

Truth, Justice and Reparations

The Case of Peru: Schedule and Difficulties

of a Transitional Agenda

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Introduction

During the first years of the Twenty-First Century, Peru was getting ready to deal with its past of armed violence and massive human rights violations inherited from the previous two decades. This process took place within a transition-to-democracy context after the collapse of Alberto Fujimori's authoritarian government (1990-2000). Thus, two breaking points in Peruvian political life combined: going from a period of armed violence to one of peace, and from authoritarianism to the restoration of the Rule of Law.

The core of that experience was the work conducted by the Truth and Reconciliation Commission (hereinafter, CVR or the Commission) between 2001 and 2003 and its legacy. This legacy may be divided into three dimensions. First, a reconstruction of the past emphasizing the human rights violations perpetrated by subversive organizations and State agents, as well as the existence of numerous silenced and hidden victims; second, a collection of recommendations for justice, reparations and reforms that would foster the consolidation of peace with justice and would deal with the rights of victims; and third, but not least, an urge for truth and memory that would thrive among the different populations affected in the following years.

This text sets forth a schedule towards the compliance of the CVR recommendations, therefore, it shows to what extent the victims' rights to truth, justice and reparations has been dealt with, and what difficulties have been encountered in this process.¹ However, to better understand this process, it is suitable to present a brief description of the Peruvian case and its dilemmas, on which we will concentrate in this introductory section.

Peru experienced an internal armed conflict with unique characteristics, as it was influenced by recurrent historical features in its development as a society. The vertical relations between the original ethnic groups and cultures and the European population who arrived in the Sixteenth Century, characterized the three Colonial centuries, and were even present, with slight modifications, in the first century of the Republic. The social democratization promoted since the 1930s was accelerated by the migration process to the coast and to urban development. However, the strongest discrimination manifestations survived in the Andean region and the Amazonian East. It was precisely in the Andes where the Maoist ideology subversive organization, known as Communist Party of Peru – *Sendero Luminoso* (Shining Path, hereinafter *Sendero Luminoso*), obtained strong roots when it started its armed operations in 1980.

The time elapsed since the presentation of the CVR Final Report² has been useful to verify the persistence of this fundamental fact, which seems to be less perceptible in the routine life in the capital city and the urban coast. The predominant public opinion in Lima has been reluctant to accept the reconstruction of facts set forth in that report, as it has for the twelve most violent years. This political and cultural aspect of the Peruvian process should be placed at the beginning of a balance regarding what has taken place over the last six years with the truth, justice and reparations agenda.

We are talking, then, of socio-cultural restrictions inherent to a country characterized by deep socio-economic gaps and by abysses of recognition separating the urban and Creole population from the rural population, which includes the indigenous population group who speak Quechua and other indigenous languages.³ However, the CVR report somehow modified the image distorted by a fear of violence which

- 1 The authors wish to thank the efficient cooperation of Álvaro Paredes, PUCP Sociology student, in the account of facts and actions related to the compliance of the CVR recommendations in the period of analysis.
- 2 The Truth and Reconciliation Commission final report was submitted on August 26, 2003, after 26 months of work. It is composed of nine books and twelve annex volumes. See CVR. (2003). *Informe Final*. Lima. We likewise refer the reader to the final report's abridged version, prepared by the CVR Submission Commission. See CVR. (2004). *Hatun Willakuy: Versión abreviada del Informe Final de la Comisión de la Verdad y Reconciliación*. Lima.
- 3 According to the 2001 National Household Survey by the National Institute of Statistics and Computer Science (INEI), the indigenous population accounts for 32% of the national population. See Del Pollo, F.; Oyarse, A., Shkolnik, S., Velasco,

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had spread over a large section of society during the 1990s. The population groups least involved or affected by the conflict accepted the thesis according which the State military intervention had saved the country from the indiscriminate terrorism of *Sendero Luminoso*. This widely disseminated idea moved towards the recognition, by a significant sector of the population, that violent actors had not only included subversive organizations, but also the armed and police forces.⁴

Nevertheless, the awareness about the need for a transitional justice process is still limited. Discrimination habits and the little value attributed to and power held by peasant sectors were at the epicenter of the internal war, hindered a more horizontal communication among Peruvians. On the other hand, the brutality of many of the actions by *Sendero Luminoso*, the experience of a bloody war, and the economic factors that provoked an extreme crisis at the beginning of the 1990s, favored the emergence of an opinion that was satisfied with the military defeat of *Sendero Luminoso*, regardless of the costs. In this climate of opinion, Peru's self-perception as a country who had defeated the demons of terrorism, hyper-inflation and political party demagogic, thanks to three main forces: the army, foreign investment, and Fujimori's quasi-dictatorial authoritarianism at times, prevailed.

The CVR was created due to a particular situation: Fujimori's second attempt for re-election divided society, and the disclosure of corruption and several Fujimorism emblematic crimes were at the forefront. This forced him to leave the presidency and flee the country. The image of a military leadership directly perpetrated to corruption worsened this situation. And it was under these circumstances that the brief –but exemplary – transition Government of Valentín Paniagua, the first months of that of Alejandro Toledo, and a favorable international climate (previous to the terrorist attack in New York and Washington on September 11, 2001) facilitated the drafting of the Commission's report.

Given this background, an analysis of the process immediately after the report's submission – that is, between 2003 and 2005 – should explain the intense controversy it created and the aggressiveness of the press in Lima, characterized by its primary submission to Fujimorism. Although the transitional justice process started in a favorable time of transition towards democracy, after submitting the report and recommendations, a readjustment of actors and forces started.

Conservative sectors rejected the report since the beginning. They were hostile to an impartial reconstruction of the truth that did not defend the armed forces nor did it justify the crimes by state agents. Very soon the thesis of "damage to the image of the armed forces" emerged, and the CVR was accused of comparing the Peruvian State to a terrorist organization.

The groups who had led the dictatorship opposition, the victims' relatives, certain critical intellectual cores, and different youth sectors, fought from the opposite side. Controversy went beyond state bodies during the Toledo Administration, divided between the support given to the Commission and the attack by ideological sectors close to the most powerful groups in society and the mass media.

The Work of the CVR

The work of CVR, around which the abovementioned controversy emerged, consisted of a thorough investigation during which almost 17,000 testimonies were collected in the most violent areas in the country. These are depositions made by victims or direct witnesses of human rights crimes or violations perpetrated

F. (2009). Censos 2010 y la inclusión del enfoque étnico: hacia una construcción participativa con pueblos indígenas y afrodescendientes de América Latina. In the *Series on Seminarios y Conferencias*. (57). Santiago: CEPAL.

4 We are talking about public opinion survey results in cities at the national level, comparing those of 1998, during the Fujimori regime, to those from 2003, when the CVR submitted its report (cf. mainly *Encuestadora Apoyo, Opinión y Mercado*, nowadays, *Ipsos Apoyo*).

by subversive organizations such as *Sendero Luminoso* and *Túpac Amaru* (MRTA); by national police or armed forces agents; and by other armed actors such as rural self-defense committees and paramilitary groups that emerged during that period. This investigation drew conclusions that are summarized as follows.

The CVR gathered direct statements by 24,000 fatal victims (dead and missing), but it estimated that the total of fatal victims is around 70,000 dead or missing people. Moreover, it proved that state and non-state armed actors perpetrated crimes against humanity. The Commission established nine guidelines or patterns of violations against human rights perpetrated during this period: 1) murders and massacres, 2) extrajudicial executions, 3) enforced disappearances, 4) kidnappings, 5) torture and cruel, inhumane or degrading treatment, 6) sexual violence against women, 7) violence against children, 8) violation of collective rights, and 9) violation of due process.

The CVR also made interpretations on the cultural, institutional and political aspects of violence and vulnerability of life, as well as human integrity during the internal armed conflict. Thus, it pointed out the large pre-existing and persistent economic and social gaps and the prevalence of racism in Peruvian society.⁵ Using that same logic, it indicated the weaknesses of key institutions such as the Judiciary and the Congress of the Republic, and, in another order of analysis, the national educational system and the political party system. Moreover, it pointed out the State's weakness and its inability to exercise democratic authority in the national territory as an important factor for the generation of a climate of violence and the lack of protection of human life.

