

# PERU/JAPAN

## Alberto Fujimori ex-president of Peru must be brought to justice

Alberto Fujimori was president of the Republic of Peru between 1990 and 2000. During his two terms in office, grave human rights violations were committed by Peru's security forces. During Alberto Fujimori's ten year administration Amnesty International documented hundreds of cases of human rights violations which included extrajudicial executions, forced disappearances, torture and ill-treatment, death threats and harassment, arbitrary detention and unfair trials.

When Alberto Fujimori took over the presidency, the Shining Path, Peru's largest armed opposition group, had already been operating since 1980 and the *Movimiento Revolucionario Túpac Amaru*, Túpac Amaru Revolutionary Movement, since 1984. At the time he became president emergency zones under military control formed the core of the government's counter-insurgency strategy. In the ten years prior to Alberto Fujimori becoming president the term "subversive" increasingly came to be applied to all inhabitants of areas where the armed opposition had a strong presence or some degree of control. The presumption that entire communities would be considered collectively responsible for Shining Path actions was invoked in justification of what amounted to a policy of widespread and systematic extrajudicial executions and "disappearance".

During the first two years of Alberto Fujimori's presidency, the number of extrajudicial executions and "disappearances" remained high. In 1991 Amnesty International documented the cases of 306 people who "disappeared" after having been detained by the security forces. Of these, 23 were subsequently found dead and 40 were eventually released or transferred to the custody of the police, the rest remain unaccounted for. In 1992 the organization documented the cases of 178 people who "disappeared" after detention by the security forces. Of these, 139 remain unaccounted for, 22 were found dead and 16 had their detention acknowledged or were released. In addition Amnesty International documented over 65 extrajudicial executions. For example, between August and October of that year at least 19 university students in the city of Huancayo, Junin department, were found dead in circumstances suggesting they had been extrajudicially executed. A further seven students were reported to have "disappeared" during this period. All had been detained by the security forces in or near the city.

In 1992 Alberto Fujimori's administration implemented a new counter-insurgency strategy that differed from those of previous governments. In particular the government developed and increased the use of civil patrols organized by the armed forces in areas where the armed opposition operated, and strengthened the intelligence services as well as enacting new wide-ranging "anti-terrorism" legislation.

In April 1992 President Alberto Fujimori announced the closure of Congress, the suspension of constitutional rule and the establishment of an emergency government. The country was ruled by decree law until December of that year. Between May and November 1992 Alberto Fujimori and his Council of Ministers, *Consejo de Ministros*, issued a new set of “anti-terrorism” decrees as part of the emergency government’s new counter-insurgency measures. The wide-ranging decree laws widened the definition of “terrorism”-related crimes, granted the police virtually unlimited pre-trial powers, accelerated trial procedures and significantly lengthened the terms of imprisonment for those convicted.

Following the implementation of the new counter insurgency measures in 1992, Amnesty International received fewer reports of victims having “disappeared” or been killed after being detained by the security forces. However, other grave human rights violations began to be carried out from 1992 onwards. Hundreds of people were falsely charged with terrorism related offences and sentenced to up to life imprisonment under an anti-“terrorism” legislation that fell short of international human rights standards. Between 1992 and 1997 thousands more were denied a fair trial under legislation which provided that trials were to be held in secret. In addition, those charged with the “terrorism”-related crime of treason were tried in military courts which are neither independent nor impartial.

In addition, throughout the ten years that Alberto Fujimori was in power, torture and ill-treatment by the Peruvian security forces was widespread. Since May 1992 the vast majority of complaints laid before the authorities about torture and ill-treatment were linked to prisoners detained under the “anti-terrorism” laws passed in 1992. This legislation facilitated the torture and ill-treatment of detainees. For example, for an initial period of 17 months, the right to *habeas corpus* was suspended.<sup>1</sup> Furthermore, the legislation granted extensive powers to the police during the investigative stage in cases of alleged “terrorism”. For example, between 1992 and 1995, the police had the right to hold the detainee in total incommunicado detention for up to 10 days “when the circumstances require it and the complexity of the investigations demand it”. The police were also granted powers to detain a suspect for a period of 15 days which could be extended indefinitely if the person was suspected of having committed the “terrorism”-related crime of treason.

Since 1992 Amnesty International documented hundreds of cases of prisoners charged with “terrorism”-related offences who had been tortured and ill-treated. María Elena Loayza Tamayo, a 38 -year-old mother of two and lecturer at the San Martín de Porres

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<sup>1</sup>*Habeas corpus* is a powerful remedy in cases of unlawful detention. It is one of the most important instruments by which the actions of the security forces may be judicially controlled.

University in Lima, the capital, was detained by the anti-terrorism branch of the police on 6 February 1993 on suspicion of having links with Shining Path. Her lawyer was not able to see her until 15 February, almost 10 days after her detention. In a letter to Amnesty International written in July 1995 in the Chorrillos High Security Prison for Women, María Elena Loayza recounts how she was raped while in police custody:

“... At midnight [on 7 February] I was taken bound and blindfolded out of the DINCOTE [anti-terrorism branch of the police] headquarters, I didn't know where they were taking me until we got to the beach. There were several of us. The men from the DINCOTE got me out of the car, stripped me and took me away forcefully. We walked for quite a stretch... they pushed my face down and violently raped me, bending back my legs and arms, I fainted.... They asked me a lot of questions, but as I didn't know about any of the names or things they were talking about, they kept submerging me in the water... [and] took me back to the sand and raped me again...”

