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# Perpetual Injustice: The 20 Year Battle for Reparations in Peru

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## INTRODUCTION

More than twenty years since the Peruvian government responded to the threat of terrorism by arresting, detaining, and torturing its own citizens, falsely accused as terrorists, many of those who were acquitted or pardoned have yet to receive moral or economic reparations.<sup>1</sup> Despite the acknowledgement of the violations by the state, the conviction of then-President Alberto Fujimori for human rights violations, and the determination that victims are due reparations, the failure to provide these reparations, as required by international law, makes the violations ongoing, creating ripple effects and perpetuating the suffering of these individuals.

## BACKGROUND

Between 1980 and 2000, two domestic terrorist groups plagued Peru: Sendero Luminoso (Shining Path) and Movimiento Revolucionario Túpac Amaru (the Túpac Amaru Revolutionary Movement, MRTA). The Shining Path was especially powerful and its leader, Abimael Guzmán, was a communist professor of philosophy who was inspired by Mao Zedong and the Cultural Revolution in China. Guzman based the Shining Path's fighting style on the strategies Mao employed in China's "People's War." The core of the strategy was to mobilize agrarian societies to revolt and then encircle large cities, eventually toppling them. Using this style, the *Senderos* (members of the Shining Path) would expel government forces and create "liberated zones." Because Guzmán's strategy imitated Mao's, the guerilla war was fought primarily in the Peruvian countryside and gradually



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choked off the big cities, with the main target being Lima, the capital.<sup>2</sup>

As the internal conflict strengthened, the state consolidated its power, and mobilized military forces to begin fighting back. In the 1990s, then-President Alberto Fujimori carried out an *auto-coup d'état* by abolishing the Peruvian Congress with Decree Law 25418. Decree Law 25418 transferred the legislative powers to the Executive Branch of the government and also abolished much of the Constitution.<sup>3</sup> Decree Laws 25422, 25423, and 25244 removed all the members of the Tribunal of Constitutional Guarantees, thirteen judges of the Supreme Court of Justice, and all the members of the National Council of Judges and the District Councils of Judges from office.<sup>4</sup> On April 23, 1992, the government removed an additional 120 judges and public prosecutors with Decree Law 25446.<sup>5</sup> With the elimination of these foundations and the balance of power, Fujimori was able to enact several reforms and apply drastic punishments to those presumed to be members of designated terrorist groups—the Shining Path and the MRTA.

The Truth and Reconciliation Commission (TRC), established on July 13, 2001, to investigate human rights violations attributable to the state, the Shining Path, and the MRTA between 1980 and 2000, found that as a part of Fujimori's anti-terrorism campaign, unsuspecting and innocent civilians were arrested and subjected to a variety of torturous acts to obtain information regarding the terrorist groups without access to due process through a legitimate court system.

The campaign to fight terrorism began with arbitrary detentions of mainly *campesinos*, or people from rural areas, on the outskirts of the city. Many civilians were accused of being terrorists or materially supporting terrorists. Raids on small villages often ended in deaths and/or violent attacks. The Colina Group, an extrajudicial "anti-communist death squad"

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carried out the most infamous of these raids—the La Cantuta massacre and the Barrios Altos massacre—under Fujimori’s orders. The La Cantuta massacre involved the kidnapping, disappearance, and assassination of nine students and a professor from La Cantuta University on July 18, 1992.<sup>6</sup> The Barrios Altos massacre involved the execution of fourteen adults and an eight-year-old boy in Lima’s Barrios Altos neighborhood on November 3, 1991. The TRC found that between 1980 and 2000, more than 69,280 persons were killed or forcibly disappeared.<sup>7</sup> This number reflects not only those killed by the government, but also those killed by the Shining Path and the MRTA. Those killed in the conflict comprise a greater number of human losses suffered by Peru than all of the wars that have occurred in its 182 years of independence. It is also more than double the combined estimated totals of those killed in the dirty war in Argentina (30,000) and during the dictatorship of General Augusto Pinochet in Chile (3,000).<sup>8</sup>