Finally, the CVR offered recommendations on truth, justice, reparations and institutional reform. It proposed a comprehensive reparations plan composed of six different programs: economic reparations, education reparations, health care reparations, restitution of citizen rights, collective reparations and symbolic reparations. On the other hand, it offered suggestions for the creation of the specialized judicial sub-system that would be in charge of due process of the crimes perpetrated in the period, and it pointed out the regulatory and legal framework criteria to be adopted in order to comply with the right of the victims to truth and justice. Regarding this right, proposals were made for a national policy for disappearances and a national policy of anthropological and forensic investigations. Finally, a wide program of State reforms was presented as a way to **reconcile** it with the civil society: this implied strengthening and broadening the presence of the State as a democratic authority and guarantor of rights, and, therefore, improving different aspects of its social service networks. The reforms also implied, in the logic of offering **non-repetition guarantees**, modifying the operations of institutions which, like the military and judicial apparatus, influenced on the accumulation of human rights violations during the period.⁶

Since the first years after the submission of the Commission's final report in 2003, it was estimated that the full compliance with its recommendations – to which we refer in this text as a **transitional agenda** – would be difficult, and even improbable. Nevertheless, it was also understood that the co-relation of political forces, as well as the existence of a sensitized public opinion before the abuses perpetrated during the armed violence period, would make it possible to achieve certain relevant advances.

Although shy, certain advances were possible in the 2003-2005 period. Contrary to what happened in other countries, in Peru, no impunity mechanisms were adopted after the work of CVR. The action of justice followed its course, though slowly and with setbacks. With regard to the rights to truth and memory,

5 The Commission determined that 75% of the victims were indigenous individuals, basing this ethnical definition on the mother tongue.

6 See a brief presentation on the case and the scenario immediately after the CVR's work in Peru in Ames, R. (2005). Violence, truth..., Reconciliation in Peru? In: IIHR-IDEA. *Verdad, justicia y reparación. Desafíos para la democracia y la convivencia social*. San José. The unabridged version of the Commission Final Report may be also consulted: CVR. (2004). *Hatun Willakuy. Versión abreviada del Informe Final de la Comisión de la Verdad y Reconciliación*. Lima.

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State actions were scarce. Instead, there was a boom of local initiatives by the affected populations. The most significant omission in this matter is the non-existence of a genuine national policy on disappearances.

At the end of that period, concerning reparations, a law creating a State policy with that purpose was enacted although the institutional framework and the allocation of resources were not adequate.⁷ However, in institutional reform matters, the actions of the State were practically nonexistent.

The 2006-2011 period may be considered as the one in which the transitional and transformation drive slowed down in the Peruvian society. This does not mean that there has not been any progress in the compliance of recommendations. The achievements made are neither few nor despicable, starting with the prosecution and conviction of former president Alberto Fujimori Fujimori for crimes against humanity. However, there was neglect by the State, particularly from the Executive Branch, of all transformational language, as well as of the implementation of a conservative and reluctant approach to the demands of justice.

But this is combined with three other concurrent processes. The first is the persistence of a victims' claim manifested in the emergence of organizations for that purpose and the consolidation of networks giving them a larger audience and ability to act in a coordinated manner.⁸ The second is an assessment of democracy including important transitional agenda components by young social sectors and new liberal expressions, throughout this decade. The third is a demand for social justice with a poorly organized national side, on the one hand, and on the other, a more leftist side. This third process, already present in the 2006 elections, generated an important turn in the national political scenario through the success of these change alternatives in the elections for Lima's Office of the Mayor (2010) and other constituencies, and, above all, in the election of the President and Congress members (2011).⁹

This text presents an explanation of the process followed by the truth, justice and reparations agenda in Peru, as of 2005. This period elapses from the end of the Alejandro Toledo Administration until the end of the Alan García Pérez Administration, with a brief prolongation until the 2011 presidential elections, and the inauguration by the new head of State, Ollanta Humala. This text also provides a brief overview of what happened in this period and an interpretation of the socio-political process underlying the registered results, and the medium-term impact of the CVR process. Every transitional agenda is, by definition, uncomfortable for the established branches of power, and is subject to scenario variations, making it more or less feasible. The case of Peru is useful to analyze that complex dynamic life of the truth, justice and reparations demands.

7 In July 2005, Law 28592 was enacted, creating the Comprehensive Plan of Reparations. The regulations of that law would be issued one year later. In 2004, the Alejandro Toledo Administration created the High-Level Multi-Sectorial Commission, in charge of coordinating the implementation of reparations.

8 The main one among them is *Movimiento Ciudadano para que No se Repita* (Citizenship Movement So It Won't Happen Again), which, according to institutional information, "articulates 38 active groups in the 25 regions in the country" "gathering more than 600 institutions." See its website at <http://www.paraquenoserepita.org.pe/pqnsr/>

9 During the general elections in Peru, representatives to the Congress of the Republic are elected (Congress is composed of only one chamber), as well as the election of the President of the Republic. In 2011, the elections had two "rounds". In the second round, contested by the two winning candidates of the first round, Ollanta Humala won by a small margin against Keiko Fujimori, daughter and political heiress of former president Fujimori, who is now serving time in jail for his accountability in crimes against humanity.

Part I: Transitional Agenda Schedule

This section presents the schedule for the truth, justice and reparations agenda in the 2006-2011 period. From a general perspective, we may say that the State's and Government's level of commitment or decision with regard to the transitional agenda has undergone four distinguishable stages over the last five years. These stages indicate a gradual weakening of those commitments and decisions.

It is suitable to make an observation before tackling the characteristics of these periods. These have been considered from the point of view of the continuity and intensity of the actions in the areas of truth, justice and reparations. We will mention the institutional reforms, but the impact of the CVR recommendations on this aspect has been practically nonexistent.

The reparations component also follows a relatively constant political and institutional path, and to a certain extent, less subject to drastic changes, such as the case of justice and the political statements of the Government. There was a perception of a gradual development of an institutional and organizational framework leading to the compliance with the right of victims to reparations in the 2003-2005 and 2006-2011 periods.

It is true that the actions to this date are far from satisfactory, and that the institutional framework has coherence and funding problems. Nevertheless, a continuity of this topic may be perceived in the Government's agendas, in a path that goes from the creation of the High-Level Multi-Sectorial Commission (CMAN), the enactment of a reparations law, the creation of a Reparations Council (CR), in charge of developing a single registry of victims, the granting of collective reparations to communities affected by armed violence, and the enactment of a legal standard to enforce individual reparations.

Consequently, the differentiation between periods is more visibly based on the justice component, and along with it, other fundamental dimensions of the process, such as truth and memory, and in a broader perspective, the Government's political statements.

First Period: Maintenance of the Previous Drive Regardless of a Change of Government

This period may be considered a continuity of the dynamics established during the Alejandro Toledo Administration, in spite of the presence of military and political leaders in the Government openly opposing the CVR Final Report. At the end of the Toledo Administration, a certain regulatory framework that offered possibilities to assess human rights violations was conceived. We can say the same thing about the policy of criminal persecution against corruption crimes perpetrated by the Fujimori Administration. The beginning of the 2006-2011 governmental period inherited this drive. The processes that were already open followed their course even though there is still a lack of collaboration by key actors, such as the Ministry of Defense. The same happens with the reparations policy. An institutional framework for such reparations is still being outlined. The key aspect is that the State already recognizes the existence of this legal obligation and that the new Administration has not stated any political will to ignore such obligation.

This period lasts the entire first year of the new Government, starting in July 2006, and even includes the end of that same year. It could also be noted that this is a time in which President García is hesitant about which would be the important political guidelines of his term. The ghost of his previous failed Government (1985-1990) is still present and encourages him towards a not very willing attitude about how his new presidential period would be like. It is in this trend that continuity regarding justice and reparations may be interpreted.

Second Period: A Conservative Turn (2007-2008)

In 2007, a change in the treatment of justice and truth is announced, a trend that would be stressed towards 2008. It may be noted that eventually, in the heart of the Judiciary, the conviction of the criteria to process human rights violation cases started to yield, and there is change towards positions more inclined to acquitting State agents in the judicial cases that were then being prosecuted.

