ Equally, in the latter case and for the first time, the Court dedicated a section to the Colina group, a death squad established by the Security Forces and members of Government to eliminate their enemies, which was also responsible for the events in *Barrios Altos*, *La Cantuta* and *Huicla-Tecse*, amongst other cases. The Court considered that

The so-called ‘Colina Group’, composed of members of the Peruvian Army, was probably one of the best known units specialized in forced disappearances and arbitrary executions. This group was created as part of the strategies used to confront terrorism by the then recently established administration of President Fujimori.... This unit was in charge of operations specially designed to identify, control and eliminate members of subversive organizations or their followers and/or collaborators, by means of indiscriminate extrajudicial executions, collective assassinations, forced disappearances and torture.⁵⁰

After the judgment in *Gómez Palomino*, the Court lent even more importance to the TRC report in cases related to gross human rights violations against Peru. This can be seen in the cases of *Baldeón García*, *Castro Castro Prison* and *La Cantuta*, where the Court dedicated many paragraphs to the TRC and its findings in relation to the general pattern of gross human rights violations in Peru between the years 1989-1993, and the modus operandi of such practices.⁵¹ These judgments by the IACtHR, all relating to events that took place between 1990 and 1992, were decided by the Court when Fujimori was in Chile and his extradition was being negotiated.

2.2.1 The Case of Barrios Altos

The massacre occurred in the neighbourhood of Barrios Altos on 3 November 1991, in retaliation for a previous Shining Path action against military personnel. Members of the Colina Group arrived at a house party, forced people to lie down on the floor, and shot at them indiscriminately. Fifteen people were killed, including a child, and four more were injured. The Peruvian Congress initiated investigations but these stopped as Fujimori shut it down in April 1992. In 1995 investigations were initiated again. As already indicated,⁵² in response to the investigations and accusations President Fujimori and the Congress approved two Amnesty Laws, suspending any investigations and paving the path to impunity. A petition was originally filed before the Commission on 30 June 1995 in relation to the events of *Barrios Altos*. In 1996 this was combined with other petitions relating to the same case. The Commission sent the case to the Court on 8 June 2000, and the final decision was reached nine months later on 14 March 2001.

The case of *Barrios Altos* is a milestone for at least the three following reasons. Firstly, it was the first case decided by the Court after the fall of Fujimori in November

⁴⁷ Ibid., para. 67a-67c.

⁴⁸ IACtHR, *De la Cruz Flores*, judgment on the merits and reparations, 18 Nov. 2004, para. 61.

⁴⁹ IACtHR, *Gómez Palomino*, judgment on the merits and reparations, 22 Nov. 2005, para 54.1-54.4.

⁵⁰ Ibid., paras. 54.5-54.7.

⁵¹ IACtHR, *Baldeón García*, judgment on the merits and reparations, 6 April 2006, paras. 72.1-72.7; *Castro Castro prison*, n. 18 above, paras. 197.3-197.11; *La Cantuta*, n. 3 above, paras. 80.1-80.18.

⁵² See, section 1.1 of this article on Amnesty Laws and Impunity.

2000, in relation to gross human rights violations that took place while he was in power. At that time of transition, Peru was eager to change its international reputation by improving its human rights record; therefore it acknowledged its international responsibility in the case.⁵³ Such a positive step is always welcome, yet there was a danger that it might discourage the Court from commenting on the case, giving the false impression, as occurred with the cases against Guatemala, that things were improving, when in reality they were not.⁵⁴ Nevertheless, in *Barrios Altos* things played out differently. The IACommHR welcomed the acknowledgment but requested of the Court

...that ... by virtue of the State's acquiescence, it should not only establish the specific violations of the articles of the Convention in which the State incurred ..., but also, in the operative paragraphs of the judgment, specifically establish the need to clarify the events, so as to protect the right to truth, the need to investigate and punish those responsible, ... the incompatibility of amnesty laws with the provisions of the American Convention, and ... the obligation of the State to annul amnesty laws.⁵⁵

While the Court accepted Peru's recognition of international responsibility, it also dedicated a section of the decision to 'the incompatibility of amnesty laws with the Convention',⁵⁶ where, for the very first time,⁵⁷ it indicated that such laws and statutes of limitations are patently incompatible with the ACHR. The Court stated:

This Court considers 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.⁵⁸

The Court went further, indicating that amnesty laws violate Article 8 (right to due process), Article 25 (right to judicial guarantees), Article 1 (obligation to respect rights under the Convention) and Article 2 (obligation to adapt domestic legislation) of the ACHR and therefore 'lack legal effect'.⁵⁹ In September 2003, in its interpretation of the judgment, the Court clarified that the legal consequences established in the *Barrios Altos* case refer not only to the facts of that particular case but are of general effect.⁶⁰ Therefore, the State is obligated to nullify the amnesty laws in relation to all cases, not only in relation to *Barrios Altos*.