That same night other men and women who were suspected of terrorism-related offences were taken blindfold to the beach and tortured by the DINCOTE. Pedro Telmo Vega Valle was among them. In his testimony he describes how he was tortured:

“First they forced me to undress completely... Once naked they made me lie on a blanket which the policemen had brought with them. I was forced to lie face down, then two of the policemen stood on my legs and a third sat on my buttocks... they bent my arms back on three occasions for about 20 minutes or more, later... they lifted me up and submerged me in the sea, they had me under the water for a long time... I could feel the water getting into me through my ears.”

Amnesty International received hundreds of cases of persons who had been detained on suspicion of “terrorism”-related offences between 1990 and 2000, the majority of them had been tortured during interrogation. Throughout the years that Alberto Fujimori was in power these grave allegations of gross human rights violations were rarely ever investigated and the perpetrators were only exceptionally brought to justice. In fact, the government during this period ensured that impunity was not only institutionalised but legalised. On 14 June 1995 the Peruvian Congress passed an amnesty law which granted a general amnesty to all those members of the security forces and civilians who were the subject of a complaint investigation, indictment, trial or conviction, or who were serving prison sentences for human rights violations committed between May 1980 and 15 June 1995.

The effect of the amnesty law was that thousands of victims of gross human rights violations and their relatives are unlikely ever to know the full truth about their loved ones. The effective investigation of human rights abuses is essential if the full truth is to emerge and the perpetrators are to be brought to justice. Victims, their relatives and the society at large all have a vital interest in knowing the truth about unresolved human rights violations. In addition, bringing the perpetrators to justice sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable. However, the government was determined to ensure that the amnesty law remained in effect. On the day the law came into effect, the judge in charge of investigating the 1991 Barrios Altos massacre, in which 15 people were killed, ruled that the amnesty law was inapplicable to this case. But on 28 June 1995, before her ruling reached the High Court for ratification or veto, Congress passed yet another law which reinforced the first amnesty law. This second law prohibited the judiciary's ruling on the legality or applicability of the amnesty law. Thus Congress effectively blocked the examining judges's ruling. The Inter-American Court of Human Rights ruled in March 2001 that the amnesty laws contravene the American Convention of Human Rights and are legally ineffective ("*carecen de efectos jurídicos*").

In November 2000, only four months after Alberto Fujimori had been sworn in for a third term in office amid allegations of electoral fraud, he was declared "morally unfit" to govern by Congress after he resigned the presidency while visiting Japan. In September 2000 it had been widely reported that his adviser on intelligence matters, Vladimiro Montesinos, had bribed opposition members of Congress, and that the armed forces were involved in selling arms to the Colombian armed opposition.

Vladimiro Montesinos, also fled the country but was arrested in June of this year in Venezuela and returned to Peru where he faces charges including human rights violations, corruption and money laundering. Members of Peru's armed forces during Alberto Fujimori's regime as well as members of his cabinet are also awaiting trial on similar charges. However, Alberto Fujimori, the head of state during that whole decade, has yet to be brought before a court.

On 5 September 2001 the Peruvian Attorney General formally charged Alberto Fujimori before the Supreme Court of Justice on charges of the murder of 15 people in 1991 at Barrios Altos in the capital Lima and on charges of the forced disappearance and murder of nine students and a professor of La Cantuta University also in Lima in 1992. On 14 September 2001 a *Vocal Supremo Instructor*, judge of the Supreme Court of Justice, ordered the detention of Alberto Fujimori. The judge argued that there is strong evidence to suggest that Alberto Fujimori had full knowledge of the existence of the *Grupo Colina*, the death squad attached to Peru's Intelligence Service which is allegedly responsible for these crimes and instructed that the national police as well as INTERPOL

should be informed of the detention order. According to reports INTERPOL has already been notified.

Amnesty International considers that the widespread and systematic nature of the human rights violations which were committed under the government of Alberto Fujimori between 1990 and 2000 constitute crimes against humanity under international law. Crimes against humanity recognized by international law include the systematic or widespread practice of murder, torture and forced disappearances. All states, including Japan, are under an obligation to exercise universal jurisdiction to prosecute and punish crimes against humanity and to cooperate in the detection, arrest, extradition and punishment of persons implicated in these crimes.

If Alberto Fujimori is not returned to Peru, Japan is obliged to carry out a prompt, thorough and independent investigation into the allegations of crimes under international law. If the investigation shows there is sufficient admissible evidence, Alberto Fujimori should be brought to trial, regardless of his nationality and of where the crimes were committed. Amnesty International urges Japan to open a judicial investigation into Alberto Fujimori's responsibility if he is not returned to Peru, for crimes against humanity committed in Peru between 1990 and 2000.

Moreover, many of the human rights violations which occurred during Alberto Fujimori's ten years in office are cases of torture and ill-treatment. Every state which is a party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, including Japan<sup>2</sup>, has an obligation under Article 7(1) of that treaty, to extradite anyone found in its jurisdiction alleged to have committed torture or to "submit the case to its competent authorities for the purpose of prosecution". Failure to fulfil this obligation would be a violation of international law.

Amnesty International expects the government of Japan to show the international community that they are at the forefront of human rights protection and promotion. In doing so Japan will help break the cycle of impunity which negates the values of truth and justice and leads to further human rights violations.

KEYWORDS: FORMER GOVERNMENTS1 / IMPUNITY1 / CRIMES AGAINST HUMANITY1 / EMERGENCY LEGISLATION / LEGISLATION / AMNESTIES FOR VIOLATORS / EXTRAJUDICIAL EXECUTION / DISAPPEARANCES / TORTURE/ILL-TREATMENT / SEXUAL ASSAULT / UNIVERSAL JURISDICTION / JAPAN
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<sup>2</sup> Japan ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in July 1999.