We are speaking of a change in the scope of the Judiciary, that is, not directly evident in the Executive Branch. It still seems, to a certain point, committed to the reparations process, although the steps taken in that direction (mainly based on the provision of collective reparations) are criticized by victim organizations and other actors involved.

The most remarkable fact is the beginning of a change in the regime's political orientation and personality. The President is clearly in favor of large natural resource exploitation companies by establishing economic growth based on primary exports as a goal during his term. Correlatively, the Government defines any social organization or professional and political group that would question that decision and make claims on specific investment projects as enemies.¹⁰

In the meantime, human rights movements, victim organizations, and the spokespersons of a certain Liberal Democrat stance emerging during the fight against Fujimori's re-election at the end of last decade, kept an opposition that, while it hardly expressed itself in the partisan political scenario, it would keep certain influence or ability to be heard in a public environment during that period.

Third Period: Cancellation of the Transition (2009-2010)

In the previous period, there were tendencies in favor of judicial impunity: sentences that, among other things, question the way in which enforced disappearance crimes were prosecuted in the last few years.¹¹

During this third period, from 2009 to 2010, these tendencies towards impunity were exhibited by the Governmental party, and it concluded with a legislative decree which, if had prevailed, would have been the same as a law on impunity. These movements characterize what we will refer to as **quasi cancellation** of the transitional agenda by García Pérez.

This refers to the presentation of bills by Peruvian APRA Party's (*Partido Aprista Peruano – PAP*) congressmen, like Edgar Núñez and Mercedes Cabanillas, who proposed amnesties for State agents involved in human rights violations. The culmination of this tendency was the governmental proposal of Legislative Decree 1097 in September 2010, which seriously hinders the continuation of open judicial proceedings against armed forces personnel and imposed severe temporary limitations to start new processes.

The defeat of the legislative decree is also important to portray this period, since it evidenced the existence and influence of Liberal Democratic sectors associated with leftist sectors traditionally defending the pro-human rights agenda. This means that, even though the most powerful political and economic sectors seem to stand against justice and truth, the game still offers spaces for these other sectors, which may achieve partial victories in an open political scenario.

10 This topic is dealt with in more detail in part II of this document.

11 Among other cases, this puts in evidence the so-called "Matero case", in which the presumed individuals responsible of an enforced disappearance were absolved. See details on this tendency later in this document.

Fourth Period: Elections and New Government

The last period includes the presidential electoral process in April and June 2011, in which two candidates ran: Keiko Fujimori, Alberto Fujimori's daughter, and Ollanta Humala, a late unifying force of his nationalist party, comprehensive but inarticulate social dissatisfaction, but unorganized, individuals, and the aforementioned options for more substantive changes.

The Fujimori option combined the forces contrary to justice and truth. In fact, its triumph would have meant not only an almost direct openness to the liberation of Alberto Fujimori – convicted for human rights violations¹² –, but also the claim for a certain **official memory** established in the country during the 1990s. To a certain extent, the victory of Humala allows for the survival of the transitional agenda and the arrival of professionals and politicians in favor of this memory in governmental positions.

In any case, it was possible to confirm the existence of a powerful sector controlling the mass media and other spaces of power, and decidedly against the transition agenda, and at the same time, the validity of an open political scenario accepting a democratic institutionalism and the subsequent existence of other forces impacting the public opinion and achieving certain political victories, at least to maintain the agenda.

We now present an account of the main events and actions concerning truth, justice and reparations matters during this period. The points of inflection pointed out in this section as distinguishable political process periods will be perceived in the treatment given to each of the topics.

Justice and Human Rights Violations

The mandate of the CVR included contributing to the elucidation of crimes and human rights violations and the exercise of justice. Concerning this, it conducted investigations on 75 cases with the objective of determining accountabilities. At the end of its mandates, it submitted the investigations' files to the Office of the Public Prosecutor.

In 2006, 59 cases of human rights violations were prosecuted at the Judiciary, and 29 cases remained in the preliminary investigation stage. These cases involved a total of 373 individuals prosecuted: 269 military men, 68 members of the National Police of Peru (PNP), fifteen members of Peru's Navy, and 21 civilians.

A very important milestone took place that year: the first sentence for an enforced disappearance in Peru. This sentence was issued by the National Criminal Court – in charge of the specialized sub-system on human rights violations and terrorism – on March 20, for the disappearance of college student Ernesto Castillo Páez. The court convicted four members of the National Police. Moreover, the leaders of *MRTA* and its head, Víctor Polay Campos, were criminally convicted. The sentence issued on October 10 against Abimael Guzmán Reinoso and leaders of *Sendero Luminoso*, for the Lucanamarca, Ayacucho peasant massacre case, was especially important. Guzmán received a life sentence. This sentence was based on the thesis of indirect responsibility authorship as grounds for the accountability of leaders of organizations perpetrating human rights violations, and it pointed out that this was equally applicable to both non-governmental and governmental organizations. The year 2006 also marks the beginning of former President Alberto Fujimori's extradition process, detained in Chile.

These events foretold the consolidation of the specialized sub-system for the prosecution of human rights violations. This went hand in hand with the steps taken towards a reform of justice according to the

¹² Alberto Fujimori received guilty verdict as indirect perpetrator of voluntary manslaughter and kidnapping. The sentence, issued on April 7, 2009, was 25 years in prison. The Special Criminal Court of the Supreme Court explained in its statement that "the voluntary manslaughter crimes are crimes against humanity, according to the criminal international law."

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recommendations made by the Special Commission for the Complete Reform of Justice Administration (*Comisión Especial de Estudio del Plan Nacional de Reforma Comprehensiva de la Administración de la Justicia* - CERIAJUS). It should be noted that the judicial system reform was also one of the recommendations by the CVR.

The progress perceived in 2006 would soon start to be hindered by changes in the Judiciary and the Office of the Public Prosecutor. Until September 2007, of the cases submitted by the CVR to the Office of the Public Prosecutor for the investigation of human rights crimes, only six were sentenced, twenty were in open criminal proceedings, and 22 were under a preliminary investigation at the Office of the Public Prosecutor. Throughout that year, a criminal investigation was opened only for the Sancaypata (Ayacucho) case.

Four members of the Colina Group (annihilation squad created at the heart of the armed forces during the Fujimori Administration) were sentenced after having recourse to the benefit of effective collaboration. On February 5, the National Criminal Court issued guilty verdict for the disappearance of local authorities in Chuschi, province of Cangallo, Ayacucho, on March 14, 1991. This sentence was quite relevant regarding the criminal persecution of the enforced disappearance crime. Two aspects on the sentence should be highlighted:

[...] the crime of forced disappearance, like all crimes against humanity, before being considered a positive rule in criminal law, has always been part of the *jus cogens*, which means that it was part of the Common Law [...] and its prosecution and punishment were an obligation of every state, even if the national rules did not establish them pursuant to provisions set forth by the IACHR (the Inter-American Commission on Human Rights) in recurrent jurisprudences.”¹³

[...] in permanent crimes, the applicable law is not necessarily the one that was valid when the crime was perpetrated, every time the conduct persists while the whereabouts of the victim is still unknown; therefore, if there is a more serious offense, it will be applicable to the persons which started the action and continued [...] Another consequence of permanent crimes is that the breach of the legal right persists even after its perpetration. In its structure, the typical conduct persists on a perpetration basis beyond the initial perpetration.¹⁴

It should be pointed out that the notion of the continuity of the typical punishable behavior had already been established in the sentence for the disappearance of Ernesto Castillo Páez. In any event, it could be said that at that moment a favorable tendency towards litigation continued. But in that same year, procedural exceptions and other resources whose effect was to hinder the criminal prosecution of crimes were admitted: the Third Criminal Court for Free Prisoners of Lima admitted one *habeas corpus* lawsuit, but it dismissed the complaint filed by the Office of the Public Prosecutor against 24 members of the Navy of Peru, involved in the killing of inmates perpetrated in the penitentiary center known as “El Frontón,” in 1986. It was considered that the criminal action had prescribed. Likewise, on March 9, the Office of the Public Prosecutor filed the investigation against Alan García, President of the Republic, when the events took place, Agustín Mantilla, the then Vice-Minister of the Interior, and retired Vice-Admiral Luis Giampietri, all for the same case.