Even when judicial processes were utilized, they were grossly defective. A commission of international lawyers charged with evaluating the Peruvian judiciary during the Fujimori regime called the judicial system’s treatment of those charged with treason or terrorism “seriously flawed and at odds in many key respects with Peru’s international legal obligations.”<sup>9</sup> An investigation conducted by the Instituto de Defensa Legal (Institute of Legal Defense, IDL), a prominent human rights organization in Peru, found that the judiciary issued 51,684 warrants for 12,858 people.<sup>10</sup> Moreover, because Peru has many common names, warrants require additional identifiers such as parents’ names, a physical description, and the age of the person, otherwise they are unlawful.<sup>11</sup> In the warrants put forth under Fujimori, however, 89.1 percent did not include parents’ names, 86.3 percent did not specify physical characteristics, and 79.2 percent did not include the age of the person to be arrested.<sup>12</sup> Despite a lack of credible statistics concerning how many innocent people the government arrested, the number of warrants issued and the lack of specific identifiers on these warrants indicates that there may have been thousands.

Many of those who were arrested were not given a trial. Those who were given a hearing had to go before a “faceless tribunal” where the judges would not show their faces, would distort their voices, and would not sign the judgments, allegedly out of fear of revenge by the terrorists. This made it impossible to know whether the judges had proper legal training, much less if they were providing a fair trial. Moreover, the accused were given limited legal representation and the evidence needed to convict and sentence the accused was minimal and was often falsified or uncorroborated.<sup>13</sup> Despite the revocation of the “faceless judge” provision in October 1997,<sup>14</sup> Human Rights Watch reported that thousands were incarcerated as a result of this measure and that, in some jurisdictions, up to forty percent of the convicted were later found innocent.<sup>15</sup>

Once imprisoned, the alleged terrorists were subjected to torture, some over the course of years. Many were held incommunicado, cut off from family, friends, and any semblance of human contact. The treatment that they received was undisputedly cruel, inhuman, and degrading.

### INADEQUATE REPARATIONS AND THE FORMATION OF ARIL

After nearly a decade of international pressure, Peru created an Ad Hoc Commission on August 17, 1996, pursuant to Decree Law 26655, to grant judicial pardons to those who had been unjustly convicted or processed for the crimes of terrorism or treason.<sup>16</sup> President Fujimori, the Ombudsman, and the Minister of Justice all supported the Commission.

In order to adjudicate the pardons, the Commission would have to receive a request for a pardon and then would gather information and evidence regarding the cases, and then evaluate the cases. If the cases qualified, the Commission would then send the requests to the President to grant the pardon. According to the IDL, Fujimori pardoned 515 persons falsely convicted of terrorism and treason.<sup>17</sup>

Despite government efforts to address the imprisonment of innocent civilians, many of the affected individuals did not ultimately receive or benefit from the pardons. Others who were unjustly incarcerated or accused were then either acquitted or never officially convicted of either terrorism or treason. Both those whom Fujimori pardoned and those whom the courts acquitted continue to have the charges or convictions on their permanent criminal records. Because these are incomplete pardons and acquittals, the individuals’ tainted records make them second-class citizens. The records label them “terrorists,” which generates severe stigmatization and prevents them from obtaining employment or accessing educational opportunities.

After years of being subjected to arbitrary detentions, torture, and violations of due process, and advocating for their right to reparations, some 300 pardoned and acquitted Peruvians came together to form the Asociación Reflexión de Inocentes Liberados (Reflection Association of Liberated Innocents, ARIL).

Unlike other groups of freed individuals, this group comprises both those who have been pardoned as well as those who have been acquitted. To them, the fight is one united effort.

### THE STRUGGLE FOR JUSTICE

In its early jurisprudence, the Inter-American Court of Human Rights (IACtHR, Court) established that the states’ duty to prevent future violations of human rights is essential for fulfilling the requirements to respect and ensure the exercise of fundamental rights as established in the American Convention on Human Rights.<sup>18</sup> The reparation judgments are the main tool

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that the Court has to compel Member States to comply with this duty.<sup>19</sup> In consistent jurisprudence, the IACtHR has established that it is a principle of international law that “any violation of an international obligation resulting in damage gives rise to the new obligation to remedy [that] damage.”<sup>20</sup> The state must give the survivors of atrocities remedies that are “in accordance with the rules of due process of law” and are both adequate and effective.<sup>21</sup> In order to be considered adequate, the domestic remedies must address the infringement of the legal right. To be effective, the remedy must be capable of producing the intended result.<sup>22</sup> The responsible state cannot invoke provisions of domestic law to modify or fail to comply with the obligation to provide reparations, because all aspects are regulated by international law.”<sup>23</sup>