Secondly, this decision triggered investigations of gross human rights violations. It gave an authoritative order to Peru to investigate, prosecute, and punish the perpetrators of gross human rights violations in the country and to fulfil the right to

⁵³ IACtHR, *Barrios Altos*, n. 3 above, paras. 34-35.

⁵⁴ M. Mersky and N. Roht-Arriaza, 'Guatemala' in Due Process of Law Foundation (ed.), *Victims Unsilenced*, n. 2 above, 7-32, at 10-13.

⁵⁵ IACtHR, *Barrios Altos*, n. 3 above, para. 36.

⁵⁶ *Ibid.*, section VII of the judgment.

⁵⁷ The IACommHR established that amnesty laws were incompatible with the ACHR since its Annual Report in 1985-1986. Nevertheless, it was in reports on individual cases where the Commission stated that such laws were contrary to the Convention. See, IACommHR, Report 26/92, *Las Hojas Massacre v. El Salvador*, 24 Sept. 1992; Report 28/92, *Hugo Leonardo de los Santos et al. v. Uruguay*, 2 Oct. 1992; Report 28/92, *Friendly Settlement Procedure in the case of Miguel Vaca et al. v. Argentina*, 2 Oct. 1992. See also, S. Canton, 'Amnesty Laws' in Due Process of Law Foundation (ed.), *Victims Unsilenced*, n. 2 above, 167-190.

⁵⁸ IACtHR, *Barrios Altos*, n. 3 above, para. 41.

⁵⁹ *Ibid.*, para. 44.

⁶⁰ IACtHR, *Barrios Altos*, Interpretation of Judgment, 3 Sept. 2001, paras. 14-18.

truth of the victims' next of kin. The impact of this decision was felt immediately in Peru and some years later in other countries of the Americas undergoing similar processes, such as Argentina and Colombia.⁶¹ In other words, the findings in this case have become valuable tools in the hands of state institutions and stakeholders arguing against impunity.

The Peruvian Supreme Court decided that the decision by the IACtHR in the *Barrios Altos* case was binding on the judicial system, thus endorsing the fight against impunity. Further, the findings of the IACtHR were incorporated in the report of the TRC in various sections. For instance, when analysing the legal dimensions of the facts under investigation, the TRC noted that, according to the IACtHR, in the *Barrios Altos* case amnesty laws and statutes of limitations are not allowed as they are against the ACHR.⁶² In addition, it has been indicated by people who worked at the TRC that the case of *Barrios Altos* gave the TRC the courage it needed to use its mandate to achieve justice.⁶³ Indeed, what became clear for the TRC after the *Barrios Altos* case was that it should document cases so as to make such reconstruction available for those tasked with the pursuit of justice, such as the Prosecutors Office in Peru.

The decision in *Barrios Altos* began to have an impact in important domestic judicial decisions taken by the highest courts, especially the Constitutional Court.⁶⁴ This can be seen in the case of *Genaro Villegas Namuche*, where the Constitutional Court recognised that the right to know the truth has a societal dimension and an individual/next of kin dimension.⁶⁵ That Constitutional Court also recognised the unconstitutionality of certain laws concerning the powers of the security forces during States of emergency, such as those related to the military jurisdiction and crimes related to the service.⁶⁶

Furthermore, in the case of *Santiago Martín Rivas* (one of the army majors involved in the *Barrios Altos* massacre who petitioned against being brought to justice because a decision had been taken by a military tribunal in 1995 not to investigate the case further) the Constitutional Court used *Barrios Altos* to conclude that the *res judicata* and the *non bis in idem* cannot exonerate a person from criminal responsibility in two situations. Firstly, when it is patently clear that the objective of the criminal investigation (in this case the one conducted by the military justice) is not to investigate and punish the perpetrators and secondly, when the judicial body in charge of the investigation does not have the competence to investigate such crimes as they were not related to the service.

