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# Peru

## The Truth and Reconciliation Commission – a first step towards a country without injustice

### I. Introduction

During the two decades of internal armed conflict between the Peruvian State and the armed opposition groups, *Partido Comunista del Perú (Sendero Luminoso)*, Communist Party of Peru (Shining Path), and *Movimiento Revolucionario Túpac Amaru (MRTA)*, Tupac Amaru Revolutionary Movement,<sup>1</sup> Amnesty International documented widespread systematic violations of the fundamental rights of large sections of the population. These included forced disappearances, extrajudicial executions, violations of due process and acts of torture and ill-treatment perpetrated by State officials and numerous serious abuses, such as killings and other physical attacks on individuals, committed by Shining Path and, to a lesser extent, the MRTA.

In the opinion of the organization, as a result of the human rights crisis and disruption of the rule of law engendered by these twenty years of violence, satisfactory solutions need to be found, in accordance with Peru's international obligations, to fundamental problems such as the impunity that enshrouds the human rights violations committed during that period, the absence of an independent and impartial judiciary that can ensure full respect for fundamental rights and the need to provide reparations for the victims of human rights violations and their relatives.

Against this background, Amnesty International welcomed the setting up of the *Comisión de la Verdad y Reconciliación (CVR) del Perú*, Truth and Reconciliation Commission of Peru, seeing it as an important step on the road to fully satisfying the rights of the victims and their families to know the truth about what happened during the two decades of internal armed conflict, to have access to justice so that those responsible can be tried and punished and to receive appropriate reparation. The organization believes truth and justice to be essential so that the open wounds left in the Peruvian social fabric by the years of violence can be closed and a new chapter in the history of the country, in which the whole of Peruvian society can find true reconciliation, can open. The CVR, which has been harshly criticized in some quarters and subjected to serious attempts to disrupt its operation and stop progress being made in clarifying the truth about what happened during the years of conflict, has therefore received Amnesty International's support in the delicate and complex task entrusted to it.<sup>2</sup>

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<sup>1</sup> Shining Path launched its armed offensive in 1980. In recent years, it has reportedly been operating in the Apurímac and Ene river valleys in the Amazon jungle. The MRTA began its armed campaign in 1984 and has now ceased operations.

<sup>2</sup> See Amnesty International document *Peru: Letter to the President in support of the work of the Truth and Reconciliation Commission*, AMR 46/011/2003, 6 July 2003.

This report brings together the main conclusions and recommendations contained in the CVR's *Final Report* which was published in August 2003. Amnesty International believes that it is essential for the CVR recommendations to be implemented if Peru is to be able to heal the wounds left by the 20 years of internal armed conflict and look towards the future. The CVR concluded that most of the victims of human rights abuses and violations during that period belonged to the least protected and most vulnerable groups within society, namely, indigenous peoples, peasants, Quechua speakers and people living in poverty who were illiterate or had little formal education. The organization has therefore drawn up a series of recommendations with regard to gender, economic, social and cultural rights and racial and ethnic discrimination, the purpose of which is to help create a country where equality of opportunity can become a reality for all and persistent social, racial and gender discrimination can be brought to an end.

In the context of Peru, this discrimination was one of the reasons why, for years, in the circles in which economic and political power is concentrated, the suffering that thousands of people from the most marginalized groups were having to endure as a consequence of the internal armed conflict was not given the importance or recognition it deserved.

## **II. The work of the Truth and Reconciliation Commission**

The CVR was set up in 2001<sup>3</sup> with a mandate to establish the circumstances surrounding the human rights abuses and violations committed between May 1980 and November 2000<sup>4</sup> by Shining Path and the MRTA as well as by the Peruvian State. Among other things, it was also asked to determine the whereabouts, identity and circumstances of the victims of the internal conflict and, as far as possible, who was responsible for the abuses and violations as well as to analyze the conditions and political, social and cultural context which contributed to the violence, develop proposals with regard to the provision of reparations to the victims and put forward measures and reforms to be taken with a view to ensuring that such events could never happen again.

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<sup>3</sup> The Truth Commission was established in June 2001, under the transitional government of Valentín Paniagua Corrao, as a result of Supreme Decree No. 065-2001-PCM. It was ratified and expanded through Supreme Decree No. 101-2001-PCM which was passed in September 2001 under the government of the current President, Alejandro Toledo Manrique. The second decree changed the name to Truth and Reconciliation Commission and increased the number of commissioners from seven to twelve.

<sup>4</sup> The period covered by the CVR comprises the latter stages of the government of General Francisco Morales Bermúdez (17 May 1980-28 July 1980) and the governments of Fernando Belaúnde Terry (28 July 1980-28 July 1985), Alan García Pérez (28 July 1985-28 July 1990) and Alberto Fujimori Fujimori (28 July 1990-20 November 2000).

Consisting of twelve commissioners and one observer,<sup>5</sup> the CVR made it a priority from the outset to gather the views of the victims who until that time had not only had to endure the effects of the violence and the denial of their fundamental rights but had also had their grief and suffering disregarded for so many years. Over 800 people working for the CVR therefore travelled round the 24 departments which make up Peru in search of firsthand testimonies. Almost 17,000 testimonies were received by the central office in Lima and the four regional offices in the departments of Huancayo, Ayacucho, Huánuco and Sicuani.<sup>6</sup> In 70% of the total number of cases, it was possible to reconstruct and corroborate the facts, resulting in the documentation of over 11,500 cases of serious human rights violations.<sup>7</sup>

The CVR also held public hearings, in which the victims or their family members were able to testify to the Commissioners and members of the public who were present, as well as hearings on particular issues such as “anti-terrorist” legislation, displaced persons, universities, women and the teaching profession. The hearings were held during 2002 in the cities of Huanta, Huamanga, Huancayo, Huancavelica, Lima, Tingo María, Abancay, Trujillo, Chumbivilcas, Cusco, Cajatambo, Pucallpa, Taratopo, Huánuco and Chungui. As a result of holding such hearings, something which had not previously been done by any truth commission in the Americas, over 400 testimonies relating to over 300 different cases of gross human rights violations were collected.<sup>8</sup>

The public hearings and the coverage of them in the media helped not only to make large sections of the population aware of the scale of the human rights violations and abuses

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<sup>5</sup> The commissioners appointed were: Salomón Lerner Febres (President of the CVR), Director of the *Universidad Pontificia Católica del Perú*, Catholic Pontifical University of Peru; Beatriz Alva Hart, a lawyer, former member of Congress and a former Deputy Employment Minister in the government of Alberto Fujimori; Rolando Ames Cobián, a sociologist, researcher and political analyst; Monsignor José Antúnez de Mayolo, a Salesian priest and former apostolic administrator of the Archdiocese of Ayacucho; Luis Arias Grazziani, a retired lieutenant-general from the Peruvian Air Force and an expert on national security matters; Dr. Enrique Bernales Ballesteros, a Doctor of Law, constitutionalist and the Executive Director of the *Comisión Andina de Juristas*, Andean Commission of Jurists; Dr. Carlos Iván Degregori Caso, an anthropologist, professor at the *Universidad Nacional Mayor de San Marcos*, Greater National University of San Marcos, and a member of the *Instituto de Estudios Peruanos*, Institute of Peruvian Studies; Father Gastón Garatea Yori, a Sacred Heart priest and chairman of the *Mesa de Concertación de Lucha contra la Pobreza*, Coordinating Committee of the Struggle against Poverty; Pastor Humberto Lay Sun, an architect and a senior official of the Assemblies of God, an evangelical denomination belonging to the *Concilio Nacional Evangélico (CONEP)*, National Evangelical Council; Sofia Macher Batanero, a sociologist and former Executive Secretary of the *Coordinadora Nacional de Derechos Humanos*, National Human Rights Coordinator; Alberto Morote Sánchez, a former Rector of San Cristóbal de Huamanga University; and Carlos Tapia García, a researcher and political analyst. Monsignor Luis Bambarén Gastelumendi, the Bishop of Chimbote and President of the Synod of Peruvian Bishops, was appointed as the observer.

<sup>6</sup> *Final Report of the Truth and Reconciliation Commission*, ‘Introduction’, p. 42.

<sup>7</sup> *Final Report*, Volume IX, Appendix 4, ‘Cases and Victims recorded by the CVR’, p. 2.

<sup>8</sup> *Report on the activities carried out by the Truth and Reconciliation Commission*, pp. 1-2, [www.cverdad.org.pe/lacomision/balance/index.php](http://www.cverdad.org.pe/lacomision/balance/index.php)

committed during the conflict but also to give the survivors back their dignity by giving them the opportunity to be heard, very often for the first time.

The CVR also held interviews with some of the main actors in the internal armed conflict, namely, members of the different political parties, military personnel and members of the armed opposition groups. Former President Alberto Fujimori Fujimori, his presidential adviser on intelligence matters, Vladimiro Montesinos, and some members of the “death squad” known as *Grupo Colina*, Colina Group, which operated during the government of President Fujimori reportedly declined the invitation to collaborate.

During its sixteen months of groundwork, the CVR also identified over 4,600 burial sites throughout the country and was able to carry out inspections at over 2,200 of them<sup>9</sup> as well as three exhumations in the towns of Chusqui, Lucamarca and Totos in the department of Ayacucho.<sup>10</sup>

On the basis of these testimonies and interviews and the analysis of information contained in both official documents and public materials, the CVR produced its *Final Report*, consisting of nine volumes plus appendices, into which the findings of its two years of work had been condensed, together with its conclusions and recommendations.<sup>11</sup> The *Final Report* was officially presented on 28 August 2003 to the representatives of the three branches of government: the President of the Republic, Alejandro Toledo Manrique, the President of Congress, Henry Pease García, and the President of the Supreme Court, Hugo Sivina Hurtado, as well as to the Ombudsman, Walter Albán Peralta. The next day the report was presented to Peruvian society as a whole in a ceremony held in Ayacucho where the internal armed conflict had begun and from where most of the victims came.

### **III. The conclusions of the Truth and Reconciliation Commission**

The CVR concluded that during the two decades of internal armed conflict thousands of serious abuses of fundamental rights had been committed by armed opposition groups, mainly Shining Path and, to a lesser extent, the MRTA, and that gross violations of human rights, which, at certain times and in certain places, were systematic and widespread and amounted to crimes against humanity, had been committed by State officials, especially the Armed Forces.

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<sup>9</sup> *Final Report* of the Truth and Reconciliation Commission, Volume IX, ‘National Plan for Forensic Anthropological Interventions’, p. 209.

<sup>10</sup> *Final Report*, Volume VIII, Appendix 2, ‘The Procedure for Exhuming Graves’, p. 273.

<sup>11</sup> The mandate of the CVR (18 months extendable for a further five months) began in July 2001 and was extended in July 2002 (Supreme Decree No. 063-2002-PCM) until 13 July 2003 and again in June 2003 (Supreme Decree No. 62-2003-PCM) until 31 August of the same year, when the CVR submitted its report and was brought to a close.

According to the analysis carried out by the CVR, the violence perpetrated by the armed opposition groups and State officials was focused on the most defenceless sections of the Peruvian population, namely, people living in indigenous or peasant communities, mainly Quechua-speaking, who had few economic resources and were educated to levels lower than the national average. The CVR took the view that the chronic racial, social and gender discrimination that exists in Peru contributed to the fact that the suffering of these thousands of Peruvian men and women went unacknowledged for years by the groups within society that hold economic and political power.