On the other hand, on September 21, the Chilean Supreme Court issued a decision in favor of Fujimori’s extradition, allowing an unprecedented event, such as the criminal proceeding against a former head of State on the grounds of human rights violations, as well as for crimes of corruption.

13 National Criminal Court sentence, p. 88.

14 National Criminal Court sentence, p. 102.

Nevertheless, at end of 2007, the exclusivity of the jurisdiction of the National Criminal Court had still to be defined regarding the prosecution of human rights violation cases. Parallel investigations persisted in the military jurisdiction, in spite of sentences issued by the Supreme Court and the Constitutional Court, attributing these cases to the civil jurisdiction. Finally, at the end of the year, there still was not a witness and judge protection program and legal defense for the victims of human rights violation cases. Of the six serious human rights-related sentences issued by the National Criminal Court in 2007, three were convictions and three not guilty verdicts.¹⁵

In 2008, the investigation about cases of sexual violence against women, one of the patterns of human right crimes and violations pointed out by the CVR, found its way. As part of this, a criminal complaint was filed for the case of rapes of women in the communities of Manta and Vilca (Huancavelica). The events, documented by the CVR, took place in year 1983, when a military base had been set up in the zone. Nine armed forces heads or authorities were accused.

Moreover, Vladimiro Montesinos (Alberto Fujimori's former advisor) and Generals Nicolás Hermoza Ríos and Luis Pérez Documet were accused for the disappearance of students from the university known as "La Cantuta." Concerning this case, the First Special Criminal Court issued guilty verdict against Julio Salazar Monroe and other four agents of the abovementioned Colina Group.

During the 2004-2006 period, the Judiciary resolutions had adopted most of the criteria established by the Inter-American Court of Human Rights (IACtHR) and the Constitutional Court on the inadmissibility of mechanisms hampering the investigations on human rights violations. However, in 2007-2008, there was a change in the Judiciary regarding the standards established by the Inter-American Court's jurisprudence. A tendency towards the search for impunity emerged. This may be explained through the improvement of the image of armed forces and, therefore, of their capacity for political pressure and in the media. A certain margin of plurality of criteria within the Judiciary is also a fact that has been constant throughout this time.

A significant example of this tendency is the so-called Matero case (disappearance of four citizens from the Matero community, in Cangallo, Ayacucho, in 1986), in which the National Criminal Court decided to issue a non-guilty verdict for the military men accused in a proceeding focused on the disqualification of witness relatives and other decisions indicating an deviation from the previously adopted criteria.

On November 6, 2008, congressman Edgar Núñez Román, from the governmental party, submitted a bill proposing amnesty for the commando groups who participated in Chavín de Huántar military operation¹⁶. He also proposed the creation of an *ad hoc* commission to evaluate, qualify and propose amnesties for the military and police personnel accused or prosecuted for the alleged perpetration of military crimes or crimes against humanity. Congresswoman Mercedes Cabanillas Bustamante, also from the governmental party, submitted another bill aimed at the creation of an *ad hoc* commission to propose to the President of the Republic the acquittal, commutation of sentences and rights of pardon to the military men and police officers who were prosecuted or accused on the grounds of "insufficient evidence."

In the same year of 2008, the Law of Organization and Functions of the Military and Police Jurisdiction was enacted, a rule that keeps a body of district attorneys and military and police judges appointed by the Executive Branch who are not subject to the control of the National Council of the Judiciary. In parallel,

15 Available at http://www.justiciaviva.org.pe/webpanel/doc_int/doc22102009-195100.pdf.

16 This is the name given to the rescue operation of the hostages taken by the MRTA in December 1996 and during the summer of 1997, at the residence of the Ambassador of Japan. The operation concluded with the rescue of 72 hostages. One of them died. Two members of the commando group and all the kidnappers died. Later, there was evidence that extrajudicial executions had taken place. The operation took place on April 22, 1997.

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the “specialized” condition of the National Criminal Court was weakening, as it widened its jurisdiction to include topics such as terrorism, drugs trade, money laundering, kidnapping, extortion, tax-related, intellectual property, and customs crimes. This contravened the recommendations of the CVR and the international practices that advised the constitution of specialized judicial sub-systems to provide attention to the accumulation of massive human rights violations.

In 2009, the tendency towards impunity increased with some strongly arguable sentences. On January 30, the National Criminal Court sentenced retired Navy commander Andrés Egocheaga Salazar to twenty years in prison and the payment of 200,000 new soles (approximately US\$65,000) for civil reparations for the voluntary manslaughter of Indalecio Pomatanta Albarrán. Nevertheless, during that same proceeding, frigate captain Jorge Luis Rabanal Calderón and sub-officers Pedro Rodríguez Rivera and Mario Peña Ramírez were acquitted.

In contrast, the Second National Higher Criminal Public Prosecutor’s Office formalized the accusation in the case of Los Cabitos headquarters (disappearances, torture, and extrajudicial executions in an Ayacucho military base between 1983 and 1985). Later, the National Criminal Court would declare the case imprescriptible.

The First National Higher Criminal Public Prosecutor’s Office, by means opinion issued in July 2009, formalized an accusation in the so-called Pucayacu II case (assassination of seven Ayacucho citizens in 1985).

An important and favorable-to-justice milestone took place on April 7, when the Supreme Court Special Criminal Court sentenced Alberto Fujimori Fujimori to 25 years in prison for his responsibility in the Cantuta and Barrios Altos cases, as well as for the aggravated kidnapping of Gustavo Gorriti and Samuel Dyer.

In the meantime, and in contrast to the actions of the Supreme Court, the National Criminal Court emphasized its tendency towards impunity. A clear example was the sentence for the case of enforced disappearance known as Los Laureles, issued on October 13 by this judicial court. In this human rights violation case, perpetrated in the Counter-subversive Base No. 313, Peruvian Army officers Mario Brito, Oswaldo Hanke, Jesús del Carpio, Mario Salazar, and Miguel Rojas García were acquitted regarding the enforced disappearance of Esaú Cajas, Samuel Ramos, and Jesús Liceti. In this case, the Court dismissed the value of the incriminatory evidence and only considered direct evidence as valid. In this regard, it is worth explaining that the Supreme Court, in the Alberto Fujimori case, had already established the validity and relevance of the incriminatory evidence to demonstrate responsibility in complex crimes perpetrated by organized power groups. This was also already explained by the Inter-American Court. Thus, the sentence in the Velázquez Rodríguez vs. Honduras case, of July 1998, the Inter-American Court ruled: “The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, traces, and presumptions may be considered as long as they lead to conclusions consistent with the facts.”¹⁷

An especially worrying element about the sentence issued for Los Laureles case is that it questioned if there was a disappearance in the Huallaga, and it stated that probably the victims had become drug dealers.¹⁸

¹⁷ The reference to the decision of the Inter-American Court of Human Rights was taken from Ambos, K. (2010). *Trasfondos políticos y jurídicos de la sentencia contra el ex presidente peruano Alberto Fujimori*. In K., Ambos, I., Meini. (editors). *La autoría mediata. El caso Fujimori*. Lima: ARA editors.

¹⁸ See a critical analysis of the sentence on the newsletter of Institute of Legal Defense: *Ideele-mail*, n.º 614 on October 14, 2009, in: http://www.justiciaviva.org.pe/webpanel/doc_int/doc15102009-153232.pdf.

Until December 2008, of the 194 cases supervised by the Ombudsman Office, 112 were still under preliminary investigation, 23 were in pre-trial proceedings, 24 were in oral trial proceedings or pending proceedings, 19 already concluded with a sentence, 5 were filed without an opinion about the merits of the case, and there was no information for 11 of them. This situation did not drastically change 2009.

The approval of the directive project “Applicable guidelines in the preliminary investigation of the crimes relevant to the Supra-provincial Criminal Prosecutor’s Offices and Special Criminal Prosecutor’s Offices” prepared by the Coordinating Higher Prosecutor’s Office to establish certain common proceeding criteria to conduct human rights violation investigations, was still pending.