⁶¹ Supreme Court of Argentina, *Judgment on the unconstitutionality of law 23.492 (Punto final) and law 23.521 (Obediencia debida)*, 14 Jun. 2005. The case of *Barrios Altos* was one of the key authorities used in the judgment to declare the unconstitutionality of said laws. For a summary of the decision, see, CELS, 'Las Leyes de Punto Final y Obediencia Debida Son Inconstitucionales' 2006, available at: http://memoria.cels.org.ar/wp-content/uploads/2006/06/sintesis_fallo_csjn_caso_poblete.pdf; and Constitutional Court of Colombia, judgment on the constitutionality of the Justice and Peace Law, C-370/2006, 18 May 2006, para. 4.4.3. The Constitutional Court used *Barrios Altos* to consider the international obligations of Colombia and the constitutionality of the Justice and Peace Law.

⁶² TRC, n. 4 above, vol 1, chap. IV, at 4.2.7.

⁶³ J. Giurlizza and E. Gonzalez, 'Verdad y Justicia desde la Óptica de la Comisión de la Verdad y Reconciliación' in L. Magarrell and L. Filippini (eds.), *El Legado de la Verdad: La Justicia en la Transición Peruana*, (New York: International Center for Transitional Justice, 2006) 85-104 at 96.

⁶⁴ According to Gloria Cano and Karim Ninaquispe more than 220 judgments were handed down by the Constitutional Court up until 2006 based on the jurisprudence of the IACtHR. See, G. Cano and K. Ninaquispe, 'El Papel de la Sociedad Civil en la Demanda y Promoción de Justicia' in *El Legado de la Verdad*, n. 64 above, 61-84 at 72.

⁶⁵ Constitutional Court of Peru, *Genaro Villegas Namuche*, Exp 2488-2002, 18 Mar. 2004, paras. 8-20.

⁶⁶ Constitutional Court of Peru, *Defensor del Pueblo and the Constitutionality of Law 24.150*, Exp 0017-2003, 16 Mar. 2004, paras. 110-134.

Therefore, the Constitutional Court decided against the petition, and allowed the prosecution of Rivas.⁶⁷

The *Barrios Altos* case has also been significant in the prosecution of Fujimori. Indeed, on 13 September 2001, six months after the decision, the Supreme Court Investigation Board started criminal investigations against Fujimori for the crimes committed in the cases of *Barrios Altos* and *La Cantuta*. The Supreme Prosecutor filed an accusation against Fujimori requesting thirty years imprisonment for his 'joint perpetration of the crime of aggravated murder against the victims of Barrios Altos, and ... joint perpetration of aggravated murder and forced disappearance of persons against the alleged victims of La Cantuta'.⁶⁸ Equally the Prosecutor requested that Fujimori be declared unfit to hold public office and compelled to pay one hundred million Nuevos Soles as civil reparation for the victims of these crimes.⁶⁹

On 30 June 2004, the Special Criminal Chamber of the Supreme Court decided to commence the trial of Fujimori *in absentia* as he was not in Peru. The Chamber also requested the extradition of Fujimori to a transitory Chamber of the Supreme Court, which granted the request for Fujimori's involvement in twelve cases in December 2005.⁷⁰ On 3 January 2006, the President of Peru formally requested the extradition of Fujimori from Chile, based on a variety of national laws and the 1932 extradition treaty between the two countries.

Barrios Altos has become a foundational case under international and regional law, establishing the practice of questioning amnesty laws and statutes of limitations in situations where gross human rights violations such as arbitrary killing, disappearances and torture are at stake. It was a judgment needed in the Americas region, where amnesties had been the rule in almost all countries undergoing transitions, from Argentina to El Salvador. Not only did the case establish limitations to what can be done after periods of conflict or in emergencies, it also effected immediate changes on the ground, which empowered stakeholders to fight for justice. Most institutions in Peru responded in a positive manner to the decision, but justice was far from being achieved. Indeed, Fujimori was now in Chile evading justice, and the victims of authoritarianism had to confront a new fight: his extradition to Peru. It was in the middle of this new battle that the IACtHR seized another important political moment with its decision in *La Cantuta*.

2.2.2 The Case of La Cantuta

In the evening of 18 July 1992, the Colina group and members of the Peruvian military arrived at the campus of Enrique Guzmán y Valle University, believed to be under the control of the Shining Path. They went first to students' dormitories, where they forced students to lie down and, matching people to names on a list, took away nine students. Then they went to the professors' houses and dragged one of them away. The whereabouts of those taken was unknown until July and November 1993, when some of the mortal remains of two of them were found in clandestine graves. The whereabouts of the other persons is still unknown.