### **1. The extent of the internal armed conflict**

The CVR concluded that the internal armed conflict that Peru underwent between 1980 and 2000 constituted “the most intense, extensive and prolonged episode of violence in the entire history of the Republic”.<sup>12</sup> According to the conclusions, the conflict covered a larger proportion of national territory than any other violent period in the country’s history. The CVR received reports of killings and “disappearances” from all departments except Moquegua and Madre de Dios and only in Tacna (1) and Tumbes (4) was the number of reported victims in single figures.<sup>13</sup>

The CVR study also indicates that the number of people who died or “disappeared” during the internal armed conflict surpasses the number of lives lost in Peru in all the foreign or civil wars that have occurred in the almost two centuries since it gained independence. 23,969 cases of people who died or “disappeared” during the internal conflict were reported to the CVR.<sup>14</sup> In addition, thousands of other cases of gross violations and abuses of human rights were documented by the CVR, including torture and cruel, inhuman or degrading treatment, sexual violence against women, violations of due process, kidnapping and hostage-taking, violations of the human rights of children and violations of the fundamental rights of indigenous peoples.

The CVR also concluded that, as a consequence of the internal armed conflict, approximately half a million Peruvian men and women, mainly from the poorest departments and those most affected by the violence, namely, Ayacucho, Apurímac, Huancavelica, Junín, Huanuco, Ancash, Pasco, Cusco and Puno, were forcibly displaced both by State officials and armed opposition groups, 80% of them between 1983 and 1993. Many of those concerned had to seek refuge in Lima where they had no option but to live in the poorest areas, thereby only exacerbating their general level of poverty.<sup>15</sup>

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<sup>12</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 315.

<sup>13</sup> *Final Report*, Volume I, ‘The Periods of Violence’, p. 54.

<sup>14</sup> According to the statistical projections made by the CVR, between 61,007 and 77,552 people may have died or “disappeared” during the conflict.

<sup>15</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 653.

According to the CVR, the extent of the violations and abuses committed during the internal conflict “demonstrated serious limitations of the [Peruvian] State in its capacity to guarantee public order and security, as well as the fundamental rights of its citizens”.<sup>16</sup>

## **2. Responsibility for human rights abuses and violations**

### **2.1 The armed opposition groups**

The CVR concluded that Shining Path “was the main perpetrator of crimes and human rights violations”,<sup>17</sup> saying that it was responsible for almost 54% of the total number of deaths and cases of people whose whereabouts remains unknown.<sup>18</sup>

The CVR found evidence indicating that, of all the fatalities reported, over 11,000 were of people, mainly civilians, who died at the hands of Shining Path members who, as part of their strategy, killed them when they were unarmed, defenceless or after they had surrendered. The CVR also attributes over 1,500 cases of people whose present whereabouts are unknown to Shining Path, thereby bringing the total number of fatalities attributed to the group to over 12,500. It received reports of killings carried out by Shining Path in 20 departments, the most affected department being Ayacucho, with one in every two victims coming from there.<sup>19</sup>

According to the CVR, Shining Path made “systematic and widespread” use of criminal acts including torture [23% of the cases of torture reported to the CVR were attributed to them] and murder, as well as the devastation of whole communities, sexual violence against women and the use of explosives to carry out indiscriminate attacks in cities.<sup>20</sup>

According to the data collected by the CVR, the MRTA was responsible for 1.8% of the total number of human rights abuses committed during the

#### **Public hearing held by the CVR in Ayacucho**

“Shining Path took my husband out and they asked me where the money was, they asked my son too. They took my husband off and left me with my five children. In 1989 we were left like that, widows, and we went from hole to hole trying to hide, frightened at the least sound, we couldn’t even go back to our homes. They grabbed one man and cut his throat saying that it was about time we took up the armed struggle. (...) ‘I’m not doing anything’, I told him and he hit me on the head with a stick. They slashed my baby. We were all hooded, and they started hitting us. (...) They took them to the square. Some said ‘I don’t know anything’. Then they called them dogs, killed them and later piled the bodies up one on top of the other.”

#### **An inhabitant of the Community of Paccha**

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<sup>16</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 316.

<sup>17</sup> *Final Report*, Volume II, ‘The Actors in the Conflict’, p. 127.

<sup>18</sup> *Final Report*, Volume I, ‘The Periods of Violence’, p. 54.

<sup>19</sup> *Final Report*, Volume VI ‘Crimes and Human Rights Violations’, pp. 53-55.

<sup>20</sup> *Final Report - Executive Summary*, p. 5.

internal armed conflict<sup>21</sup> and 1.5% of the reported fatalities.<sup>22</sup> The CVR also said that it was responsible for the “systematic use of kidnapping (...) [and] crimes (...), such as murder and hostage-taking”.<sup>23</sup>

The CVR held the armed opposition groups responsible for 11% of the more than 500 reported cases of sexual violence against women and girls. Most of them were committed during incursions and armed confrontations or when withdrawing from an area or as a result of forcing women to have abortions or marry or cohabit against their will as well as of forcing both women and girls, including female members of armed opposition groups, into sexual slavery.<sup>24</sup>

The CVR also states that the armed opposition groups were responsible for forcibly recruiting young boys and girls. While in the case of the MRTA, the CVR believes that it was not a widespread practice and was concentrated in the departments of Ayacucho, San Martín, Junín and Ucayali, in the case of Shining Path, however, it believes that enforced recruitment was targeted at minors who were apprehended and, from an early age, forced to participate in acts of war. It also concluded that Shining Path committed indiscriminate acts against boys and girls which constituted breaches of international humanitarian law, including attacks on their lives and physical integrity, cruel treatment and torture, and the rape and sexual abuse of minors.<sup>25</sup>

According to the CVR, the armed opposition groups also helped to create the climate of terror that led to the forced displacement of populations. In particular, with regard to the Asháninka people in the department of Junín and other peasant and indigenous communities in the sub-region known as “Oreja de Perro”, in the department of Ayacucho, it holds

**Public hearing held by the CVR in Huancavelica**

“Sendero Luminoso killed my mother in 1987. ‘We were left as orphans, we had nothing to eat or drink, we escaped from there and came to live in the city, leaving our homes and our things’.”

**Domitila Manchelaría from the community of Santa Barbara, a town that was abandoned by its inhabitants. Now Domitila Manchelaría is the first woman to hold municipal office within the community.**

**Public hearing held by the CVR in Huancayo**

“The community abandoned us ... I don’t want that to happen to anyone, to have to leave your community, your life, your customs and adapt to other ways of living. I feel no joy in living, I am a frustrated citizen .. I want them to find those responsible because they destroyed my life, the whole family. Secondly, I want my brothers to end up, to become professionals, Thirdly, I want my father to be recognized as a leader, a community leader, a peasant leader.”

**Elías Lozano Lozano, Community of Chinche. His father Víctor Lozano, a leader of the Federación Campesina del Valle del Canipaco, Canipaco Valley Peasant Federation, and of his community, was kidnapped and murdered by Shining Path in January 1989.**

<sup>21</sup> *Final Report*, Volume II, ‘The Actors in the Conflict’, p. 430.

<sup>22</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 319.

<sup>23</sup> *Final Report – Executive Summary*, p. 5.

<sup>24</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 374.

<sup>25</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 621. The CVR documented over 2,900 cases of human rights violations against children during the conflict.

Shining Path responsible for the “forcible transfer of people” for having forced the population to move solely in order to be able to have a captive body of people at its disposal to work to satisfy its logistical needs.<sup>26</sup>

The CVR also documented cases in which the MRTA had murdered people on account of their gender identity or sexual orientation in order to “gain legitimacy with the population, thereby encouraging social prejudice against homosexuality, and (...) create anxiety among people from sexual minorities”.<sup>27</sup> The CVR received eight cases of killings of transvestites and homosexuals by members of the MRTA in Tarapoto, department of San Martín, in 1989 and cases of similar offences in the department of Ucayali between May and July 1990, as well as complaints of telephone threats made to leaders of the *Movimiento Homosexual de Lima*, Lima Homosexual Movement, in 1992.<sup>28</sup>

## 2.2 State officials

According to the cases submitted to the CVR, State officials, *Comités de Autodefensa*, Self-Defence Committees<sup>29</sup> and paramilitaries were responsible for over 37% of deaths and “disappearances”, most of them, almost 29%, apparently perpetrated by the Armed Forces<sup>30</sup>, followed by the police who, according to the testimonies gathered by the CVR, were responsible for almost 7% of deaths and “disappearances”.<sup>31</sup>

With regard to the actions of the Armed Forces during the internal armed conflict, the CVR confirmed that “at some places and moments in the conflict, [their] behaviour ... not only involved some individual excesses by officers or soldiers, but also entailed generalized and/or systematic

### Public hearing held by the CVR in Ayacucho

“My mother disappeared in 1991 when I was 12 years old. Next day I went to the police to look for my mother and they told me she hadn’t been taken there. I cried all night but I had to be strong for Paul, my brother. We went to the police so often that we made friends with one man there, the same one who tortured my mother, and he told me that she had been taken there. Sometimes I leave the door open because I still expect her to come back but no, she’s not going to come back but I still can’t rest... On the first of November, the Day of the Dead, in Ayacucho candles are taken to the dead. But I don’t know where to take mine because I don’t know where to go...”.

**Liz Marcela Rojas Váldez**

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<sup>26</sup> Ibidem, pp. 632 and 654.

<sup>27</sup> *Final Report*, Volume II, ‘The Actors in the Conflict’, p. 433.

<sup>28</sup> Ibidem, pp. 432-433.

<sup>29</sup> During the 1980s, in the central highlands of the Andes, the first *Comités de Defensa Civil*, Civil Defence Committees, or *rondas contra-subversivas*, anti-subversive patrols, were set up in some peasant communities to provide armed defence against Shining Path. In November 1991, under Legislative Decree 741 issued by the government of Alberto Fujimori, they were recognized as *Comités de Autodefensa*, Self-Defence Committees. Such committees came under the orders of the Armed Forces.

<sup>30</sup> *Final Report*, Volume I, ‘The Periods of Violence’, p. 55.

<sup>31</sup> *Final Report*, Volume II, ‘The Actors in the Conflict’, p. 232.

practices of human rights violations that constitute crimes against humanity as well as transgressions of the norms of international humanitarian law”.<sup>32</sup>

In the case of the police, the Commission’s analysis indicates that “the torture used by police forces was a systematic, general and widespread practice (...) [as were] the unwarranted arrests [on charges relating to “terrorism”]”.<sup>33</sup> According to the CVR, the police “resorted to torture as one of the most effective means they had of obtaining information and evidence [with regard to “terrorism” cases], both in order to extract self-incriminating confessions and to obtain personal details and general information or to get the victims to name others as responsible”.<sup>34</sup>

The *Final Report* states that 61% of those who died at the hands of State officials during the internal armed conflict were the victims of forced disappearance.<sup>35</sup> The CVR received almost 4,500 cases of forced disappearance at the hands of State officials in at least 18 departments of the country. In 65% of those cases, the whereabouts of the victims is still not known.<sup>36</sup>

According to the CVR, forced disappearances were widespread and indiscriminate in the departments of Ayacucho, Huancavelica and Apurímac between 1983 and 1984 under the government of President Belaúnde Terry. After that, the practice spread to other departments, with 1989, under the administration of Alan García Pérez, being the year when the largest number of districts reported “disappearance” cases.<sup>37</sup>

The CVR also attributed responsibility for over 7,300 extrajudicial executions, of which the whereabouts of the victim is known in 4,400 cases, to State officials. In the remaining cases, however, although the Commission concluded that most of the victims had been killed by State officials, their remains have not yet been located or recovered.<sup>38</sup> Therefore, the total number of those who “disappeared” at the hands of State officials is over 7,000.<sup>39</sup>

Most cases of extrajudicial execution for which State officials were responsible took

**Public hearing held by the CVR in Huancavelica**

“Since my son left, it feels like my two hands and my head have been taken away. (...) He said: ‘I’m not going to train to be a teacher but to be a doctor so that I can help you’. Those young people were the future ... They were denied the right to defend themselves or to health care or, at the very least, to have a minister to help them.”