In 2010, there was a formal opening of the trial against Alberto Fujimori for voluntary manslaughter and aggravated kidnapping against six members of the Ventocilla family, in Huacho, in 1992. Likewise, the oral proceedings started again in the proceedings for alleged extrajudicial executions after the Chavín de Huántar operation. The Inter-American Court held the Peruvian State liable for the disappearance of university student Kenneth Anzualdo, missing in 1993.

However, in the homicide case of Indalecio Pomantanta, the Supreme Court decided to conduct a new oral trial. As mentioned before, only one of the accused was convicted, and the other three were acquitted.

In 2010, it seemed that there was consolidation of the tendency to impunity with Legislative Decree 1097, which pointed out that crimes against human rights should be filed if no sentence was issued within 36 months as of the beginning of the pre-trial proceedings. Furthermore, it indicated that the Convention on Imprescriptibility of Crimes of War and Against Humanity, “has been in effect in Peru since November 9, 2003,” when this country joined the convention. This decree generated loud public outcries by the different sectors of society. After a laborious struggle, in which the decree was heartedly defended by the ministry of Defense, Rafael Rey, it was amended and finally repealed. This event represented an important trend: on the one hand, the clear opposition against the enforcement of criminal justice by the Government and by the most conservative sectors in society; on the other hand, the activation of an important and *transideological* coalition, in which leftist and liberal sectors converged in a strict defense of human rights.

That same year, in July, army officer Telmo Hurtado, accused as the actual perpetrator of the Accomarca massacre, in which residents of this community were murdered, including women and children, in 1986, was extradited to Peru. On August 2, he was held liable by the National Criminal Court to determine if he accepted the accusation, or if a public trial should be initiated. Last, on June 1st of that same year, the Third Liquidating Criminal Court of the Supreme Court of Justice of Lima restarted, for the third time, the oral proceedings in the trial for alleged extrajudicial executions during the Chavín de Huántar operation, in 1997.

As a summary, as noted by several human rights advocacy organizations, the period has witnessed the quasi-consolidation of a trend towards impunity characterized by different elements: exclusion of incriminatory evidence as an element for the legal foundation of sentences in complex crime cases, a trend to dissociate military senior officers from the cases under investigation, disqualification of testimonies by witness relatives, acceptance of the “excess” theory in cases such as Parcco Alto and Pomatambo, which lessened the value of the thesis of crimes against humanity and the existence of a policy that violated human rights. We may also add the fact that complex cases are heard by supra-provincial judges in Lima, which makes it difficult to interrogate witnesses who live in provinces and this leads to an extension of the term for the investigations.¹⁹

¹⁹ See, among other sources: National Human Rights Coordinator. (2011). *Informe anual: de los conflictos del presente a los desafíos del futuro*. Lima.

Reparations

As pointed out, since the Alejandro Toledo Administration, an institutional framework for the reparation of victims has been brewing. The starting point was, of course, the same recommendations by the CVR to create a comprehensive reparations plan. This was followed by the creation of the High-level Multi-Sectorial Commission, which is the body in charge of coordinating the compliance with CVR recommendations, the enactment of a reparations law and the creation of the Reparations Council. Next, there is an account of that schedule.

In 2006, important actions were taken for the implementation of a reparations program for the victims of the internal armed conflict. The Regulations of the Comprehensive Reparations Plan (PIR) were enacted, and the members to the Reparations Council were appointed. Retired military men and human rights advocates were appointed to take part. The Reparations Council has the mandate of developing the Sole Registry of Victims (RUV), an instrument for the implementation of the Comprehensive Reparations Plan. The members of said Council were elected from a list proposed by the CMAN. The high political sensitivity of this topic is validated here, as it sought to include a human rights trustworthy group, but this would not mean an estrangement from the military world. As such, the Council has operated acceptably.

However, the PIR only started to be applied in 2008, and it did not allocate budgetary resources to the financing of the Reparations Council or the reparations programs.

In 2007, the CMAN approved the beginning of the PIR through the implementation of the Collective Reparations Program (PRC), to finance construction and development projects in peasant and native communities mainly affected by violence. The Comprehensive Reparations Plan was launched in Huanta, Ayacucho, on June 16, 2007, with the symbolic handing over of the first collective reparations. During a first stage, there was intervention of 440 rural towns highly affected by violence. During 2007, priority was given to the PRC application, mainly in 134 towns in Ayacucho, 88 in Huánuco, 72 in Junín, 65 in Huancavelica, and 47 in Apurímac. Another advance was the enforcement of the reparations program in the health area, through the affiliation of victims to the Comprehensive Health Insurance (SIS). Moreover, the Ministry of Women and Social Development (MIMDES) granted 1,350 displaced accreditations, and the Ombudsman's Office delivered 75 enforced disappearance certificates to victims' relatives. This was aimed at facilitating the access of the persons registered in the reparations programs.

By the end of the year, the Reparations Council had yet to start the development of the Sole Registry of Victims. This was due to the fact that the budgetary resource management significantly delayed the hiring of personnel and the beginning of tasks for the creation of the RUV. It was only between June and October 2007 that the CR technical team operations started.²⁰ Thus, by the end of 2007 the Reparations Council, regardless of having registered 1,631 individual victims and 1,243 towns, only registered 351 towns and no individual victims.²¹

20 The following results were obtained: a) a national map of the concentration of violence, a basic instrument to prioritize areas for the gathering of information, b) a CR territorial layout strategy, c) Regulations for the registration proceedings at the RUV, detailing the operational guidelines, criteria and definitions for institutional tasks. It came into force after the approval of the amendments proposed by the CR to the Regulations of Law 28592 (published in February 21, 2008), c) a protocol for the inclusion in the Census for Peace, regarding provisions contained in Law 28592 and its Regulations, d) operational instruments for registration: information gathering card, fill-out and interview guidelines, RUV database platform, e) methodology to assess the level of impact on communities and towns to be registered in the RUV Book 2, f) protocol for the evaluation of files, including reference to the exclusions defined by the law and an analysis of the events and impact, g) individual victim registration basic module (digital).

21 By registry, we understand the action of collecting information. The registry consists of a registration application in the RUV, and this is, therefore, the beginning of the process. The Council compiles data on the victim, the impact, information on relatives, if needed, and other relevant data. Registration is the formality of formally entering a name in the Sole Registry of

During that time, the affiliation process to the Comprehensive Health Insurance for relatives of the victims of La Cantuta started. Moreover, the Provincial Municipality of Huanta signed an agreement with the PCM to grant reparations to twenty communities. Also, the granting of certificates to political violence victims and collective reparations in Chuschi and the VRAE started.

However, until October of this year, only 131 communities that should have benefitted from the PRC had their respective works. Likewise, the completion of works in about 800 communities benefitted by the PRC was still pending. Moreover, advances regarding economic and educational reparations were pending, as well as an easy access to housing for the internal armed conflict victims.²² There was no follow-up to the sentences of six cases prosecuted by the Inter-American Court of Human Rights against the Peruvian State, which implied symbolic reparation measures and compensation acts. Finally, the CMAN stated that the Health Reparations Program would be implemented as of 2009.

Until December 2009, the RUV had registered 66,088 individuals as victims of human rights violations perpetrated during the period of violence. In the same way, it identified and registered 5m423 collective beneficiaries. By September 30, two lists of beneficiaries were delivered to the CMAN: the first one comprises 36,708 beneficiaries for the educational reparations program; the second, 39,452 beneficiaries for the health reparations program.

Regarding collective reparations, in 2009, the accumulation of benefitted towns raised to 1,397. Likewise, the CMAN conducted technical assistance workshops, mainly in Apurímac, Ayacucho, Huánuco, and Junín. In 450 towns benefitted by the PRC work, meetings were held with CMAN technicians, in order to advise the population on the development of technical files, collection of observations, legal assistance for the drafting of agreements, assistance on legal proceedings and drafting of the required documentation. In regards to individual reparations, on September 21, 2009, the Reparations Council provided the CMAN with a list of 30,051 beneficiaries of the economic reparations program, including 29,186 relatives of dead or disappeared victims during the period of violence, 641 individuals with serious injuries, and 224 victims of rape.