Although a petition in this case arrived at the Commission in 30 July 1992, the case was only declared admissible on 11 March 1999. On 24 October 2005 the Commission adopted a report in line with Article 50 of the ACHR, in which it considered that Peru had violated several rights of the ACHR. This report was sent to

⁶⁷ Constitutional Court of Peru, *Santiago Martín Rivas*, Exp 4587-2004, 29 Nov. 2005.

⁶⁸ IACtHR, *La Cantuta*, n. 3 above, para. 80.86.

⁶⁹ *Ibid.*

⁷⁰ The other cases referred to the kidnapping and inhuman treatment of several persons in the underground level of the Intelligence Services Offices, and to different charges related to corruption.

Peru with recommendations. Although Peru replied to the report, the Commission sent the case to the Court as it believed that Peru had not implemented its recommendations satisfactorily.⁷¹ The case was filed at the Court on 14 February 2006, almost fourteen years after it was presented before the Commission. How is such a delay to be explained? Why was it sent to the Court in 2006? Among the possible reasons one is particularly important. At the time the case was sent to the Court, the government of Peru was seeking the extradition of Fujimori, who had been in Chile since 6 November 2005, to Peru. Further, *La Cantuta* concerned disappearances and arbitrary killings committed during a period in which it was acknowledged that the state engaged in a systematic practice of such violations to fight subversive groups. Therefore, in my view, it was a case that could potentially play an important legal and political function: to assist the extradition of Fujimori to Peru.

Peru acknowledged its partial international responsibility in relation to the case.⁷² It accepted the facts of the case, including the existence of the Colina group and that it carried out the abductions and disappearances of the nine students and the professor. However, Peru said that it could only acknowledge responsibility for lack of investigation and prosecution during Fujimori's government, but not after he left power, as since then the State had done all it could to achieve justice in the particular case. Peru also rejected the claim for reparations made by the Commission and the representatives of the victims. The Court accepted the recognition of responsibility but due to the serious nature of the violations held that:

Taking into account the powers vested in the Court for the best protection of human rights, and bearing in mind the context in which the events of the instant case have taken place, the Court considers that a judgment adjudicating on the issues of fact and on all the elements of the merits of the case, as well as on the corresponding consequences thereof, constitutes a way of contributing to the preservation of the historical memory, to the redress of the damage inflicted upon the next of kin of the victims and, moreover, it also contributes to avoid the repetition of similar events.⁷³

Subsequently, the Court produced a symbolic judgment despite the partial acknowledgement of responsibility of Peru, in which it also decided on the matters still under dispute. In relation to the latter, that is the ongoing violation of Articles 8 (right to due process) and 25 (right to judicial guarantees) of the ACHR, the Court considered that although the obligation to investigate, prosecute and punish the perpetrators of such crimes is not an obligation of result but of conduct, Peru was still in breach of those obligations as the measures taken domestically were not effective enough to achieve justice. So, for example, the Court pointed out that although criminal proceedings were initiated after the fall of Fujimori, nothing had been done to locate the eight persons who remained disappeared.⁷⁴ The Court equally stated that no new proceedings had been initiated in Peru against persons convicted for these crimes by military tribunals, and that none of the convicted persons were currently in prison serving sentences.⁷⁵

However, what was really groundbreaking in the decision was the indication that under international law states have an international obligation to cooperate in bringing to justice those responsible for gross human rights violations. Here, the Court was addressing Chile and reminding it that:

⁷¹ IACtHR, *La Cantuta*, n. 3 above, paras. 5-14.

⁷² *Ibid.*, paras. 37-44.

⁷³ *Ibid.*, para. 57.

⁷⁴ *Ibid.*, para. 146.

⁷⁵ *Ibid.*, para. 150.

...the acts involved in the instant case have violated peremptory norms of international law (*jus cogens*). Under Article 1(1) of the American Convention, the 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. The Court points out that, under the collective guarantee mechanism set out in the American Convention, and the regional and universal international obligations in this regard, the States Parties to the Convention must collaborate with one another towards that end.⁷⁶

So, with a very diplomatic statement, the Court reminded Chile that it had the obligation to consider the extradition of Fujimori to Peru for cases like *La Cantuta*, so that the fight against impunity could take place.