The Constitutional Court of Peru, using guidance from the jurisprudence of the Inter-American System of Human Rights (IASHR), affirmed the right to a remedy from a competent court in the face of any act or omission that harms fundamental rights.<sup>24</sup> This right was elaborated in *Velásquez-Rodríguez v. Honduras*, when the Court became the first human rights tribunal to require a state to “prevent, investigate and punish any violation of the rights . . . [and] attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”<sup>25</sup> These remedies, known collectively as reparations, refer to the economic and moral reparations, which the violating state is responsible for providing to the victims under the American Convention. Economic reparations are money rewards for actual damages or pecuniary rewards.<sup>26</sup> Moral reparations are designed as restitution for damages that cannot be quantified and are public acts or works that aim to restore dignity to the victims and their families and publicly condemn the human rights violations in question to prevent their recurrence.<sup>27</sup>

In order to fulfill these obligations, the Peruvian government enacted Decree Law 28952, which created the Integral Plan of Reparations (*Plan Integral de Reparaciones*, PIR), to give those who have been pardoned adequate reparations.<sup>28</sup> However, the plan excluded those who were acquitted before being convicted, despite having suffered similar violations to those who were pardoned. Under the PIR, acquitted individuals do not qualify for monetary compensation because it is assumed that they did not suffer the same prison conditions or loss of livelihood as those who served prison terms. The state failed to give even those who qualified for the reparations as pardoned individuals their reparations, claiming that it lacked funding.

For years, the members of ARIL have been struggling to have their voices heard within the judicial system. Despite the democratization of the government and the international legal right to reparation they have in theory, in practice, members of ARIL have not received any

compensation. In order to gain access to reparations, the *indultados*, or pardoned, must file for them in domestic court. The ARIL members complied with this process but were denied access to reparations when judges dismissed their claims because they could not afford to pay the necessary fees. They were incapable of doing so because they live in poverty as result of the violations they suffered. In essence, one of the reasons they need the reparations, for economic stability, is the same reason that they are denied it. The courts do theoretically provide fee waivers, but they have denied ARIL’s requests for them. The ARIL members’ lack of resources has thus been an impassible hurdle. Ultimately, the state is not living up to obligations under its “duty to repair” because ARIL members do not have an effective route to obtain these reparations, which is a fundamental tenet of the state’s duty.<sup>29</sup>

Far from being “repaired” to the state of their lives before they were swept up in the conflict, even the one reparation some members of ARIL were given has caused them to struggle. The government gave pardoned members of ARIL a desolate plot of land in Huachipa, about an hour outside of the capital city and situated in the middle of three factories, as a reparation, but the grant was realistically a tool used by the state to get the group to cease its requests for further redress. The members of ARIL call this a “self-reparation” because, after they were granted the land, they had to fight to use it. First, ARIL members had to fight military officials in charge of the munitions factory that borders the plot for rights to the land. Then, after they won a smaller piece of the land from what the original reparation granted, they were told they could not build on it until there were environmental tests that showed the land was safe to live on. ARIL members then conducted the necessary environmental tests at their own expense. After they were finally approved to build on the land, they had to finance the infrastructure on the arid plot. The land at Huachipa has a nonfunctional sewage system, no water supply, and the homes are not structurally secure. The greatest irony of their “self-reparation,” members note, is that they must live as neighbors with the military, the same institution that Fujimori used to torture them and deny them of their basic human rights for years.<sup>30</sup>

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The members of ARIL not only suffer from memories of the past but also continue to suffer from the ongoing stigmatization of being branded as terrorists. Despite the fact that they have been pardoned or acquitted and were never involved in acts of terrorism, being associated with the Senderos and the MRTA haunts their daily lives. Marred with criminal records, these individuals have trouble accessing employment. Some of the members were isolated from their families after being labeled as terrorists and have had trouble reestablishing a sense of community. The members' names appear published as "terrorists" in newspapers, leading to threats and personal insecurity. They face this social and economic isolation in addition to the many ailments that result from being subjected to torture. Many of the individuals live with post-traumatic stress disorders and physical ailments from the many years of torture they endured. They suffered a loss of livelihood, family life, security, economic opportunities, homes, crops, businesses, community involvement, and virtually everything a person values and needs for basic adequate subsistence. They suffer this because they were mistaken as terrorists, something the Peruvian government recognized its responsibility for, yet has failed to redress.