**The Crispín family. One of their sons, a student at the *Instituto Superior Pedagógico*, Higher Institute for Teacher Training, “disappeared” after being detained on 3 July 1989 by members of the Army.**

<sup>32</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 322.

<sup>33</sup> *Final Report*, Volume II, ‘The Actors in the Conflict’, p. 233.

<sup>34</sup> *Ibidem*, p. 234.

<sup>35</sup> *Final Report*, Volume I, ‘The Faces and Profiles of Violence’, p. 166.

<sup>36</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 113.

<sup>37</sup> *Ibidem*.

<sup>38</sup> *Ibidem*, p. 179.

<sup>39</sup> *Final Report*, Volume VI, ‘The Periods of Violence’, p. 53.

place, according to the CVR, between 1983 and 1985 (45%), under the government of President Belaúnde Terry, in the department of Ayacucho, mainly in the provinces of La Mar and Huanta, and between 1989 and 1992 (23%), in the latter years of the government of Alan García and the early years of Alberto Fujimori's first administration, mainly in the departments of Junín, Huánuco, Huancavelica and San Martín.<sup>40</sup>

The CVR also received reports of 122 massacres carried out by State officials in the departments of Ayacucho, Huancavelica, Junín, Cusco, San Martín and Lima under all the different governments that held power during the two decades of internal armed conflict.<sup>41</sup>

The CVR also recorded over 6,400 cases of torture and other cruel, inhuman or degrading treatment committed by State officials in 22 departments of the country to which should also be added the thousands of victims of "disappearance" and extrajudicial execution, most of whom were also almost certainly subjected to torture. According to the CVR, 75% of the cases of torture analyzed were carried out either by State officials - over half by the Armed Forces and 36% by the police - or by people acting with their authorization or acquiescence, including Self-Defence Committees and paramilitary groups.<sup>42</sup> Most occurred in the departments of Ayacucho (32%), Apurímac (14%) and Huánuco (10%).<sup>43</sup>

**Public hearing held by the CVR in Ayacucho**

"I asked them, 'Why are you taking my son away' and they said that he had to be a witness and that they would give him back to me at the door to the barracks... 'Piss off, you stupid old woman', they told me, 'leave your son'... When I caught up with them at the door, they pushed me and beat me. They wanted to put a bullet in me, they took my son from me and put him in the army truck and I started shouting like a mad woman. Since that day I have been going all over the place day and night trying to get them to return my son and when I went to see the Army, they told me that he hadn't been taken there and so I walked around for another fortnight like a mad woman.

At that point my son sent me a note from the barracks saying, 'Mother, I am here in the barracks, find a lawyer, get hold of some money to get me out'. That is my last memory of my son. That note is evidence that my son was there..."

**Angélica Mendoza, President of the Asociación Nacional de Familiares Secuestrados, Desaparecidos y Detenidos del Perú (ANFASEPP), National Association of Kidnapped, Disappeared and Detained Relatives of Peru. In 1983 the Army went to her home and took away her son. She has never seen him again.**

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<sup>40</sup> *Final Report*, Volume VI, 'Crimes and Human Rights Violations', p. 179.

<sup>41</sup> *Ibidem*, p. 179-180.

<sup>42</sup> *Ibidem*, p. 183.

<sup>43</sup> *Ibidem*, p. 258-259.

According to the CVR analysis, the aim of the torture carried out by State officials was to obtain information or a confession from the detainee or to get the detainee to incriminate others, as well as to punish or intimidate both individuals and communities to prevent them from collaborating with the armed opposition groups, or to get them to fight against them. The CVR concluded that torture and other forms of cruel, inhuman or degrading treatment were systematically inflicted in military bases and barracks, provisional detention centres and police stations, as well as in the offices and headquarters of counter-terrorism units. Of the torture methods used, the CVR devoted particular attention to cases of sexual violence against women and girls, most of which (83%) were attributed to State officials, especially the Armed Forces.<sup>44</sup>

The CVR also concluded that the recruitment of boys and girls aged between 15 and 17 was a systematic and widespread practice used by the Armed Forces during that period.<sup>45</sup>

### 2.3 The political authorities and the judiciary

The CVR assigns grave responsibility to the political authorities who were governing the country during those years,<sup>46</sup> authorities who, according to the CVR, “relinquished their powers to the Armed (...) Forces with regard to everything connected with the struggle against subversion”<sup>47</sup> and “incurred the most serious responsibility by failing to attend to reports of human rights violations or, as in many cases, by ensuring impunity for those responsible for the violations”.<sup>48</sup>

Furthermore, during those two decades, a period in which the parties in government had a majority in Congress, the governing authorities used those majorities to curb or weaken the ability of Congress to scrutinize the militarization of the conflict or put forward other options, especially after the 1992 coup when Congress generally endorsed and encouraged the policy of cover-up and impunity that was being followed.<sup>49</sup> The *Final Report* concludes that the government of Alberto Fujimori legalized impunity for human rights violations attributable to State officials by successfully obtaining majority approval for two amnesty laws which violated several provisions of the Constitution as well as international treaties Peru had ratified.<sup>50</sup>

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<sup>44</sup> *Ibidem*, p. 374 .

<sup>45</sup> *Ibidem*, p. 620.

<sup>46</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 326.

<sup>47</sup> *Final Report*, Volume II, ‘The Armed Forces’, p.378.

<sup>48</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 326.

<sup>49</sup> *Ibidem*, p. 333.

<sup>50</sup> *Ibidem*, p. 334. On 14 June 1995, Congress passed an amnesty law (Law No. 26479) which granted a general amnesty to all members of the security forces and civilians who had been accused, investigated, indicted, tried or convicted, or who were serving prison sentences, for human rights violations committed between May 1980 and June 1995. Following the passing of that law, the judge in charge of investigating the killings in Barrios Altos in 1991 claimed that it did not apply to her case. However, on 28 June 1995, before her decision had gone to the High Court to be ratified or vetoed, Congress passed

In the opinion of the CVR, not only civilian authority but also the administration of justice had been relinquished to the Armed Forces. It concluded that the judicial system had failed to adequately fulfill its mission, whether with regard to punishing the actions of subversive groups under the law, protecting the rights of detained persons or putting an end to the impunity of State agents who committed grave human rights violations. During those two decades, the judiciary came to be seen as a “sieve” that freed guilty suspects and imprisoned innocents. Its officials failed to guarantee the rights of detainees, thereby aiding and abetting gross violations of the right to life and physical integrity, or to take action to bring members of the armed forces accused of gross human rights violations to justice.<sup>51</sup>

In cases of human rights violations allegedly committed by members of the Armed Forces, the CVR analysis shows how the military justice system opened legal proceedings against those concerned when they were already being tried in civilian courts, resulting in disputes over jurisdiction between the military and civilian courts. The CVR concluded that “[t]he military justice system, which was systematically favoured in Supreme Court rulings on any cases of contested jurisdiction which arose, was not used so that the institution could punish the perpetrators but as a tool to protect them”.<sup>52</sup>

The CVR also documents the deficiencies in the legislation applied during those years by the courts trying people accused of “terrorism-related” offences and the negative effect that legislation had on the right of detainees to a fair trial. For example, the 1992 “anti-terrorism” legislation provided a legal framework that made it possible for people to be charged and convicted unfairly. Among other things, the use of an imprecise definition of “terrorism-related” provided a framework in which people could be found guilty of committing an offence when there was no clear evidence that they had done so.

Another piece of this legislation which helped to detain and imprison people who had been unfairly accused of belonging to armed opposition groups was a law known as the *Ley de Arrepentimiento*, Repentance Law,<sup>53</sup> which was in force between May 1992 and November 1994. Under it,

**Hearing held by the CVR “on behalf of the innocent”**

“In October 1992, when I was 19 years old, I was kidnapped at the entrance to La Cantuta University. The men said to me, ‘You terrorist shit, now you’re going to tell us the names of [other] terrorists’. When I was completely naked, they gave me an injection in the left arm. I felt dizzy but despite that, I could feel the terrible pain. They did the same thing the next day. I would have rather died than that. They weren’t human beings but monsters from hell.”

**Testimony given by Magdalena Montesa who was pardoned in 1998 after spending six years in prison unjustly accused of “terrorism”.**

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a second amnesty law (Law No. 26492) prohibiting the judiciary from ruling on the legality or implementation of the previous amnesty law.

<sup>51</sup> *Final Report*, Volume III, ‘The Political and Institutional Actors’, p. 283.

<sup>52</sup> *Ibidem*.

<sup>53</sup> Decree Law No. 25499 of 16 May 1992.

members of armed opposition groups who renounced violence, distanced themselves from such groups and supplied information leading to the capture of other members were granted benefits, including a reduced sentence. Such legislation therefore opened the way for people to make false allegations against others in order to get their own sentences reduced. Although the *Reglamento de la Ley de Arrepentimiento*, Repentance Law Regulations,<sup>54</sup> which came into force in May 1993, stated that the police “have responsibility for verifying the information supplied by the applicant”, they often failed to do so and the Repentance Law therefore opened the door to further arrests that were unsupported by any evidence other than allegations made by members of armed opposition groups who submitted applications under the law in question.

In addition, between 1992 and 1995, depending on the complexity of the case, a detainee could be held totally incommunicado without a judge’s authorization for up to ten days during the pre-trial investigation period. Detainees could be held for up to 15 days without charge and for a further 15 days if the charge of “terrorism” could be deemed an act of “treason”. During such periods, detainees were often tortured and ill-treated to force them to confess.

Furthermore, the trials of people accused of “terrorism-related” offences fell far short of international fair trial standards. For example, in cases in which the “terrorism-related” offence in question was “treason”, civilians were tried by military courts which failed to meet the required standards of independence and impartiality. In addition, between 1992 and 1997, all “terrorism-related”

offences were tried before so-called “faceless judges” (*jueces sin rostro*) who sat behind tinted glass and talked to the defendants through microphones which distorted their voices. On many occasions the defendant was unable to hear what was being asked and trials often lasted only a few minutes with little or no time available to present a defence.