In the institutional area, several local Governments (Anchonga and Congallao Castrovirreyna) allocated a budget for the implementation of collective reparation projects and symbolic reparations for the victims.

In brief, the inexistent attention to reparations in health, education, the facilitation of access to housing solutions and individual and economic reparations was obvious during the year. In spite of the important number of victims registered in the RUV, the CMAN did not significantly encourage the individual reparations program, arguing the need for the Reparations Council to provide information to accredit the victims in each one reparation program, thus going beyond the duties of this entity. Moreover, the rights restitution program does not have the necessary institutional regulatory development to adequately enforce it. Finally, by the end of the year, the registration process for individuals displaced by violence as collective beneficiaries in the RUV had not started yet. The creation of said registry is still facing difficulties due to the lack of human resources for the verification of more than 39,000 cards submitted.

In 2010, the Reparations Council submitted 17,161 accreditation certificates – 16,808 individual reparations, and 353 collective reparations – at a national level. However, until August 26, 81,213 individual

Victims database. It is the direct consequence of the decision adopted by the Council during its regular sessions, where it is determined if the condition of victim of an individual is recognized or not. In case the Council's opinion is positive, he/she is registered in the RUV. The Council decisions are reflected in the minutes of each session. (The authors wish to thank Jairo Rivas Belloso, Council of Reparations technical secretary, for his personal communication).

²² See APRODEH-ICTJ. (2009). *Sistema de vigilancia de reparaciones – Reporte Nacional de Vigilancia del Programa de Reparaciones Colectivas. Etapa II*. Lima.

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and 5,609 collective beneficiaries had been registered. In July, the Executive Branch created a commission in charge of drafting the technical guidelines and methodologies to determine the amounts, procedures, and methods of payment for the economic reparations program to be implemented in 2011.

From 2007 to this day, more than 1,800 communities have benefitted by expenditures higher than 160,000,000 soles from the central Government, by means of the PCM and for collective reparations purposes. Although there was co-financing by regional and local Governments, most of the expenses were borne by the central Government. Thus, to this date, about 660,000 individuals have benefitted from the PRC. In regards to the types of projects financed, it should be noted that, until December 2010, most of this involved the construction of irrigation infrastructure (18%), closely followed by community management and infrastructure projects (17.9%), and then, livestock projects (14%), and educational and sports services (13%), among others.

To conclude with the topic of collective reparations, it should be pointed out that more emphasis has been given to the construction of works than to the remedial purpose these initiatives should have. No design was made, and no resources were allocated, to the symbolic, educational, housing reparations or the restitution of citizen's rights. Neither were the PIR regulations amended to include innocent individuals who suffered imprisonment and the victims of sexual crimes other than rape as economic reparation beneficiaries.

Consequently, the victims, their relatives and neighbors have not been able to clearly understand, even upon receiving some of these reparations, that this was a form of compensating their suffering due to unjustified violence during the internal war. These programs were frequently confused with other simultaneous social support actions developed by state bodies. Human rights organizations have been able to prove, through consistent surveys, this significant confusion. The joint profile of a current transitional justice process has not been frequently visible, as it should, through these collective reparations.

Finally and surprisingly, by the end of the Alan García Administration, on June 16, the implementation of an individual economic reparations program was approved. It started with a budget of 20,000,000 soles (approximately US\$7,300,000). By May 31, the RUV has registered about 120,000 individual victims, 5,668 communities and towns, and twenty displaced groups. 70% of the more than 135,000 registrations collected have been rated. Moreover, 44% of the certificates accrediting registration in the RUV have been submitted. Therefore, the Reparations Council has the largest testimonial documentation concerning the internal armed conflict.

As a negative aspect of the final months of the Alan García Administration, Supreme Decree 051-2011-PCM declared December 31, 2011, as the closing date for RUV registrations. Likewise, an amount of 10,000 soles (approximately, US\$3500) was defined as individual economic reparation.

It is clear that the outgoing Government, although keeping the collective reparations component in its agenda, treated it with limitations. Currently, the main problem for affected individuals is that they have experienced –justifiably – as an arbitrary and questionable decision-making both the guideline for individual economic reparations –which establishes a very limited ceiling -, and the extreme shortening of the term for registration as a reparations beneficiary. Moreover, these decisions were not consulted with victim organizations.²³

23 See Rivas, J. Reparaciones: balance 2006-2011. *Noticias Ser.* [In the web]. Available at <http://www.noticiasser.pe/24/08/2011/informe/reparaciones-balance-2006-2011>.

Truth and Memory

In its final report, the CVR claimed having received reports of more than 4,600 clandestine burial sites. Furthermore, it reported having received information on the existence of 8,000 disappearances. The registry of missing persons was continued by the Ombudsman's Office. Today, the number of disappearances is estimated at 15,000 people.

The policy concerning disappearances is thus the most important aspect regarding the right to truth. We pointed out certain relevant events and actions in regards to this topic.

In 2007, the Ministry of Women and Social Development (MIMDES) handed out 1,350 accreditations to the displaced, and the Ombudsman's Office handed out 75 written enforced disappearance certificates to the victims' relatives. It should be pointed out that by virtue of an assignment set forth in Law 28413, since 2005 the Ombudsman's Office has been in charge of verifying the information that would lead to the control of the legal situation of disappearances. Consequently, until July 2010, 2,957 applications were received, and 1,981 investigations were concluded, on the basis of which 1,540 absence certificates due to enforced disappearance were handed out, while the reunion of three families who were separated by a context of violence was fostered.

Finally and closely related to the question of truth, the development of an anthropological-forensic interventions plan that would allow an adequate response to the magnitude of the task and the particularities of clandestine and non-official burial sites was still pending, in order to ensure the recovery and identification of the human remains. In regards to this, there is still a need for a suitable coordination between the judicial perspective focused on the identification of perpetrators and the humanitarian perspective, focused on providing the victims' relatives with accurate information about the whereabouts of the disappearance of their loved ones, beyond the results of a criminal proceeding. The denial of truth due to judicial obstacles, especially in a context stressing a tendency to impunity, is posed as a significant challenge at this moment.

During this period, damage has been produced to the establishment of truth in the judicial scenario. Except in two cases (sentences on the Chuschi case and the homicide of Efraín Aponte Ruiz), the National Criminal Court has refrained from rating systematic human rights violations as crimes against humanity. This establishes their alleged nature as isolated actions, hiding a central piece of truth, which is that these are system crimes, forcing an investigation of the state power structures behind those recurrent crimes in certain regions and in certain periods of the armed violence situation.

In regards to the commemoration and organization of symbolic acts of recognition, the State has not designed a policy yet. The exception at the level of national initiatives is the creation of a commission to build a museum or a memorial site. This decision followed a complex path. Initially, the Peruvian Government rejected a donation of resources by the German Government for the creation of such a museum. Finally, after strong pressure from society, especially from opinion leaders such as author Mario Vargas Llosa,²⁴ the Government accepted and created this commission chaired by Llosa and composed of, among others, two former members of the Truth Commission, Salomón Lerner Febres and Enrique Bernales Ballesteros.²⁵

²⁴ See Vargas Llosa, M. El Perú no necesita museos, in *El País*. March 08, 2009. [On the web]. Available at: http://www.elpais.com/articulo/opinion/Peru/necesita/museos/elpepul/20090308elpepiopi_13/Tes.

²⁵ Later, Salomón Lerner Febres, former president of the CVR Peru, and Mario Vargas Llosa resigned from the Commission. Vargas Llosa did it to protest for the Government's promulgation of a legislative decree seeking impunity for the military, as mentioned above. The Commission for the memory site still exists, chaired by the outstanding plastic artist Fernando de Szyszlo.

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A relevant event was the organization of the *Yuyanapaq* photograph exhibit about the internal armed conflict, at the Museum of the Nation, sponsored by the Ombudsman's Office. *Yuyanapaq* was the exhibition of Truth and Reconciliation Commission launched in 2003, before the submission of its final report. The photograph exhibition at the Museum of the Nation will remain open until 2011.