2.3 The Extradition from Chile

In response to a request by Peruvian authorities, Chilean authorities detained Fujimori on 6 November 2005 when he arrived in Chile. Although he had been banned from public office, Fujimori intended to make his way to Peru to run for the 2006 presidential elections. The judge in charge of his case in Chile, Orlando Alvarez, rejected his extradition on 11 July 2007. On appeal, on 21 September 2007, the Second Criminal Chamber of the Supreme Court in Chile decided to grant the extradition in relation to some of the grounds presented by Peru.

2.3.1 The Decision of Judge Orlando Alvarez

Peru requested the extradition of Fujimori based on twelve cases against him, the majority of which were for corruption-related crimes and three for gross human rights violations: *La Cantuta*, *Barrios Altos*, and the kidnapping and torture of Samuel Dyer, Gustavo Gorriti, and others.⁷⁷ The judge rejected the extradition in relation to the twelve cases. The judge considered that there were only indicia, but not enough evidence to consider that Fujimori knew of and had authorised the crimes in *La Cantuta*, *Barrios Altos* and the kidnappings.⁷⁸ He maintained that the President knew nothing about the events of *Barrios Altos*, as the Colina group was an element of the military forces that predated Fujimori, and that the massacre was a response to an attack on the military forces that took place before Fujimori arrived in power.⁷⁹ He argued that the cases are built on 'mere presumptions that while he was President of the Republic, for having such a job, he had to have ordered the killings or consented to them'.⁸⁰ Further, the Judge stated that the decisions by the IACtHR in *La Cantuta* and *Barrios Altos* were decisions against Peru and not against Fujimori, and that such decisions did not expressly mention Fujimori at any time, but only the institution of the Presidency of Peru or the Government.⁸¹

⁷⁶ Ibid., para. 160.

⁷⁷ Supreme Court of Justice, Chile, *Recurso 5646-2005*, 11 July 2007, Judge Orlando Alvarez.

⁷⁸ Ibid., para. 112.

⁷⁹ Ibid.

⁸⁰ Ibid., para. 115.

⁸¹ Ibid.

The Judge concluded that regarding extradition requests it was his duty not only to look at the formal elements of the request, such as the double criminality principle, but also to arrive at the conviction that the person to be extradited had committed the imputed crimes.⁸² This decision was severely criticised by lawyers, academics and human rights defenders.⁸³

2.3.2 The Decision of the Chamber of the Supreme Court of Justice

The decision taken by Judge Alvarez was appealed before the Second Criminal Chamber of the Supreme Court, which granted the extradition request in relation to seven of the twelve cases, including *La Cantuta*, *Barrios Altos* and the kidnapping of Gustavo Gorriti and Samuel Dyer. In relation to the cases of *Barrios Altos* and *La Cantuta*, the Court maintained that there was sufficient evidence to consider Fujimori as a co-author of those crimes. The Court considered that important evidence incriminated Fujimori, including multiple witness statements from people who were present when Fujimori and Montesinos planned the acts or where the former authorised the latter. Other evidence illustrated that Fujimori gave military decorations to members of the Colina Group after such crimes. But, more importantly, there was evidence that, since the *coup d'état*, Fujimori had been in control of all branches of power, and had devised his own intelligence strategy to fight terrorism in the country.⁸⁴

The judgment of the IACtHR in the case of *Barrios Altos* was presented as evidence before the Supreme Court.⁸⁵ Nevertheless, the Court did not explicitly rely on this judgment to conclude that there was sufficient evidence to incriminate Fujimori to the crimes⁸⁶ as it only relied on direct evidence incriminating Fujimori. Despite the lack of acknowledgment of the decision to grant the extradition on the grounds alleged by Peru, it is indisputable that both *Barrios Altos* and *La Cantuta* influenced the decision of the Supreme Court. In such situations, judgments are determined not only by the materials at hand, but also by other less visible constraints. In this case, the two decisions by the IACtHR were among those constraints, especially taking into account that the IACtHR had decided the case of *Almonacid Arellano* against Chile in September 2006, in which it condemned its amnesty law, requested Chile to declare it void, and required Chile to investigate, prosecute and punish gross human rights violations.⁸⁷ Therefore, Chile could not appear before the international community as a state that continues to tolerate impunity.