The 1992 “anti-terrorism” legislation also stated that police and military officers involved in the arrest and interrogation of those suspected of “terrorism-

**Public hearing held by the CVR in Lima**

“[I]n 1994 I found out that warrants had been issued for all of us, that we were all terrorists with 30-year prison sentences. We turned ourselves in to find out what would happen to us because we weren’t terrorists (...) The Army Captain (...) recommended to us that, since even elderly people were being sought as terrorists, we should apply under the Repentance Law so that everything would be over quicker. So we all went, the whole community, men, women, old people, everyone. But everything got worse. The police beat us up badly, they took our money and tortured us constantly because we were seen as *requisitoriados* (wanted people). Most of us ended up in detention. I spent nine months at the headquarters of the anti-terrorist police until June 99 when I was acquitted.

The truth is that I don’t understand. Is this how my community is rewarded for all the sacrifices it made for peace and survival?”

**Testimony given by Fermín Tolentino from the Cochas Paca community which was caught in the crossfire and attacked by both Shining Path and the Army.**

<sup>54</sup> Regulations D.S. No. 013-93-JUS of 8 May 1993.

related” offences could not be called as witnesses and cross-examined during the trial. Furthermore, until November 1993, lawyers were prohibited from defending more than one client at a time charged with “terrorism-related” offences.

At the same time, as the CVR states, during the years of internal armed conflict *habeas corpus* petitions were generally declared inadmissible, a practice which is believed to have contributed to the fact that arbitrary detentions often culminated in torture, arbitrary execution and forced disappearance.<sup>55</sup>

The CVR believes that, of the tens of thousands of people who were held in pre-trial detention on suspicion of committing acts of “terrorism”, many of whom were also subjected to torture and cruel, inhuman or degrading treatment, a large proportion were innocent and had been held unfairly on “terrorism-related” charges. For example, of the almost 34,000 cases of pre-trial detention recorded by the CVR between 1983 and 2000, almost half of those detained had to be released for lack of evidence before the case came to trial.<sup>56</sup>

In addition, according to the CVR, of the thousands of people accused of “terrorist-related” offences who were imprisoned as the result of a court order after the “anti-terrorism” legislation came into force in 1992, almost 1,400 - known in Peru as “innocent prisoners” - were found to have been unfairly convicted and were therefore acquitted by the courts, released as a result of a presidential pardon or granted clemency between 1996 and 2000. This took place after the government of Alberto Fujimori publicly recognized that mistakes had been made and that hundreds of people who had been unfairly convicted for “terrorism-related” offences were being held in Peruvian prisons.<sup>57</sup>

The CVR stated that, since the 1992 “anti-terrorism” legislation had been strictly and uncritically implemented, the impartiality and accuracy of the trials in question could not be guaranteed. “[H]undreds of innocent persons had to endure long sentences [and] due process violations cast a heavy shadow of doubt over the trials that took place”.<sup>58</sup>

The CVR also confirmed that those sentenced for “terrorism-related” offences were subjected to prison conditions which amounted to cruel, inhuman or degrading treatment and in no way led to their rehabilitation.<sup>59</sup> Such conditions led to riots and massacres in June 1986, when over 150 prisoners died in Lurigancho, Santa Bárbara and El Frontón prisons in Lima, and in 1992, when at least 39 inmates died in Castro Castro Prison, also in Lima.<sup>60</sup>

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<sup>55</sup> *Final Report*, Volume VIII ‘General Conclusions’, p. 335.

<sup>56</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 428.

<sup>57</sup> *Ibidem*.

<sup>58</sup> *Final Report*, Volume VIII ‘General Conclusions’, p. 335.

<sup>59</sup> *Ibidem*.

<sup>60</sup> *Ibidem*.

### **3. The victims: some of the most defenceless members of Peruvian society**

#### **3.1 Social exclusion and racial discrimination**

The CVR found that the violence fell unequally across different geographical areas and different strata of the population. It concluded that “there is a clear relationship between social exclusion and the intensity of the violence”.<sup>61</sup> Of the victims recorded by the CVR, 40% were from Ayacucho, one of the poorest departments in the country. Taken together with the cases from Junín, Huánuco, Huancavelica, Apurímac and San Martín, they made up 85% of the total number of cases received by the CVR,<sup>62</sup> Huancavelica, Ayacucho, Apurímac and Huánuco being four of the five poorest departments of Peru representing only 9% of the overall income of all Peruvian families.<sup>63</sup> In contrast, less than 10% of the people who died or “disappeared” belonged to the wealthier sectors of society.<sup>64</sup>

The *Final Report* also shows how most of the victims, both male and female, belonged to rural (79%) or peasant (56%) groups which are those that face greatest social exclusion and have least access to economic resources. The percentage of deaths and “disappearances” among people working in the farming/livestock sector and living in rural areas reported to the CVR is much greater than the percentage of people who, according to the 1993 electoral census, were living in those areas (29%) and working in that sector (28%).<sup>65</sup>

The CVR also concluded that a very high proportion of those who died or “disappeared”, over 75%, spoke Quechua or other native languages as their mother tongue in a country where, according to the 1993 census, only a fifth of the population spoke those languages.<sup>66</sup>

According to the CVR analysis, indigenous peoples, mainly the Asháninka, were very badly affected by the internal armed

#### **Public hearing held by the CVR in Ayacucho**

“After the massacres, the community disappeared, a victim of violence from both sides. After a while, everyone started coming back. We asked for a road to be put in so that we could get out of the poverty we have been left in by the war but they did not build it; we asked for a school because our children were illiterate but they did not give us one; we asked for a health centre because there is a lot of disease but they didn’t give us that either. Maybe within one generation our children will be Peruvians.”

#### **An inhabitant of the community of Chacca.**

<sup>61</sup> *Final Report*, Volume I, ‘The Faces and Profiles of the Violence’, p. 158.

<sup>62</sup> *Ibidem*.

<sup>63</sup> *Ibidem*.

<sup>64</sup> *Ibidem*, p. 159.

<sup>65</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 316.

<sup>66</sup> *Final Report*, Volume I, ‘The Faces and Profiles of Violence’, p. 160.

conflict, a situation which seems to have exacerbated the exclusion and alienation they had already been suffering for centuries. Although there are no specific figures, the CVR estimated that of the 55,000 Asháninkas, about 10,000 were forcibly displaced within the Ene, Tambo and Perené valleys in the Peruvian Amazon jungle, 6,000 died and about 5,000 were held captive by Shining Path. It is also believed that, during the years of internal conflict, between 30 and 40 Asháninka communities disappeared.<sup>67</sup>

The cultural and ethnic gulf between the sectors of society most affected by the violence and the rest of the country is further reinforced by the differences in their levels of education. For example, the CVR concluded that the educational level of the dead and “disappeared” was far below the national average (68% of the victims had failed to attain secondary level education in a country where only 40% of the population as a whole had failed to do so).<sup>68</sup>

Similarly, in the case of internal displacement, about 70% of those affected were native language speakers from peasant and indigenous communities. Displacement not only exacerbated the alienation, prejudice and extreme poverty they were already suffering but also, given their low levels of education, forced them to become involved in the informal sector of the economy where they faced ethnic and cultural discrimination.<sup>69</sup>

Likewise, the majority of the victims of torture and cruel, inhuman or degrading treatment whose cases were investigated by the CVR were indigenous peasants aged between 20 and 39 who spoke Quechua and had only attained primary level education.<sup>70</sup>

Bearing in mind the socio-economic profile of the vast majority of the victims, as the CVR stated, “it is not surprising that this Peruvian rural, Andean, jungle-dwelling, Quechua and Asháninka, peasant, poor and uneducated was left to bleed for years without the rest of the country feeling or assuming as its own the true extent of the tragedy being endured by that ‘alien people within Peru’.”<sup>71</sup> According to the CVR, “the violence and its victims gradually took on greater importance for public opinion [and the media] as the conflict began to attack the centres of economic and political power within the country”.<sup>72</sup> In its judgment, “[this] demonstrates the veiled racism and scornful attitudes that persist in Peruvian society”.<sup>73</sup> It found that “due to the racism and the fact that those people of indigenous, rural and poor origin were given little consideration as citizens, the deaths of thousands of Quechua-speakers went unnoticed by national public opinion”. Their absence and the pleas of their relatives were not enough to create active social pressure to condemn such acts<sup>74</sup> and “ethnic and racial

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<sup>67</sup> *Final Report*, Volume V, ‘Representative Stories of the Violence’, p. 241.

<sup>68</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 316.

<sup>69</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 656.

<sup>70</sup> *Ibidem*, pp. 256-257.

<sup>71</sup> *Final Report*, Volume I, ‘The Faces and Profiles of the Violence’, p. 163.

<sup>72</sup> *Ibidem*, pp. 180-181.

<sup>73</sup> *Final Report*, Volume VIII, ‘General Conclusions’, p. 316.

<sup>74</sup> *Final Report*, Volume VIII, ‘The Factors which made the Violence Possible’, pp.101-103.

differences (...) were often cited by the perpetrators [including both State officials and armed opposition groups] to justify action against their victims”.<sup>75</sup>

### 3.2 Gender discrimination

According to the CVR, the violence during the internal Peruvian conflict did not affect men and women in equal measure. The testimonies gathered confirm that it was men, mostly aged between 20 and 49 (over 55%), who formed the bulk of the fatalities from the conflict (80%).<sup>76</sup> Women of all ages, on the other hand, made up less than 20%. Over 75% of the victims of the conflict were men over 15 who were married or living with a partner. In the opinion of the CVR, this shows that most of the victims belonged to the population group with the largest number of dependent children and on whose shoulders the main economic and political responsibility within their respective communities lay.<sup>77</sup>

According to the CVR, most female deaths (60%) occurred in situations of indiscriminate violence such as massacres<sup>78</sup> or the “devastation of communities”. In the case of men, on the other hand, most killings and extrajudicial executions took place in operations or actions against groups of less than five people, in other words, cases in which violence was used selectively against the group in question.<sup>79</sup>

The profile of the victims was said to be linked to the objectives and strategies of the main actors. For example, the CVR concluded that, through its strategy of seeking to win power through armed struggle, Shining Path sought to deliberately attack those who, according to their ideology, represented the State, namely, people with relatively important responsibilities or who played a certain social or political leadership role within their communities and who, in the main, were men. About 21% of the people killed by Shining Path reported to the CVR were local authorities or social leaders. In the judgment of the CVR, this seriously hindered any attempt to organize political mediation in the areas affected by the conflict since Shining Path had deliberately eliminated a whole generation of local political leaders.<sup>80</sup>

State officials also selected their victims according to a general profile of who was most likely to become a member of an armed opposition group. The largest number of victims to die or “disappear” at the hands of the security forces were, according to the CVR, males of under 30 years of age, a high proportion of whom, by comparison with the victims of armed opposition groups, were educated to secondary school level. Of the over 1,000 people arrested for “terrorism-related” offences who were interviewed by the CVR, half were between 20 and 29 years of age at the time of arrest and about 45% were educated to further education level. The CVR concluded that “any strategy that selects targets for repression on the basis of such

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<sup>75</sup> Ibidem, p. 105.

<sup>76</sup> Ibidem, p. 48.

<sup>77</sup> *Final Report*, Volume I, ‘The Faces and Profiles of the Violence’, pp. 164-165.

<sup>78</sup> The CVR defines a massacre as a multiple killing with five or more victims.

<sup>79</sup> *Final Report*, Volume I, ‘The Faces and Profiles of the Violence’, p. 166, and Volume VI, ‘Crimes and Human Rights Violations’, p. 179.