In August 2007, the Executive Branch organized a ceremony in honor of the victims, and the Day of the Defenders of Democracy was established. This day, dedicated to the military personnel, converges with the *Castrense* discourse, according to which the image of the armed forces has been affected by denouncing the crimes perpetrated by its agents. Similarly, in October, the regional Government of the Amazon declared the September 16-21 week as the Week for Peace. Moreover, the Peruvian State apologized for the Cantuta crime. However, on September 23, the “The Eye that Cries” memorial was partially destroyed by Fujimori’s followers in the context of his extradition.

If the State action regarding memory matters has been quite scarce, in contrast we may say that during that period different sectors of society have undertaken numerous initiatives for the recovery and symbolic interpretation of the past. In the first place, we should mention the commemoration strategies undertaken by diverse victim organizations and communities affected. A survey of memory sites carried out by the *Movimiento Ciudadano para que no se Repita* registered, until 2009, 101 initiatives for “physical memory sites that were deliberately planned, designed, and built by different organizations and groups in the country.”²⁶

Over the last few years (especially in 2009) different art exhibitions were displayed: “Graphic History of Lima and its Disasters,” “Disappeared,” “Memory of Oblivion: Tarata Street, June 16, 1992,” and “Cantuta: Cieneguilla, June 27, 1995.” Also highlighted is the photographic exhibit “If I don’t Come Back, Look for Me in Putis.” There was also the itinerant museum *Arte por la Memoria* (Art for Memory) initiative, which gathered a group of young plastic artists, with different views on arts and culture. Likewise, the *Yuyachkani* theater group presented a retrospective view of its repertoire with the plays: *El último ensayo* (The Last Essay), *Sin título* (Titleless), *Adiós Ayacucho* (Goodbye Ayacucho), *Antígona* (Antigone).

An important advance in memory matters is the enormous literary production, mainly narrative from recent years. We could mention Alonso Cueto’s *La hora azul* (The Blue Hour); Santiago Roncagliolo’s *Abril rojo* (Red April); Daniel Alarcón’s *Guerra a la luz de las velas* (War at the Light of the Candles), and *Radio Ciudad Perdida* (Missing City Radio); Gustavo Faverón’s *El anticuario* (The Antique Shop); and Iván Thays’ *Un lugar llamado Oreja de Perro* (A Place Called Oreja de Perro). Moreover, there has been abundance of films on diverse aspects of violence and its legacy. The most widely-known is Claudia Llosa’s *La teta asustada* (The Milk of Sorrow). The sector hostile to memory produced a film titled *Vidas paralelas* (Parallel Lives), by Rocío Lladó, defending the official memory by the military sector.

This last aspect is relevant, because in recent years, the armed forces or sectors linked to them have been more active in the task of presenting a version contrary to the truth rebuilt by the CVR. A systematic effort in this sense was the drafting of the report “In Honor of the Truth,” written by the Permanent Historical Commission of the Army of Peru.

26 See Reátegui, F. (ed.). (2010). *Los sitios de la memoria. Procesos sociales de la conmemoración en el Perú*. Lima: IDEHPUCP. See, especially, annex “Relación de sitios de memoria”. Also worth consulting is the electronic portal: <http://mapeodesitiosdememoriaperu.blogspot.com/>.

Institutional Reforms

Institutional reforms have been the most neglected aspect of the transitional agenda. There are very few State actions in this respect, apart from what concerns the institutionalism relating to justice and reparations, mentioned in previous sections.

Among the scarce advances, we should mention that in 2008 a law was enacted establishing rules for the use of force by the armed forces when its participation is requested for internal control purposes or to reestablish the order. The use of weapons is allowed to repress social protests, without a need for a declaration of a state of emergency. Due to this, in September 2009, the Constitutional Court declares this law unconstitutional. It stipulated that the armed forces should take into account the UN regulations for the use of lethal force, and Congress should issue a related guideline.

Beyond this specific advance, there is still a wide pending agenda including reforms in the armed forces, reforms in the administration of justice, and, as part of this, in the military jurisdiction and the penitentiary system, educational reforms for the promotion of inclusion, respect for diversity, memory and citizenship education, and land-use planning reforms, and the presence of state authorities, especially for a adequate management of local conflicts.

Part II: Changes in Power Relations and their Impact on the Transitional Agenda

Here we would like to highlight the logic of a joint process, placing the described events in terms of the evolution of political power relations throughout these years. We will only refer to the most important aspects of the process, as well as to those more related to our topic. Therefore, we should re-visit elements for the separation of periods we have proposed.

a) Recovery of Factual Powers

As pointed out at the beginning, the creation of the CVR Peru and the fulfillment of its tasks were possible due to a very particular political context, characterized by an enormous discredit, at the end of the Fujimorism, of the factual powers which, victorious during the 1990S, under normal circumstances, would have opposed an investigation of armed violence focused on the violation of human rights and the search for justice in favor of the victims.

Basically, the weakening of the armed forces due to its alliance or complicity with Alberto Fujimori's authoritarian regime is worth mentioning. The revelation on how its highest authorities were involved in the corrupt management of the regime was very shocking and devastating for the institutional image, and no less important, how everyone put himself/herself at the service of Fujimori's main advisor and associate, Vladimiro Montesinos. Montesinos was an Army officer in the 1970s, and, precisely, he was expelled from this military institution on the grounds of treason to the country.²⁷

But it was not only the military sector tainted with illegitimacy due to the fall of Fujimorism, but also the economically powerful sectors. Towards the end of 2000 and the beginning of 2001, there was a public opinion climate in which the forces sympathizing with authoritarianism had such a soft voice and little "symbolic capital" to define a transition political agenda, while pro-democracy sectors and, among them,

27 This charge was due to the fact that Montesinos sent information of the Peruvian armed forces to the Government of the United States. Among a wide variety of bibliographical references on Montesinos' behavior, both before and during the Fujimori Administration, see Bowen, S.; Holligan, J. (2003). *El espía imperfecto. La telaraña siniestra de Vladimiro Montesinos*. Lima: Peisa.

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human rights advocates, strongly supported by the international community (Embassy of the United States, European Union) were strengthened and owned the initiative. It was only then that a Truth Commission could be created and appointed. It was, thus, received by the Alejandro Toledo Administration, who decided to ratify its legal existence, and, in fact, provided it with the necessary instruments to work and respected its independence during all his term in office.

Already towards the middle of that Government, the dynamics of the power relations in the country changed. The Government quickly lost momentum. Important economic power groups and conservative sectors took advantage of the weakened President's image and the social revolts against the privatization of utilities and high extractive investment projects. Due to these, several communities claimed territorial rights and expressed their environmental concerns. Therefore, a sense of anguish and non-governance emerged, and on the other hand, a demand for order and stability was included in the national public agenda. Requests for a "strong hand" were no longer eccentric, and it was not embarrassing for these sectors to state a yearning for Fujimori's Government. The symbolic defeat of authoritarianism started to be reverted with vigorous actions by the media addicted to the 1900s regime, especially in Lima.

Thus, during the Alejandro Toledo Administration, the hostile powers to truth and justice found a comeback path to the political arena. Even a request for the vacancy of the Presidency of the Republic was made. It is in this context that a highly weakened President carry out to make political compromises with conservative forces.²⁸

Although the 2006 elections were won by Alan García, main leader of the APRA Political Party and with popular roots and social-democratic external relations, he did it through an alliance with conservative factual political powers and sectors. This situation worsened because suddenly, an almost unknown Army former commander, Ollanta Humala, went to a second electoral round. He proved for the first time, in electoral terms, that in spite of economic growth, large social sectors on the less-modernized territories of the economy were unhappy with the State and its public policies. Humala appeared at that moment as a determined emulator of Venezuelan ruler Hugo Chávez, and lost the election by a tight margin, but in that context, the orientation of the García Administration could be foreseen. Also, an alliance with the conservative elites was forged since the beginning. His candidate to the vice-presidency, former vice-admiral Luis Giampietri, was one of the most violent critics of the Truth and Reconciliation Commission, and one of the most spirited spokespersons of the lawsuits of impunity for the armed forces agents involved in human rights violations.