The decision by the Supreme Court of Chile approving the extradition of Fujimori is an unprecedented decision, as Fujimori is the first former head of state to be extradited to his home country to face trial for gross human rights violations.⁸⁸ He was extradited to Peru on 22 September 2007. As a result of the extradition decision, on 29 October 2007 the Prosecutor in charge of the case in Peru, José Peláez, requested thirty years imprisonment for the homicides in the cases of *Barrios Altos* and *La Cantuta*, for serious bodily injuries to the surviving victims in *Barrios Altos*, and for the kidnapping of Gustavo Gorriti and Samuel Dyer. The prosecutor also requested the payment of compensation of 100,000 Nuevos Soles to the victims in *Barrios Altos* and *La Cantuta* and

⁸² Ibid., 122.

⁸³ Pontificia Universidad Católica del Perú, 'Caso Fujimori: Análisis Jurídico de la Sentencia del Ministro Orlando Álvarez', 5 Sept. 2007, available at: <http://www.juicioysancionafujimori.org/documentos.htm>

⁸⁴ Supreme Court of Justice, Second Criminal Chamber, Chile, 3744-2007, 21 Sept. 2007, paras. 92-95.

⁸⁵ Ibid., para. 92, evidence 23.

⁸⁶ Ibid., para. 95.

⁸⁷ IACtHR, *Almonacid Arellano v. Chile*, judgment on the merits and reparations, 26 Sept. 2006, paras. 105-122.

⁸⁸ Luis García Mesa, dictator in Bolivia in 1980, was extradited to his country from Brazil after the trial had taken place in absentia. He went back to Bolivia to serve his sentence in 1995.

300,000 to Gorriti and Dyer. The trial of Fujimori began on 10 December 2007. Fujimori is being tried by the Specialised Criminal Chamber of the Supreme Court of Justice according to the mandate of Article 100 of the 1993 Peruvian constitution.⁸⁹ More than sixty hearings have taken place in the trial so far, and it is unknown how long the trial will last. Fujimori's criminal responsibility seems to be compromised in several cases related to gross human rights violations, however he can only be prosecuted in Peru for the crimes for which he was extradited. This means that he will never be investigated for other cases. In this sense, extradition can also become a mechanism to help impunity. Nevertheless, his criminal responsibility in *Barrios Altos* and *La Cantuta* is being judged and this should be seen as a positive step in the fight against impunity, mainly if it is taken into account that, very rarely, a former head of state is brought to justice to face trial for such crimes.

2.4 Other Trials in Peru

As a result of the lack of legal effect of the amnesty laws, several processes have been reopened in Peru against persons suspected of committing gross human rights violations. The processes are against the perpetrators of crimes (such as the members of the Colina Group) as well as against criminal masterminds (Montesinos, Hermosa Ríos). In these cases the judgments in *Barrios Altos* and *La Cantuta* have been essential tools for the reconstruction of important facts that will be significant in the trial against Fujimori. A good example of this is the recent decision by the First Special Criminal Chamber of the Superior Court of Justice of Lima against Julio Rolando Salazar Monroe and others related to *La Cantuta*.⁹⁰

The Court was authorised to decide whether Salazar Monroe, the Director of the SIN at the time of the events, and four other people, members of the military and the Colina group, were guilty of homicide, bodily injury and kidnapping. In the case of Salazar Monroe, the Court had to prove that he knew of the plan to detain and disappear the ten people from *La Cantuta* university, and that he was one of the people with authority over the Colina Group. Based on confessions, statements, and also on the decision by the IACtHR in the case of *La Cantuta*, the Court concluded that they were all guilty.

The Court in Lima referred to paragraphs 80.18 to 82 of the *La Cantuta* judgment, as in those paragraphs the IACtHR acknowledged that there was a systematic practice of arbitrary killings and disappearances in Peru, and that the Colina group was established by the military and the government to carry out the dirty war against terrorism. These two statements assisted the Court to establish the theory that there was an organised and hierarchical criminal structure running intelligence operations, and that the Colina group and people like Salazar Monroe and the other defendants were part of such machinery.⁹¹

This decision is bound to be important in the Fujimori trial, as one of the defence's arguments is that Fujimori did not control or order military operations, and that therefore he is not guilty of the tragic events. As for the Colina group, Fujimori has either denied the existence of the group or has said that he only learnt of its existence

⁸⁹ Prosecutor General, *Indictment* 2275-2007-1aFSP-MPFN, available at: http://www.pj.gob.pe/CorteSuprema/spe/index.asp?codigo=5578&opcion=detalle_cuerpo

⁹⁰ Superior Court of Justice of Lima, First Special Criminal Chamber, *Expediente: 03-2003-1SPE/CSJLI*, 8 Apr. 2008.