<sup>80</sup> *Final Report*, Volume I, ‘The Faces and Profiles of the Violence’, pp. 168-169.

general categories (age group and level of education) and is applied systematically and on a large scale inevitably results in gross human rights violations”.<sup>81</sup>

Nevertheless, although the victims of human rights violations were mainly men, according to the CVR, the conflict also had a significant impact on women. In its view, the internal conflict in Peru emphasized and strengthened a gender system that was characterized by inequality, hierarchy and discrimination. Women were caught in the crossfire. They were ordered by both the armed opposition groups and the security forces to cook for them, tend the sick and provide accommodation while at the same time being under threat from both. They had no choice, they had to obey, otherwise their lives and those of their relatives would be put at risk. Women were not listened to, their views were not taken into account by either side. “While women may have been invisible and marginalized before the conflict, their situation worsened as a result of the internal conflict. Women whose opinions were already not usually seen as relevant or permitted were in that context once again silenced”.<sup>82</sup>

According to the CVR, women suffered greatly during the internal conflict because of their gender, with rape being employed as a weapon of war to diminish them and keep them in their place through the use of their bodies. They were also subjected to other forms of torture, including psychological torture, which was used to obtain information about their relatives, as well as enforced recruitment and forced marriage or cohabitation.<sup>83</sup>

The CVR found that rape was common and used quite extensively, mainly by the Armed Forces who used it

**Public hearing held by the CVR in Ayacucho**

In 1985 they came in with twenty-four soldiers (...): they went from hut to hut getting the people together and blocked off the exits so no one could escape. There were mainly only young women, children, pregnant women and elderly people there. From the woods I could see them taking the young women off to a nearby mound to rape them. Then they separated them out: women and children in one house and men in the other. They started shooting and throwing bombs and the houses caught fire. They silenced 69 people right there. After that my people were in a bad way but they still went on killing people... If they found two people together, they killed them. If they found three, they would kill them all too. It was as if my people were alienated within Peru. No one knows why they did the killings. Unfortunately. What had those people done? Did they find terrorists? What terrorists did they find? That was just an excuse used by the military.”

**Testimony given by an inhabitant of the community of Accomarca.**

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<sup>81</sup> Ibidem, pp. 173-174.

<sup>82</sup> *Final Report*, Volume VIII, ‘The Factors which made the Violence Possible’, p. 71.

<sup>83</sup> Ibidem, pp. 45 and 48.

almost exclusively against women. Of the over 500 cases of rape reported to the CVR,<sup>84</sup> in only 11 of them was the victim a man.<sup>85</sup> Many of the women concerned said that they had suffered mental and physical health problems, including problems with reproduction, as a result of the sexual violence to which they were subjected.

According to the CVR, most sexual violence against women and girls was not reported because of the shame they felt or because they feared intimidation from their attackers. In cases in which complaints had been lodged, the CVR found that “indifference or little or no response was the norm, not only for fear of reprisals from the (...) [perpetrators] but also because the matter was not deemed important and was seen as a private issue”.<sup>86</sup>

In addition, “in their role as mothers or wives (...) it was [women] who largely faced the consequences of the enforced disappearance [or death of a loved one] on the family, by taking responsibility for running the household and searching for the relative concerned”,<sup>87</sup> many of them having to suffer continuous ill-treatment, harassment and threats throughout the difficult and painful process of looking for the loved one.<sup>88</sup> Various forms of sexual violence were also used against them to punish them or as a reprisal for reporting human rights violations committed against their relatives to the authorities.<sup>89</sup> A quarter of the testimonies given to the CVR by women were from direct relatives of people who had “disappeared”.<sup>90</sup>

Hatred and malice also led to revenge being taken against them. For example, the CVR points out that women were not only subjected to abuse by the different actors in the conflict but also had their human rights violated for being the mother, sister or daughter of alleged “terrorists” or for being the partner of a member of the security forces. Sometimes, in the violent atmosphere which prevailed, ideological reasons were also given for punishing women who did not perform the submissive role assigned to them.<sup>91</sup>

Most of these women were Quechua speakers from the southern highlands, young peasant women with very little education, in other words, members of the most socially and politically marginalized groups. In their case racial discrimination was combined with gender discrimination.

A clear example of this dual discrimination is the fact that thousands of women of indigenous or peasant origin and living in poverty or extreme poverty are believed to have been sterilized against their will or without their consent between 1996 and 2000. Although the CVR did not

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<sup>84</sup> The CVR considers this figure to be just a fraction of the true number of offences of sexual violence committed against women and girls during the internal armed conflict in Peru because most cases were not reported to the authorities.

<sup>85</sup> *Final Report*, Volume VIII, ‘The Factors which made the Violence Possible’, p. 66.

<sup>86</sup> *Ibidem*, pp. 280-303.

<sup>87</sup> *Final Report*, Volume VI, ‘Crimes and Human Rights Violations’, p. 116.

<sup>88</sup> *Ibidem*.

<sup>89</sup> *Ibidem*, p. 374

<sup>90</sup> *Final Report*, Volume VIII, ‘The Factors which made the Violence Possible’, p. 50.

<sup>91</sup> *Ibidem*, pp. 72-73.

analyze these gross violations of women's rights in their *Final Report*, these cases also show how the right of thousands of Peruvian women to live free of violence is held back by social and gender discrimination. These enforced sterilizations took place in the context of the Family Planning Program implemented during the last five years of the period studied by the CVR, under the final administration of former President Alberto Fujimori, as part of its policy of demographic control which was specifically targeted at indigenous and peasant women belonging to the most deprived sectors of society.

The Family Planning Program stated that patients should be informed of all the family planning methods available and allowed to choose freely the method they preferred. However, at the same time, the service providers were set goals in terms of the number of sterilizations to be carried out as well as quotas for the number of clients they attracted who would choose sterilization over other forms of family planning. The conditions placed on the providers therefore contradicted the principle of allowing the users to choose freely.

According to reports received by Amnesty International, women were frequently given biased information or were pressurized to accept sterilization. Over 200,000 poor women from indigenous communities and rural areas in the Andes and the Peruvian Amazon are said to have been sterilized without proper consent. Many of them or their families were threatened with fines or imprisonment or with having State food aid withdrawn if they did not agree to undergo the sterilization procedure. In addition, many of them reportedly did not receive the necessary post-operative care and as a consequence suffered health problems, some of them even losing their lives.<sup>92</sup>

Amnesty International believes that the use of enforced sterilization in Peru between 1996 and 2000 amounted to a violation of the reproductive rights of thousands of peasant and indigenous women with few economic resources. These rights, which were laid down in the Program of Action of the International Conference on Population and Development held in Cairo, are based on recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, as well as the right to attain the highest standard of sexual and reproductive health. They also include the right to make decisions about reproduction without being subjected to discrimination, coercion or violence.<sup>93</sup>

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<sup>92</sup> See *Subcomisión Investigadora de Personas e Instituciones Involucradas en Acciones de Anticoncepción Quirúrgica Voluntaria* (Sub-Commission to investigate people and institutions involved in voluntary surgical contraception procedures), *Informe Final sobre la Aplicación de la Anticoncepción Quirúrgica Voluntaria* (Final Report on the Implementation of Voluntary Surgical Contraception), June 2002; Ombudsman's Office, *Anticoncepción Quirúrgica Voluntaria I. Casos Investigados por la Defensoría del Pueblo* (Voluntary Surgical Contraception I. Cases investigated by the Ombudsman's Office), January 1998; and CLADEM, *Nada personal, Reporte de Derechos Humanos sobre la Aplicación de la Anticoncepción Quirúrgica en el Perú: 1996-1998* (Nothing Personal. Human Rights Report on the Implementation of Surgical Contraception in Peru: 1996-1998), April 1999.

<sup>93</sup> United Nations document A/CONF.171/13, 12 May 1994, para.7.3.

In 1999, the case of a Peruvian woman who died after being forcibly sterilized in 1998 was submitted to the Inter-American Commission on Human Rights. In 2000, after the Commission declared the case admissible, the Peruvian State acknowledged that it had violated several rights enshrined in both the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”) to which Peru is a party. The State recognized that it had violated the right to life, the right to physical integrity and the right to equal protection before the law without discrimination and that it was in breach of its duty to refrain from engaging in any violent act or practice against women.<sup>94</sup>

On the other hand, as the CVR notes, the internal armed conflict also transformed the social role to which women in Peru were traditionally relegated. They participated in the conflict mainly on the side of the armed opposition groups and their role was not confined to the traditional female roles of mediator and carer. They also participated in armed confrontations and committed human rights violations. The CVR cites documents indicating that 40% of the membership of Shining Path was female and over 50% of its Central Committee were women, most of them, in contrast to their low incomes and position in the labour market, with a higher level of education than the men. According to some studies cited by the CVR, Shining Path capitalized on the hatred and frustration created by not only the social and racial discrimination that existed in Peru but also the gender discrimination, in other words, on the frustration felt by women who, despite being academically qualified, encountered problems when trying to enter the labour market.<sup>95</sup>

Furthermore, women had to go from being mothers and wives to struggling against and confronting institutional power, which involved organizing themselves against the violence and searching for their “disappeared” relatives while at the same time taking over complete responsibility for their families. Women were the witnesses, the ones who had to deal with the continuing violence and conflict and the ones who mobilized themselves to report abuses and seek justice. It was not by chance that most of the testimonies given to the CVR came from women.<sup>96</sup>

Women were also “obliged to migrate or move, (...) [while having] to take sole responsibility for broken family groups, (...) [and], without financial resources and in conditions of cultural uprooting and social stigmatization, to make sure the family survived”.<sup>97</sup>

This led, according to the CVR, to the coming together of a group of women who became important social and political actors, through their work in organizations of relatives of the “disappeared” and women’s organizations such as the “canteens” (“comedores”) and the

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<sup>94</sup> Report No. 66/00 of the Inter-American Commission on Human Rights of the Organization of American States, Case 12,191, María Mamérita Méstaza Chávez, Peru, 3 October 2000, and Report No. 71/03, Case 12,191, Friendly Settlement, María Mamérita Méstaza Chávez, Peru, 22 October 2003.

<sup>95</sup> *Final Report*, Volume VIII, ‘The Factors which made the Violence Possible’, pp. 56-57.

<sup>96</sup> *Ibidem*, p. 49.

<sup>97</sup> *Ibidem*, p. 46.

‘glass of milk’ program which sprung up in response to the economic crisis and the increasing deprivation facing the urban masses.

## IV. The recommendations made by the Truth and Reconciliation Commission

### 1. Reconciliation and justice

The CVR interprets reconciliation as being “a new foundational pact [made] between the Peruvian State and society, and among the members of society (...) [in order to build] a country that is positively recognized as multiethnic, pluri-cultural, and multilingual”.<sup>98</sup> It sees such reconciliation as being a necessity that can be made possible by uncovering the truth and using the justice system to provide reparations and punish the guilty. It must also include social justice, that is to say, the redistribution of access to power and wealth within Peruvian society.