The years of detention the members of ARIL suffered involving cruel, inhumane, and degrading treatment by the Peruvian government have ended, but the violation of their human rights has not. They remain stigmatized by the state's false accusations of terrorism and treason. Moreover, because of their history of oppression by the state, they cannot afford to gain access to the reparations they are due under the law. Unable to seek help domestically, ARIL looked to the Inter-American Commission on Human Rights (IACHR) almost nine years ago and has yet to reach even the admissibility stage. The eight petitions they filed languish, and the justice they deserve is on hold as the IACHR tries to process 8,500 other pending cases.<sup>31</sup>

## CONCLUSION

The members of ARIL have suffered a clear violation of international law by Peru. The IASHR has affirmed that where a country violates the rights of its citizens, those citizens are due adequate and effective reparations. The IASHR, as well as the government of Peru, has affirmed the violations and, therefore, Peru incurred this obligation to properly redress it. In order to do this, the state should give the members of ARIL reparations that will put them back to the position they were in before they were wrongfully accused of treason and terrorism, arbitrarily detained, and subjected to cruel and inhuman treatment. The IACHR clarified the duty to provide restitution as a requirement of customary international law in numerous cases, including the *Miguel Castro-Castro Prison v. Peru* case.<sup>32</sup> This requires both payments of economic reparations for years of life taken away from them, pain and suffering, and lost economic opportunities, as well as moral reparations that counter stigmatization with moral reparations to publically acknowledge the members of ARIL's innocence. There is no way to completely repair the life of someone who has suffered so greatly at the hands of a state actor, but Peru has not even come close to fulfilling their obligations to attempt an adequate reparations.

## Endnotes

<sup>1</sup> Moral reparations are designed as restitution for damages that cannot be quantified and are public acts or works that aim to restore dignity to the victims and their families and publicly condemn the human rights violations in question to prevent their recurrence.

<sup>2</sup> See Louis Proyect, *Shining Path*, COLUMBIA UNIVERSITY, ¶ 3, available at <http://www.columbia.edu/~lnp3/mydocs/indian/sendero.htm>.

<sup>3</sup> *Documento—Peru: Los Derechos Humanos Durante El Gobierno Del Presidente Alberto Fujimori* (9206S), AMNESTY INT'L., §§ 3.1-3.2, available at <http://www.amnesty.org/es/library/asset/AMR46/018/1992/es/bb601bd3-edbe-11dd-a95b-fd9a617f028f/amr460181992en.html>, §§ 3.1-3.2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Fujimori Found Guilty of Human Rights Crimes*, THE NATIONAL SECURITY ARCHIVE (Apr. 7, 2009), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB274/>.

<sup>7</sup> *Informe de la Comisión de la Verdad y Reconciliación*, § 1.1, available at <http://www.cverdad.org.pe/ifinal/pdf/TOMO%20I/>

*Primera%20Parte%20El%20Proceso-Los%20hechos-Las%20v%EDctimas/Seccion%20Primera-Panorama%20General/1.%20PERIODIZACION.pdf*; Truth and Reconciliation Commission of Peru, *Final Report*, UNITED STATES INSTITUTE OF PEACE ¶ 5, (Jul. 2001), available at <http://www.usip.org/publications/truth-commission-peru-01>.

<sup>8</sup> Truth and Reconciliation Commission of Peru, *Final Report—General Conclusions*, COLUMBIA UNIVERSITY, available at [https://coursewebs.law.columbia.edu/coursewebs/cw\\_12F\\_L9165\\_001.nsf/0f66a77852c3921f852571c100169cb9/D7511D493201AB0C85257AA4001750D7/\\$FILE/Peru+TRC+Final+Report-Conclusions.pdf?OpenElement](https://coursewebs.law.columbia.edu/coursewebs/cw_12F_L9165_001.nsf/0f66a77852c3921f852571c100169cb9/D7511D493201AB0C85257AA4001750D7/$FILE/Peru+TRC+Final+Report-Conclusions.pdf?OpenElement).

<sup>9</sup> Antonio Maldonado and Diego Rodriguez, *Report Exposes Problems with Peru's Judicial System*, HUMAN RTS. BRIEF, Vol. 1, Iss. 2 (1994), available at <http://www.wcl.american.edu/hrbrief/v1i2/peru12.htm>.