⁹¹ *Ibid.*, paras. 50, 51, 136, 137

from Montesinos in 1993.⁹² Therefore, this case against Salazar Monroe and others constitutes further evidence to rebut the arguments of Fujimori's defence.

Conclusion

The fight against impunity in Peru is paradigmatic of what can be achieved if political opportunities are seized by the protagonists and participants of processes of transitional justice. In this article I have illustrated the significance that the IACtHR, sitting in Costa Rica, can have in domestic and international politics at such moments. By concentrating on two decisions by the Court, those of *Barrios Altos* and *La Cantuta*, I have illustrated the legal and political significance of the Court and of those judgments for Peru and Chile.

The decision of *Barrios Altos* has been fundamental to the fight against impunity in Peru and in other countries in the Americas region. The IACtHR took this decision during the first months of transition in Peru, when the need for change was widely recognised by Peruvian society and when the foundations of the transition were being established. It was in this context that the investigations that had been halted as a consequence of the amnesty laws were re-opened and new ones were set in motion. This decision even affected the mandate of the TRC, as it inspired its members to gather detailed information to help the Prosecutors Office in the fight against impunity. Indeed, the TRC took this obligation seriously and documented seventy-three cases, which were reported to the Prosecutors Office in order to enable it to begin, ex officio, a criminal investigation of the possible perpetrators.⁹³

The judgment in *La Cantuta* complements the case of *Barrios Altos* as it extends the obligation to investigate, prosecute and punish gross human rights violations to states other than Peru by arguing that there is an international obligation to cooperate in such processes. This decision occurred at another key political moment that was rightly seized by the IACtHR: when Peru demanded the extradition of Fujimori from Chile. Certainly, the work of the Court in these cases cannot be attributed entirely to its activism, as the IACommHR was also instrumental in getting those cases to the Court and nothing would have happened in Peru if it had not been for stakeholders using such judgments to fight impunity.

Both *Barrios Altos* and *La Cantuta*, as well as other cases decided by the Court between 1995 and 2007, have been essential to the argument that gross human rights violations took place in Peru between 1989 and 1993 in a systematic manner, to corroborate the existence of death squads like the Colina group, and to illustrate the existence of a state policy 'created, organized and directed from the heart of the Presidency of the Republic and the Army Command'.⁹⁴ Therefore, these cases have been relevant not only in empowering people to fight against impunity but also in providing legal operators with important evidence and legal arguments, which are of utmost importance in the trial against Fujimori, as was noted in the case of *Salazar Monroe and others*.

Finally, and although there are many examples attesting to the limitations of law to affect the course of politics, the case of Peru suggests the opposite: law's capacity to establish the limits and possibilities of politics, if it is properly articulated by stakeholders at key political moments. Indeed, the cases of *Barrios Altos* and *La Cantuta* have been significant from a legal and political point of view: both have contributed to the precision

⁹² J. Burt, 'The Trial of Alberto Fujimori', special report for the Washington Office on Latin America of the first week of the trial of Fujimori, 31 Dec. 2007, available at: http://www.wola.org/index.php?Itemid=2&id=624&option=com_content&task=viewp

⁹³ TRC, n. 4 above, vol. VII, chap. II, p.1-3.

⁹⁴ As argued by the IACommHR. IACtHR, *Gómez Palomino*, n. 50 above, para. 54.6.

of states' international obligations in the fight against impunity, and both have seized political opportunities to allow victims and those interested to challenge impunity.

Appendix I

Cases against Peru decided by the Inter-American Court on Human Rights
(total of cases up to 5 May 2008: 23)