While the CVR sees truth as a precondition for reconciliation, it sees justice as its essence and effect.<sup>99</sup> Bearing this in mind, the CVR believes that the first step towards reconciliation can only be taken when the perpetrators assume responsibility before the courts and pay their dues to society.<sup>100</sup> If the basis of the principle of reconciliation is justice, then “not only must the members of (...) [Shining Path and the MRTA] pay for their crimes [referring to the fact that most are already imprisoned for the crimes they committed] but also anyone else who has committed a crime (...) [because] [n]o one is above justice”.<sup>101</sup>

In order for justice to be done, of the cases of gross human rights abuses and violations it documented, the CVR forwarded 43 cases in which the alleged perpetrators, including both members of opposition groups and State officials, could be identified to the *Defensoría del Pueblo*, Ombudsman’s Office, and the *Ministerio Público*, Public Prosecutor’s Office. They included killings, extrajudicial executions, forced disappearances, torture and ill-treatment, sexual violence and massacres in communities and prisons, as well as examples of human rights issues in some military barracks and bases.<sup>102</sup>

### 2. National Plan for Forensic Anthropological Interventions

In order to move forward in the search for the more than 7,000 people who “disappeared” during the armed conflict, the CVR has put forward a *Plan Nacional de Investigaciones Antropológico-Forenses*, National Plan for Forensic Anthropological Investigations, and

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<sup>98</sup> *Final Report*, Volume IX, ‘General Conclusions’, p. 342.

<sup>99</sup> *Final Report*, Volume IX, ‘The Foundations of Reconciliation’, p. 13.

<sup>100</sup> *Ibidem*, p. 27.

<sup>101</sup> *Ibidem*, p. 34.

<sup>102</sup> Official Letter No. 005-2003-CE from the *Comisión de Entrega* (Handover Committee) of the CVR, 3 September 2003.

proposed that a *Registro Nacional de Sitios de Entierro*, National Registry of Burial Sites, be compiled. The CVR believes that the Plan will help to ensure that human remains are properly retrieved so that the facts, the causes of death and the presumed perpetrators can be determined. By returning the remains of victims to the families and societies concerned, it will be possible to make progress with investigations and legal proceedings as well as with the reparation process.

### **3. Reparations**

The CVR has put forward a *Plan Integral de Reparaciones*, Comprehensive Plan for Reparations, to help the victims of the internal armed conflict to regain their personal dignity, security and tranquility as well as their self-respect and mental and physical wellbeing. The Plan also seeks to ensure that the victims are given back their rights as citizens and, where possible, that compensation is provided for the social and material damage caused to their local area or community as a result of the specific loss, “disappearance” or suffering endured. Reparations must therefore be both individual and collective.<sup>103</sup>

According to the CVR, the beneficiaries of the Plan will be any individual or group of individuals who suffered acts or omissions that amount to violations or abuses of international human rights law, including those who were subjected to forced disappearance, kidnapping, extrajudicial execution, murder, enforced displacement, arbitrary detention and violation of due process, enforced recruitment, torture and rape, as well as those who were wounded, injured or killed as a result of attacks by the armed opposition groups, regardless of who the perpetrator was, what relationship he or she had with the victim and what the victim may have done in the past.<sup>104</sup>

The CVR sees the reparation of victims as being closely linked with the tasks of uncovering the truth, reconstructing historical memory, implementing justice and carrying out the institutional reforms that are necessary to ensure that what happened can never be repeated. In the opinion of the CVR, if any one of these is done without the others, its value will be largely lost and it will be seen as an empty gesture. As a result, any contribution it may make to bringing about national reconciliation and building and consolidating the rule of law and democracy is likely to be limited.<sup>105</sup>

In this context, the CVR has recommended the following types of reparation:

**a) Symbolic reparations** such as:

- 1) Encouraging the holding of events that recognize the importance and seriousness of the damage caused to those who should have been protected.

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<sup>103</sup> *Final Report*, Volume IX, ‘Comprehensive Plan for Reparations’, p. 147.

<sup>104</sup> *Ibidem*, p. 149.

<sup>105</sup> *Ibidem*, p. 148.

2) Closing down or renovating places associated with human rights violations, including detention centres in which conditions are particularly harsh and amount to cruel, inhuman or degrading treatment, such as Challapalca Prison and El Callao Naval Base.<sup>106</sup>

**b) Reparations in the field of health** such as:

setting up free health programs to provide treatment for mental and physical problems, including specialist mental health treatment for women.

**c) Reparations in the field of education** such as:

- 1) Exonerating those who were forced to give up their studies from having to pay for their education and setting up a grants program for them.
- 2) Extending or setting up adult education programs in the areas where there was greatest violence.

**d) Reparations relating to the restoration of full citizen status and the removal of social stigma** such as:

- 1) Regularizing the legal status of the “disappeared” by recognizing them as being “absent due to disappearance” which would allow their relatives to settle matters relating to succession, property and ownership of goods.
- 2) Regularizing the legal situation of citizens against whom arrest warrants were wrongly issued in connection with “terrorism-related” offences( *los “requisitorios”*).
- 3) Setting up a general program for the issuing of new regularized documentation to people who have been left without identity documents as a result of the internal armed conflict.
- 4) Destroying the legal, trial and police records of “innocent prisoners” who have been acquitted, released on completion of sentence, pardoned or granted clemency.

**e) Financial reparations** such as:

- 1) Offering individual compensation to the relatives of those who died or “disappeared”, people who have been left with physical or mental disabilities, people who were unjustly imprisoned, the victims of sexual violence and children born as a result of rape.
- 2) Offering collective compensation to rebuild and consolidate institutions in peasant and indigenous communities, settlements and other areas which lost their social and physical infrastructure, partially or entirely, as a consequence of the period of violence.

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<sup>106</sup> Challapalca Prison, in the department of Tacna, is 4,600 metres above sea level and extremely cold. Several leaders of armed opposition groups are held in underground cells at El Callao Naval Base.

#### **4. Institutional reform**

##### **a) Reforms to ensure that the State has a presence**

One of the reasons highlighted by the CVR for the extent of the conflict and the huge impact it had in some parts of the country was the absence of a State presence or institutional mechanisms in those areas. Among the reforms proposed by the CVR in this connection are the following:

- 1) The rights of indigenous peoples and their communities should be recognized in national legislation in order to give them fair and legitimate legal protection, reaffirm the diversity and plurality of Peru and set up a State policy body to deal with indigenous and ethnic matters.
- 2) Policies and standards need to be developed to facilitate collaboration between the National Police, the municipal authorities and citizens so that the police can do their work effectively and to a high standard. Mechanisms should also be set up to prevent abuses and, in the event that they do take place, ensure that they are rapidly and efficiently dealt with.
- 3) Incentives should be given to those working in state education and health to go and work in the areas that were most affected by the conflict and are far away from urban areas.

##### **b) Reforms related to the security forces** such as:

- 1) Developing a national security policy and establishing civilian control over the military intelligence services.
- 2) Determining the respective spheres of competence of the Armed Forces and the Police.

##### **c) Reforms related to the administration of justice** such as:

- 1) Strengthening the independence of the justice system and confining military jurisdiction to service-related offences.
- 2) Incorporating into domestic legislation developments on international human rights law and international humanitarian law.
- 3) Reforming the prison system by introducing guaranteed rights for detainees, including access to basic services (food and health care), as well as retraining, rehabilitation and social reintegration programs.
- 4) Setting up the necessary procedures and institutions to examine and rule on requests for clemency from those convicted on terrorism charges who claim they are innocent (the “innocent prisoners”).

##### **d) Reforms related to the education system** such as:

- 1) Promoting respect for ethnic and cultural differences and favouring a policy of bilingual and cross-cultural education that, by prioritizing children from the poorest areas that were most affected by the violence, can bring about greater integration and overcome racism and discrimination.

2) Drawing up a plan to teach basic literacy that prioritizes teenage and adult women in rural areas where illiteracy rates are highest.

3) Improving rural schools at the level of both infrastructure and staffing.

### **5. Following up the work of the CVR**

The CVR also recommended that a Cross-Institutional Working Group be set up to organize its recommendations, help disseminate the *Final Report* and pass on specific proposals to the relevant public bodies.

## **V. How the *Final Report* was received**

In November 2003, in a speech made in response to the CVR's report, President Alejandro Toledo gave his backing to the Commission's work, stressing that its recommendations would be addressed by the government and that a group would be set up to follow them up. The President apologized on behalf of the State "to those who have suffered" and announced that some 800 million US dollars would be put into a *Plan de Paz y Desarrollo*, Peace and Development Plan, to improve public works in the areas most affected and strengthen state institutions and civil society.

In his speech to the nation, the President also declared 10 December, International Human Rights Day, as a Day of National Reconciliation and called on authorities throughout the country and civil society to hold symbolic reparation ceremonies in recognition of the civilian, military and police victims. He also said that the inclusion of the most important aspects of the *Final Report* in school curriculums and textbooks would be encouraged.

The President also emphasized that it was now the task of the Public Prosecutor's Office and the judiciary to ensure that justice is done in these cases "without sheltering behind impunity or abuse".

In addition, at the ceremony during which the *Final Report* was handed over, the President of the Supreme Court of Justice promised to adopt the necessary measures to ensure that the legal proceedings arising from the investigations carried out by the CVR would be impartial, effective and transparent. He also apologized to the people of Ayacucho and the country for the disgraceful conduct of many judges who misuse their responsibility and renounced their sacred duty to dispense justice, and acknowledged that the judiciary did not take firm enough action to demonstrate that they were committed to defending life and liberty.

In Congress in November 2003, in response to the presentation of the *Final Report*, the Justice and Human Rights Commission set up a working group to evaluate and follow up its conclusions and recommendations.

However, the political parties and former presidents who had governed the country during the years of internal armed conflict distanced themselves from the CVR's conclusions and denied

that the human rights violations attributed to the Armed Forces were systematic and widespread.<sup>107</sup>

Many members of the Armed Forces and Police expressed their displeasure with the report and rejected its conclusions, and attempts were made to discredit the Commissioners by accusing them of being hostile to the security forces. Serving and retired members of the security forces and their relatives, while recognizing that excesses were committed by State officials during the internal armed conflict, also denied that human rights were systematically violated.<sup>108</sup>

However, according to opinion polls carried out in Lima, the general public for the most part believed that the CVR had performed its task well and saw the *Final Report* as positive for the country. Its findings, including the fact that responsibility was assigned to both the armed opposition groups and the security forces, were generally accepted as were the recommendations, including the need to make moral and material reparation to all the victims of the conflict. Most of those interviewed, who were of all ages and social classes, thought that the government should implement the recommendations put forward by the CVR.<sup>109</sup>

In December 2003, as far as the Church was concerned, the Peruvian Bishops included a reference to the *Final Report* in their Christmas message, saying that it should become a starting point for the reconciliation process and that it was necessary “to move towards comprehensive reconciliation based on truth and justice”.<sup>110</sup>

## **VI. Progress and setbacks since publication of the *Final Report***

One year on from the publication of the *Final Report*, the Peruvian authorities have undertaken a series of initiatives to address the recommendations contained in it. Last February, the *Comisión Multisectorial de Alto Nivel*, High-Level Cross-Sector Commission, was set up to take charge of State action and policy on matters relating to peace, reparations and reconciliation and to follow up on the CVR recommendations.<sup>111</sup> Furthermore, in December 2003, the *Fiscalía Superior Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas*, Office of the Specialist Prosecutor for Human Rights, Forced Disappearances, Extrajudicial Executions and

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<sup>107</sup> Bulletin 1, ‘And after the CVR, what next?’, Consultancy for the ICTJ, 8-14 September 2003, p. 2, and APRA Statement, ‘APRA and the Truth Commission’, 8 November 2003.