<sup>10</sup> Amado Enco Tirado, et al., *Los Requisitorios Por Terrorismo ¿Quénes son? ¿Cuántos son?*, INSTITUTO DE DEFENSA LEGAL, 13-15 (2006).

<sup>11</sup> Interview with Carlos Rivera, Legal Coordinator, *Instituto de Defensa Legal*, in Lima, Peru, 24 Oct. 2012.

<sup>12</sup> Tirado, *supra* note 10.

<sup>13</sup> Interview with Carlos Rivera, *supra* note 11.

<sup>14</sup> *Peru: End of “Faceless Judge” System—Only One Step Towards Fair Trials in Terrorism Cases*, Amnesty Int’l, (Oct. 16, 1997), available at <http://www.amnesty.org/en/library/asset/AMR46/038/1997/en/b11f85ed-e988-11dd-8224-a709898295f2/amr460381997en.html>.

<sup>15</sup> *Peru: The Two Faces of Justice*, Human Rts. Watch, (Jul. 1, 1995) ¶ 4, available at <http://www.unhcr.org/refworld/docid/3ae6a7ed4.html>.

<sup>16</sup> Law No. 26655, Aug. 17, 1996, (Peru) available at <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/26655.pdf>.

<sup>17</sup> *Fujimori indultó a más terroristas que Paniagua y Toledo juntos*, DIARIO 16 (Oct. 5, 2012) <http://diario16.pe/noticia/19562-fujimori-indultao-a-maas-terroristas-que-paniagua-y-toledo-juntos>.

<sup>18</sup> Velásquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct.H.R. (ser. C) No. 4 (Jul. 29, 1988), available at <http://www.refworld.org/docid/40279a9e4.html>; Godínez Cruz v. Honduras, Compensatory Damages, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 8, (Jul. 21 1989). See also Lisa J. Laplante, *Bringing Effective Remedies Home: The Inter-American Human Rights System, Reparations, and the Duty of Prevention*, Netherlands Quarterly of Human Rights, Vol. 22, No. 3, 347-388, (September 28, 2008) available at SSRN: <http://ssrn.com/abstract=1274787> at 350.

<sup>19</sup> See Velásquez Rodríguez case, *supra* note 18; Laplante, *supra* note 18.

<sup>20</sup> Case of the Miguel Castro-Castro Prison v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 414 (Nov. 25, 2006); Bridget Mayeux and Justin Mirabal, *Collective and Moral Reparations in the Inter-American Court of Human Rights*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW HUMAN RIGHTS CLINIC, 6, available at [http://www.utexas.edu/law/clinics/humanrights/work/HRC\\_F09\\_CollectiveReparations.pdf](http://www.utexas.edu/law/clinics/humanrights/work/HRC_F09_CollectiveReparations.pdf).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Luis Felipe Almenara Bryson, *Sentencia del Tribunal Constitucional*, No. 1941-2002-AA/TC, ¶ 3, (Jan. 27, 2003) available at <http://www.tc.gob.pe/jurisprudencia/2003/01941-2002-AA.html>.

<sup>25</sup> Mayeux, *supra* note 20 (citing Velásquez-Rodríguez v. Honduras, *supra* note 18).

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* (citing Villagrán-Morales et al. v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 84).

<sup>28</sup> Julie Guillerot, *Reparaciones en la Transición Peruana: ¿Dónde Estamos y Hacia Dónde Vamos?*, 273 available at [http://derechoshumanos-portal.segob.gob.mx/archivos/lecturas/Guillerot\\_reparaciones\\_transicion\\_peruana.pdf](http://derechoshumanos-portal.segob.gob.mx/archivos/lecturas/Guillerot_reparaciones_transicion_peruana.pdf).

<sup>29</sup> Laplante, *supra* note 18 at 351.

<sup>30</sup> ANIL: *Asociación Nacional de Inocentes Liberados*, <http://www.scribd.com/doc/15767303/Asociacion-Nacional-de-Inocentes-LiberadosANIL>, 11-12 (the article refers to ARIL under its original name “ANIL”).

<sup>31</sup> *Reform process—2012, IACHR methodology for reviewing regulatory provisions, policies, and practices in order to strengthen the inter-American human rights system*, Inter-Am. Comm’n H.R. ¶ 24, available at <http://www.oas.org/en/iachr/mandate/docs/Methodeng.pdf>.

<sup>32</sup> Case of the Miguel Castro-Castro Prison v. Peru, *supra* note 20 at ¶ 6.