Case	Date of the events/violations	Date petition was filed with the IACommHR	Date IACommHR took the case to the IACtHR	Date the case was decided by the IACtHR on the merits
Neira Alegria et al.	18 June 1986: Riot at El Fronton Prison where more than 100 detainees were killed or disappeared.	31 August 1997	10 October 1990	19 January 1995
Cayara	14 May 1988: Around 40 persons were killed or disappeared in the Cayara province by military personnel.	17 November 1988	14 February 1992	3 February 1993 (no decision on the merits as it was declared inadmissible by the Court).
Loayza Tamayo	6 February 1993 onwards: Maria Helena Loayza was arbitrarily detained, subjected to inhuman treatment and to unfair trial for the crimes of treason against the fatherland and terrorism.	6 May 1993	12 January 1995	17 September 1997
Castillo Páez	21 October 1990: The abduction and disappearance of Rafael Castillo Páez by the National Police.	16 November 1990	13 January 1995	3 November 1997
Castillo Petruzzi et al.	14 and 15 October 1993: 4 Chilean nationals were detained in Peru, prosecuted and sentenced to life imprisonment for the crime of treason against the fatherland. Several human rights violations took place during the detention and trial.	28 January 1994	22 July 1997	20 May 1999
Cesti Hurtado	25 November 1996: The trial by a Military court of a citizen of Peru who had retired from the army in 1984 for the crimes of fraud and disobedience against the duty and dignity of the service.	7 March 1997	9 January 1998	29 September 1999
Durand and Ugarte	18 June 1986: See the case of Neira Alegria above.	27 April 1987	8 August 1996	16 August 2000

Cantoral Benavides	6 February 1993: The arbitrary detention, unfair trial and inhuman treatment of Luis Alberto Cantoral Benavides	18 April 1994	8 August 1996	18 August 2000
Constitutional Court	29 August 1996 onwards: The dismissal of justices of the Constitutional Court for deciding against the interests of President Fujimori and the constitutional article in relation to his re-election.	2 June 1997	2 July 1999	31 January 2001
Yvcher Bronstein	The deprivation of Peruvian nationality of Yvcher Bronstein, majority shareholder of Channel 2 of Peruvian television, to stop him continuing to denounce human rights violations and acts of corruption.	9 June 1997	31 March 1999	6 February 2001
Barrios Altos	3 November 1991: Massacre that killed 15 persons and injured 4 more was perpetrated by members of the Colina group in the neighbourhood of the same name	30 June 1995 (other petitions followed by other NGOs and next of kin of the victims in 1996)	8 June 2000	14 March 2001
Five Pensioners	April 1992: Unjustified and illegal changes in the pension rights of 5 retired persons.	1 February 1998	4 December 2001	28 February 2003
Gómez Paquiyauri brothers	21 June 1991: The arbitrary detention, torture and arbitrary killing of Emilio and Rafael Gómez-Paquiyauri.	2 July 1991	5 February 2002	8 July 2004
De la Cruz Flores	27 March 1996 onwards: María Teresa was arbitrarily detained, subjected to inhuman treatment and to an unfair trial for the crime of terrorism.	1 September 1998	11 June 2003	18 November 2004
Lori Berenson-Mejía	30 November 1995 onwards: Lori Berenson was detained, subjected to inhuman treatment and to an unfair trial and sentenced to life imprisonment for the crime of treason.	22 January 1998	19 July 2002	25 November 2004
Huilca-Tecse	18 December 1992: The arbitrary killing of Pedro Huilca, trade union leader, by the members of the Colina group.	4 June 1997	12 March 2004	3 March 2005

Gómez Palomino	9 July 1992: The abduction and subsequent disappearance of Santiago Gómez Palomino.	8 October 1992	13 September 2004	22 November 2005
Acevedo Jaramillo et al.	The non-compliance with some domestic judgments ordering the reinstatement of some workers to their jobs between 1996 and 2000.	13 June 1999	25 June 2003	7 February 2006
Baldeón García	25 September 1990 onwards: The abduction, inhuman treatment and subsequent death of Bernabé Baldeón while in military custody	24 May 1997	11 February 2005	6 April 2006
Dismissed Congressional Employees	31 December 1992: Unfair dismissal of 257 employees from the National Congress.	18 October 1997 and 10 July 1998	4 February 2005	24 November 2006
Castro Castro Prison	6 May 1992 onwards: The killing and inhuman treatment of approximately 500 inmates of the Castro Castro Prison as a consequence of Operative Transfer I authorized by President Fujimori	18 May 1992 and 5 June 1997	9 September 2004	25 November 2006
La Cantuta	18 July 1992: The disappearance of one professor and 9 students from La Cantuta by the Colina Group	30 July 1992	14 February 2006	29 November 2006
Cantoral Huamaní and García Santa Cruz	13 February 1989: The abduction, torture and extrajudicial killing of Saúl Cantoral and Consuelo García by the Rodrigo Franco Comando	9 May 1989	21 February 2006	10 July 2007