<sup>108</sup> ‘Statement by Former Commanders-in-Chief of the Armed Forces to the Peruvian people concerning the report of the Truth and Reconciliation Commission (CVR)’, 23 September 2003, and Bulletin 4, ‘And after the CVR, what next?’, Consultancy for the ICTJ, 22-28 September 2003, pp.2-3.

<sup>109</sup> ‘Ideele’ (a magazine), September 2003, pp. 44-47.

<sup>110</sup> Bishops of Peru: *Preparamos el camino del Señor: Mensaje de Navidad* (Let us prepare the road of the Lord: Christmas Message), 13 December 2003.

<sup>111</sup> Supreme Decree No. 011-2004-PCM, 6 February 2004.

the Exhumation of Secret Graves, was set up in Lima, together with ten other specialist provincial prosecutors' offices, in order to move forward in the area of truth and justice.<sup>112</sup>

Several government authorities have also reportedly held ceremonies in recognition of the people who suffered serious abuses and violations of their fundamental rights during the conflict. Some local authorities have also taken action to erect public memorials to the victims of the violence.

For its part, in April 2004, the Ombudsman's Office, which in September 2003 took charge of the store of documentation gathered by the CVR,<sup>113</sup> inaugurated, with that same documentation, the *Centro de Información para la Memoria Histórica y Colectiva y los Derechos Humanos*, Information Centre for the Historical and Collective Memory and Human Rights, where the information gathered by the CVR and the official complaints submitted to the Public Prosecutor's Office between 1983 and 1996 will be available for public consultation.

In May 2004, the Ombudsman's Office also held a public audience for the Asháninka people in the department of Junín at which the *Final Report*, especially the parts relating to the suffering inflicted on that indigenous group by Shining Path, was made known to the community.

In May 2004, the Ombudsman's Office also announced the launching of a campaign to address the documentation needs of over 5,000 people in indigenous communities who are said to have no official documents. The Ministry of Health is also reportedly providing access to health programs in those communities.

In addition, according to reports from the Health Ministry, between October 2003 and January 2004, the cases of 200 people suffering from mental health problems in the Ayacucho region were addressed under the *Programa de Intervención en Violencia Política*, Program for dealing with [the effects of] Political Violence, run by the Mental Health Unit of the Health Ministry. This was in addition to the over 600 cases it reportedly dealt with earlier in 2003.<sup>114</sup>

According to reports received by Amnesty International, since September 2003, in the area of education, the Education Ministry and other educational institutions have begun to allocate grants to children of victims of the conflict and in March 2004, with regard to housing, the Peruvian authorities, through the Housing Ministry, granted victims of the conflict priority access to low-cost housing programs.

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<sup>112</sup> Resolutions from the Public Prosecutor's Office Nos. 2034-2003-MP-FN, 2036-2003-MP-FN, 2037-2003-MP-FN, 2038-2003-MP-FN, 2039-2003-MP-FN, 2040-2003-MP-FN, 2041-2003-MP-FN, 2042-2003-MP-FN, 2043-2003-MP-FN and 2044-2003-MP-FN.

<sup>113</sup> Article 7 of Supreme Decree No. 65-2001-PCM of June 2001 stipulates that "when [the CVR] has finished carrying out its duties, the store of documentation gathered by it (...) throughout its term of office, shall be handed over, with an inventory, to the Ombudsman's Office, and its contents held in strictest confidence".

<sup>114</sup> Press release 141-04, 'Health Ministry carries out mental health work in areas affected by political violence', 23 February 2004.

As regards justice, three of the 43 cases submitted by the CVR to the Public Prosecutor's Office have been brought to trial, with the rest still under investigation. The three cases being prosecuted relate to the alleged arrest and subsequent extrajudicial execution in Ayacucho of residents of the district of Totos in April 1983 and of the Quisillaccta peasant community, in the district of Chuschi, in March 1991, both attributed to officers from Totos Military Base, and the case of the murder of 34 inhabitants of Lucmahuaycco, Cusco, in November 1984, allegedly committed by a patrol made up of police, soldiers and members of the *rondas campesinas*, peasant patrols.

In the area of institutional reform, in May 2004, the Defence Ministry reportedly announced that changes would be made to the military curriculum so that international law is incorporated into the teaching and training provided in military institutions.<sup>115</sup>

In May 2004, the *Sala Nacional de Terrorismo*, National Terrorism Court, began reviewing the “*requisitorias*”, the irregular or incomplete arrest warrants issued in connection with terrorist offences. The review is due to end in March 2005.

With regard to the cases of people arrested on “terrorism-related” charges, in January 2003, the Peruvian Constitutional Tribunal had already declared several articles of the 1992 “anti-terrorist” legislation to be unconstitutional, thereby invalidating the life sentences handed down, as well as the trials held in civilian courts with “faceless judges” and the trials of civilians in military courts for the “terrorism-related” offence of treason. The Constitutional Tribunal ordered the retrial of all those who had been convicted under the articles of the “anti-terrorist” legislation that had been declared unconstitutional.<sup>116</sup>

Also in May 2004, the Peruvian Congress passed a Law on Internal Displacement granting legal status to displaced persons and establishing rights and guarantees to protect people from enforced displacement and the levels of government and humanitarian aid such people should receive in the event of displacement, return to their place of origin or resettlement.<sup>117</sup>

However, with regard to access to justice, a recent ruling by the prosecutor in charge of the case of the extrajudicial execution and subsequent “disappearance” of nine students and a teacher from La Cantuta University in 1992, which was attributed to the Armed Forces, is a cause of concern. In June 2004, the prosecutor decided to refer the trial of Nicolás Hermoza Ríos, who at the time of the incident held the post of Commander-in-Chief of the Army, to the military courts. This decision is in breach of international human rights standards and jurisprudence which state that military jurisdiction should be confined to service-related offences and that human rights violations should be tried in civilian courts.

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<sup>115</sup> Press Release: Defence Ministry submits to Congress the actions it has been taking on the CVR recommendations, 12 May 2004.

<sup>116</sup> Constitutional Tribunal, *Judgment declaring several different articles of Decree Laws N° 25475, 25659, 25708, 25880 and 25744 to be unconstitutional*, 3 January 2003.

<sup>117</sup> Law No. 28223, 20 May 2004.

The ruling is a worrying retrograde step since, as the CVR states in its *Final Report*, during the two decades of internal armed conflict in Peru, military justice “(...) was used (...) as a tool to protect the perpetrators”.<sup>118</sup> One of the matters of greatest concern during the internal armed conflict was precisely the fact that impunity was institutionalized, impunity which fed the vicious circle of violence in which the failure to punish those responsible for human rights violations helped to generate further acts of violence. The need to put a stop to such impunity led to the setting up of the CVR whose mission was to move forward towards truth and justice which are essential if the wounds from those two decades of suffering are to be closed and the country is to look to the future.

Amnesty International believes that Peruvian society will not be able to achieve true reconciliation if decisions such as that taken in June 2004 become the norm, when the hundreds of other cases documented by the CVR and in which it is crucial for justice to be done are brought before the judiciary.

It is worth pointing out that, in November 2003, the Ombudsman’s Office submitted an appeal on grounds of lack of constitutionality (*recurso de inconstitucionalidad*) against certain articles of the *Ley Orgánica de Justicia Militar*, Basic Law on Military Justice, and the Military Justice Code, arguing that they go beyond the bounds of the Peruvian Constitution by granting powers to military courts which should fall to the civilian courts and that they violate the right to have access to impartial and independent courts and judges and the right to legal representation. Amnesty International hopes that the Constitutional Tribunal will rule favourably on this appeal at the earliest possible opportunity.

The organization trusts that the Peruvian authorities will continue to take steps to address all the recommendations made by the CVR and to make sure that no decisions are taken that will impede the right of victims and their relatives to know the truth, have access to justice, see those responsible tried in independent and impartial courts and receive appropriate reparation.

## **VII. Amnesty International’s conclusions and recommendations to the Peruvian authorities**

The CVR carried out an extensive and thorough analysis of the circumstances that gave rise to the internal armed conflict as well as of the human rights abuses and violations which took place during the two decades of violence and destruction Peru experienced between 1980 and 2000. It is clear from the *Final Report* that the armed opposition groups, especially Shining Path, capitalized on the chronic social exclusion and racial, ethnic and gender discrimination that exists in Peru to recruit followers from amongst those who were the victims of such discrimination. Furthermore, the negative stereotypes attributed to such people were also used by all the actors in the internal conflict, both State officials and armed opposition groups, to

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<sup>118</sup> *Final Report*, Volume III, ‘The Political and Institutional Actors’, p. 283.

justify the violence to which thousands of citizens of indigenous or peasant origin living in poverty or extreme poverty were subjected.

The existence of such discrimination also helped to ensure that the numerous gross human rights abuses and violations committed against the impoverished indigenous and peasant majority did not fill the public with indignation and that they went practically unnoticed for years until the conflict spread to the capital, Lima, and began to affect the minority who control political and economic power within the country.

The *Final Report* also looks more closely at one of the least known aspects of the Peruvian internal conflict: the extent of the gender abuses and violations, including the hundreds of cases of sexual violence and rape perpetrated against Peruvian women and girls, most of whom came from groups at the bottom end of the social scale and found themselves caught in the crossfire during that dark period of Peruvian history. Women who, as well as suffering social, racial and ethnic discrimination, had to deal with the gender discrimination that still affects the ability of thousands of women in Peru today to exercise their civil, political, social, economic and cultural rights.

Amnesty International believes that these discriminatory attitudes towards women and girls and those who have limited financial resources or are of peasant or ethnic origin and which are entrenched in a large part of the Peruvian population contributed to creating the atmosphere of violence the country experienced for twenty years. The organization therefore believes that, in order to move towards a future in which the rights of all Peruvian men and women are respected, regardless of their social class, race or ethnicity, gender, sexual orientation or gender identity, the discrimination and exclusion which are still preventing many Peruvians from freely exercising their rights as citizens must be brought to an end and action needs to be taken to reverse their effects.

With a view to ensuring that the terrible events that took place during the Peruvian internal conflict can never happen again, the CVR has put forward recommendations that include action to address the victims' right to truth, justice and reparation as well as reforms to deal with the failure of the authorities to protect and promote the economic, social and cultural rights of the vast majority of Peruvian men and women.

Some of these measures do not require major financial investment and, given sufficient political will, they could be implemented by the Peruvian authorities very quickly. Others involve radical structural reform or require changes in the culture and perceptions of a significant swathe of Peruvian society and will therefore need a long-term program of reforms. Amnesty International hopes that they will all be carried out as soon as possible.

The organization believes that, if the country is to break with its tragic and painful past, the Peruvian State needs to implement numerous measures, both in order to satisfy the right of the victims to truth, justice and reparation and to ensure that such events can never happen again, as well as to help create a country where equality of opportunity for all Peruvian men and women can become a reality.

In order to meet these objectives, Amnesty International believes that it is essential for the Peruvian State to draw up a **National Action Plan on Human Rights** that sets out the measures required to improve human rights promotion and protection, as recommended in the Vienna Declaration and Programme of Action approved by the UN World Conference on Human Rights on 25 June 1993.<sup>119</sup>

Such an Action Plan should take an integrated approach to human rights issues within the country, including civil and political rights as well as economic, social and cultural rights, through the adoption of public policies that involve all sectors of the State. The Peruvian authorities should also immediately implement programs to address the marginalization and discrimination suffered by the sectors of the population who bore the brunt of the violence during the internal armed conflict, namely, women, those with limited economic resources and indigenous and peasant populations. Such programs should include the design and implementation of measures to prohibit as well as eradicate the discrimination suffered by those groups for so many years.

The **National Action Plan on Human Rights** should prioritize the dissemination of the *Final Report* of the Truth and Reconciliation Commission throughout the country and in all the languages of the country. The conclusions contained in the *Final Report* with regard to the truth of what happened during the two decades of internal armed conflict should also be incorporated into education programs in order to begin rebuilding the history and historical memory of the country. The Commission's recommendations should also be implemented at the earliest possible opportunity.

In the view of Amnesty International, the following recommendations should be implemented within the context of the **National Action Plan on Human Rights**:

#### a) The right to truth and justice

- The Truth and Reconciliation Commission sent the Attorney-General's Office 43 cases of human rights abuses and violations in which, according to the Commission, it was possible to document all the elements necessary to bring those responsible to justice. Thorough, independent and impartial investigations should be carried out into these 43 cases, as well as the thousands of other cases of human rights violations documented by the Commission, within the shortest possible time and those responsible should be brought to trial in civilian courts and punished in line with the gravity of the offences committed.
- The *Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas*, Office of the Specialist Prosecutor for Human Rights, Forced Disappearances, Extrajudicial Executions and the Exhumation of Secret Graves, should be given the resources it needs to investigate and bring to trial the 43 cases referred to the Attorney-General's

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<sup>119</sup> Vienna Declaration and Programme of Action, United Nations document A/CONF.157/23, 12 July 1993, para. 71.

Office by the Truth and Reconciliation Commission, as well as the thousands of other cases of human rights violations documented by the Commission.

- Both the Public Prosecutor's Office and the *Oficina de Personas Desaparecidas*, Office of Disappeared Persons, an autonomous specialist unit responsible for implementing the National Plan for Forensic Anthropological Interventions, should be given the financial and human resources they need to be able to make progress in identifying and recording the victims who remain "disappeared".

### b) The right to reparation

- Reparation measures, both individual and collective, should be commensurate with the seriousness of the human rights violations in question and should include all the damage and prejudicial consequences suffered by the victims.
- The State should make public, using public and private mechanisms both at home and abroad, the procedures to be followed in order to apply for reparations.
- Individual reparations to victims of human rights violations and their relatives should include the following, in accordance with the United Nations Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law:
  - **restitution** (the aim of which should be to re-establish the situation in which the victim found him or herself in prior to the conflict), including the restoration of liberty, family life, citizenship, return to one's place of residence, employment and property.
  - **compensation** which should be provided for any physical, psychological or moral harm or damage as well as lost opportunities, including education, material damages and loss of earnings, including loss of earning potential, harm to reputation or dignity and costs required for legal assistance.
  - **rehabilitation**, including medical, psychological and psychiatric care.<sup>120</sup>

### c) Eradicating gender-based violence and discrimination

- The authorities should clearly and publicly condemn all acts of violence against women and girls, regardless of whether those responsible are State officials or private citizens.
- Thorough, independent and impartial investigations should be carried out in the shortest possible time into the cases of rape of women and girls documented by the Truth and Reconciliation Commission and those responsible should be tried in civilian courts and punished in line with the gravity of the offences committed.

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<sup>120</sup> See the Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, United Nations document E/CN.4/Sub.2/1996/17.

- The necessary training on women's rights and how to handle cases of sexual violence should be given to staff at the Public Prosecutor's Office, especially the Office of the Specialist Prosecutor for Human Rights, Forced Disappearances, Extrajudicial Executions and the Exhumation of Secret Graves.
- The police and the judiciary, as well as all State institutions set up to protect and monitor women's rights, must incorporate a gender perspective into their analysis and handling of violence against women.
- Action should be taken to ensure that women's access to reproductive health care and family planning is not restricted and that they and their partners have the right to make decisions about reproduction without being subjected to discrimination, coercion or violence.
- All necessary measures should be taken to protect women and girls from domestic violence.
- The authorities should recognize, both in the law and in practice, that discrimination against women is a key contributing factor to violence against women. In order to combat violence against women, the authorities should periodically analyze, evaluate and review their laws, codes and procedures to ensure that they do not discriminate against women and to improve their effectiveness in eradicating such discrimination. The authorities should repeal any provisions that allow or endorse any form of discrimination against women.
- The authorities should fund and support measures, including civic education and training programs and systems of support and protection for victims of violence and those working to defend women's human rights, so that all women can live without fear of violence. School curriculums should also be reviewed in order to remove gender stereotypes and promote positive images of women as social actors involved in decision-making who have the same rights and responsibilities as men.
- The authorities should take immediate specific steps to counteract the poverty faced by women by ensuring equal access to social and economic rights, such as the right to food, water, property, employment and social benefits, and safeguarding social security networks, especially at times of tension and economic upheaval.
- Women's ability to participate in decision-making on an equal footing within the structures of national and local government and in the community should be guaranteed.
- The Peruvian authorities should make sure that they implement the recommendations made by the United Nations Committee on the Elimination of All Forms of Discrimination against Women following its consideration of Peru's fifth periodic report submitted in March 2001. They should also continue to submit periodic reports to the Committee on the progress made within the country in implementing the Convention on the Elimination of All Forms of Discrimination against Women.

#### **d) Eradicating racial and ethnic discrimination and protecting the rights of indigenous communities**

- The authorities should clearly and publicly condemn all acts of racial or ethnic discrimination as well as any other violations of the rights of indigenous communities, regardless of whether those responsible are State officials or private citizens.
- Thorough, independent and impartial investigations must be carried out within the shortest time possible into the cases of violations of the rights of indigenous communities documented by the Truth and Reconciliation Commission and those responsible should be tried in civilian courts and punished in line with the gravity of the offences committed.
- The authorities should ensure that national laws prohibit all forms of racial or ethnic discrimination and take effective action to prevent racism.
- It should be recognized that discrimination against indigenous peoples contributes decisively to the fact that human rights violations are committed against them. Action plans should therefore be drawn up to eradicate discrimination and combat all forms of racism. Representatives of the affected groups, relevant organizations from civil society and experts working in the field of racism, as well as the appropriate authorities, should be involved in designing such strategies and plans which should include measurable objectives and monitoring mechanisms.
- Steps should be taken to identify and eliminate all forms of racist behaviour by public officials as well as institutional racism, in other words, racism that exists overtly or covertly in the policies, procedures, practices and culture of public and private institutions, and to punish any use of racist language by public officials.
- State bodies should introduce recruitment policies and practices that reflect the diversity of Peruvian society at all levels of the organization.
- Special instructions and training should be given to public officials so that they can recognize the specific protection needs of indigenous peoples; action should be taken by the authorities at all levels to ensure that all private bodies, such as businesses and international corporations, fully respect the rights of indigenous peoples by guaranteeing, in particular, that they do not become victims of discrimination.
- The authorities should ensure that any bilateral or multilateral loan programs they are involved in give proper consideration to the wellbeing of indigenous peoples and make efforts to consult any indigenous groups affected in order to ensure that their fundamental human rights are effectively protected in the context of development projects, including debt-for-nature swaps.
- The particular vulnerability of women and minors from indigenous communities and ethnic and racial minorities should be recognized, and appropriate measures taken to protect them from human rights violations.

- The authorities should launch and support campaigns to mobilize public opinion against racism and celebrate and promote cultural and racial diversity through the development of effective media programs, publications and research projects. Study plans and teaching methods should be reviewed to remove racial prejudice and racist attitudes as well as negative stereotypes.
- The Peruvian State should ensure that the recommendations made in April 1999 by the United Nations Committee for the Elimination of All Forms of Racial Discrimination, following its consideration of Peru's 12<sup>th</sup> and 13<sup>th</sup> periodic reports submitted in March 1999, are implemented and that it submits its 14<sup>th</sup> periodic report on the action it has taken to implement the United Nations Convention on the Elimination of All Forms of Racial Discrimination, which has been pending before the Committee for five years.

#### **e) Guaranteeing economic, social and cultural rights**

- All necessary measures should be taken, using the maximum resources available to the Peruvian State, to bring about by all appropriate means, including the adoption of legislative measures, full implementation of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights. These rights include the right to earn one's living through work that is freely chosen or accepted and in which conditions are just and favourable, and where both male and female workers can freely exercise their labour rights, as well as the right to enjoy the highest attainable standard of health, the right to education and the right of everyone to an adequate standard of living, including food, clothing and housing.
- All necessary measures should be taken to ensure that everyone has access to these rights without any type of discrimination on grounds of race, colour, sex, language, sexual orientation, religion, political or other opinion, national or social origin, property, birth or other status.
- The Peruvian State must ensure that the recommendations made in May 1997 by the United Nations Committee on Economic, Social and Cultural Rights, following its consideration of Peru's initial report submitted in May 1999, are implemented and that it submits its first periodic report on the measures it has taken to implement the International Covenant on Economic, Social and Cultural Rights, which has been pending before the Committee for five years.

#### **f) Eradicating discrimination against lesbian, gay, bisexual and transgender people (LGBT)**

- The authorities should clearly and publicly condemn all acts of discrimination against lesbian, gay, bisexual and transgender people on account of their sexual orientation or gender identity as well as any other human rights violations committed against

members of the LGBT community, regardless of whether those responsible are State officials or private citizens.

- Legal protection against homophobic abuse should be assured through the adoption of constitutional and other provisions prohibiting all forms of discrimination founded on sexual orientation or gender identity.
- The police and judiciary should act with due diligence to protect LGBT people from violence within the community in general, including domestic violence as well as incitement to discrimination, hostility or violence. The authorities should make it clear that such acts are crimes and will not be tolerated. Specific instructions and training on how to identify and investigate homophobic crime should be given to law enforcement officials.
- Public anti-discrimination campaigns should be undertaken and supported in order to raise public awareness about the need to protect the rights of everyone, including lesbian, gay men, bisexual and transgender people.

The **National Action Plan on Human Rights** should also ensure that:

- All necessary measures are taken to strengthen the independence and effectiveness of the justice system by taking into account the United Nations Basic Principles on the Independence of the Judiciary.
- All necessary measures are taken to ensure that members of the Armed Forces receive training on the rules of international humanitarian law, including those concerning the protection of women and girls in time of war or internal armed conflict and United Nations Security Council Resolution 1325 (2000) on this issue.<sup>121</sup>
- All necessary measures are taken to ensure that law enforcement officials receive training on human rights and especially on the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These standards should be incorporated into domestic legislation and practice and periodic reports should be published on their implementation. Special circumstances such as a state of emergency or some other kind of public crisis cannot be used to justify non-compliance with such standards.
- The most recent international jurisprudence and legislation on human rights is incorporated into domestic legislation, including the rights enshrined in the Inter-

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<sup>121</sup> United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security was adopted by the Security Council on 31 October 2000.

American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Rome Statute of the International Criminal Court and the Indigenous and Tribal Peoples Convention No 169 of the International Labour Organization. These developments in international human rights law should be disseminated to the relevant authorities at national, regional and local level so that they can ensure that they are implemented.