García's convergence with conservatism is quickly evident. Two other examples were the role played by minister Rafael Rey, a well-known representative of the Catholic conservatism, also reviler of the CVR and a spokesperson of the lawsuits of impunity, first as a Minister of Industry, and then as a Minister of Defense. And there is also the almost explicit alliance with Cardinal Juan Luis Cipriani, archbishop of Lima and primate of the Catholic Church in Peru. Cipriani, a member of the Opus Dei and archbishop of Ayacucho at the end of the armed violence period, has regularly acted as a determined opponent of human rights organizations and, in fact, was a constant ally of the Alberto Fujimori Administration.²⁹

28 It is worth noting that this analysis refers to strictly political aspects of the national agenda. In fact, those great powers had not lost presence in regards to the management of the economy and trade. From an economic point of view, the Alejandro Toledo Administration did not mean a drastic change in regards to the Fujimori Government, but rather continuity, including the respect to the legal framework, the contracts and concessions granted to large companies to do business in the country.

29 The CVR Final Report for Peru, in its chapter on the performance of churches during the armed conflict conducted a very positive assessment both of the Catholic Church and Evangelic Churches, but regretted the actions of Juan Luis Cipriani as archbishop of Ayacucho, the most affected region by human rights violations. See CVR. (2003). *Informe Final*. (Volume III, Chapter 3,3). Lima.

b) The Government Defines a “Vision”

As could be seen in Part I of this document, the recovery of factual powers and conservative positions did not mean an immediate or drastic deactivation of actions in favor of truth, justice or reparations because drive generated by the CVR final report could be maintained. But then, the same did not happen. The counter-offensive of a set of political, economic, institutional, (religious) and media forces aligned and under the determined and effective leadership of President García, would achieve several objectives.

In fact, if his alliances with conservative forces were, in due time, a not-necessarily strategic movement and were focused on ensuring stability and building the trust of those sectors,³⁰ soon García could conceive his own project that would make it possible for him to align behind him those who were his allies under the circumstances. That event takes place when he realizes that the economic growth wave based on the high prices of minerals exported by Peru would give him the opportunity to have a successful Administration in certain aspects, first of all, to extend his political future beyond 2011. That also led him to redefine his allies in more organic terms outside institutional policies (large companies, armed forces and rightist mass media), as well as to confirm an alliance in the official political arena, particularly in Congress, with Fujimorism representatives. At the same time, he defined his opponents: social organizations claiming social or cultural rights in view of the investment wave for mining and hydrocarbons exploitation, left-wing and Liberal Democratic opposition and, of course, civil organizations advocating for the truth, justice and reparations agenda. Thus, there is a new scenario that may be defined as “**friend-enemy**” as a guideline for governmental behavior.³¹

That political option emerged when in October and November 2007 García Pérez publishes two articles in the *El Comercio* newspaper: *El síndrome del perro del hortelano* (The Vegetable Gardener’s Dog Syndrome) and *Receta para acabar con el perro del hortelano* (Recipe to Get Rid of the Vegetable Gardener’s Dog), in which he defines the development project and explicitly accuses as enemies all those who, according to his interpretation, are opposed to allowing all Peruvians to benefit from the wealth distributed across the national territory in the name of particular claims. This shift towards a socially conservative stance taints the Government’s relation with the social agenda in general, and the transitional agenda, defining an alliance with the most hostile sectors towards memory, truth and justice.

However, although the García Administration portrays itself through what has been described as a tendency towards political polarization, it is careful about maintaining itself within the limits of liberal pluralism. This facilitated the fact that transitional justice agenda advocate sectors, harassed and in a relative minority, could keep a certain presence in the public scenario. García himself, apparently attentive to the issues set forth in the CVR Report, maybe due to his own political past, was careful, for instance, in keeping a relationship with victims’ reparation demands, and was present under certain circumstances in those places, with collective reparation measures. At the end of his Administration, he even ordered the individual reparations program start-up, although with a very limited amount and without a previous dialogue with victim organizations, as seen above.

30 We have to remember that García was besieged by the memory of poor management during his first term, during which violence had extended across the national territory, but which was characterized, first of all, by an economic downfall and endemic corruption. Among the extensive bibliographical references the first term of García Pérez, it would be interesting to see Crabtree, J. (2005). *Alan García en el poder. Perú 1985-1990*. Lima: Peisa.

31 This option for a development model focused on natural resource exploitation and the subsequent abandonment of a State reform agenda in order to build more democratic and inclusive relations with society seems, precisely, the opposite of what the development conception would be defined from the lessons learned in a transitional justice process. Although this text cannot develop an argument on the connections between justice, social transformation and development, we refer the reader to an article where we analyze this topic. See Ames, R.; Reátegui, F. (2009). Toward Systemic Social Transformation. Truth Commissions, and Development. In De Greiff & Duthie. (eds.). *Transitional Justice and Development. Making Connections*. Nueva York: Social Science Research Council.

c) The Space for a Transitional Agenda

Since 2009, the political arena was not really in favor of the truth, justice and reparations agenda. In a broader sense, it should be said that this had an adverse impact on the discourse the CVR wanted to convey. This discourse, encouraged by a conception of a strong motivation of the transitional justice process, was focused on the fact that the country should be able to admit its historical errors and deficiencies and undertake a drastic transformation that would entail: a sense of responsibility and solidarity towards those excluded, vigorous actions to ensure inclusion and rejection of the legacy of the hierarchical, state and authoritarian culture that still corrupted the political apparatus. All of this was due to a **complex** sensitivity, characterized by a certain **historical** awareness, that was dominated by a more simple discourse and focused on immediate promises: promotion of economic growth and an immediate and mythic access to the “first world”.

In this situation, it is notorious to see that the transitional agenda could survive, although limitedly, and even that it could win several political battles such as the fight against the attempts for amnesty and pardon for military men, as well as the maintenance of a climate of political freedoms. Some of the reasons for this are that, in spite of all, the CVR discourse still had several respectful individual speakers and that the image of the Commission, regardless of strong demolition press campaigns, was still favorable for the public opinion and, certainly, among the international community representatives accredited in Peru.

Additionally, it is worth mentioning that a convergence of pro-democratic sectors in the Peruvian public space has been taking place; even if it is a minority, this allows keeping the agenda alive: young people, mainly from the university, a politically worn-out, but still active, left wing policy, progressive Christian sectors, a nationalist political sector³² strategically positioned in line with the CVR discourse, several popular protest movements, and as a novel actor, a sector composed of intellectuals, technicians and liberal and democratic opinion leaders, whose most visible and influencing exponent is writer Mario Vargas Llosa.

This confluence of forces has allowed the transitional agenda to keep a certain space. We have already pointed out that recently key institutional restrictions have come from the Judiciary, as well as its setback regarding criteria and standards for the prosecution of serious human rights crimes and violations. We reiterate that one of the most visible manifestations of the resistance capacity of the transitional agenda was the defeat of legislative decrees, which proposed the completion of proceedings against military men after 36 months without having issued a sentence, and other measures leading to impunity. The Government's willingness to take on the project of creating a national memory site may also be included in this positive account, in spite of a drastic initial refusal, as well as the maintenance and warm progress of a rather limited reparations policy.

d) Social Organizations: Real, but Limited, Presence

Now, we would like to highlight three specific elements, beyond the evolution of the general power correlations set forth therein and that are relevant to understand the complexity of the progress and setbacks of the transitional justice process. We start with the position of social organizations in the public area. We point to the presence and influence of civil society organizations today, in the scenario where the transitional agenda develops.

It should be noted, in the first place, that since the beginning of the two-thousand decade there has been an overflowing in the official or traditional political scenario in Peru, given the collapse of political parties

³² This is the name of the political bloc supporting Ollanta Humala, a sector composed of old and new leftist parties, and also of a network of regional political movements and organizations. It is also necessary to mention at this point that Ollanta Humala has been accused of human rights violations, when he was a military stationed in emergency zones. The case has been dismissed at the judicial level, but it is far from being completely clarified.

since the end of the 1980s and before the activation of local demands in many different ways.³³ These two elements have outlined new ways of mediation between the population and the State, based on platforms, dialogue roundtables, mixed commissions, and in which the protagonists, apart from State authorities, are innovative organizations, such as networks, groups and fronts, advised or supported by actors from the so-called **third sector**, such as non-governmental organizations.

This new framework, characterized by these extra-institutional spaces, has allowed the preservation of governance, though limited and sometimes precarious, in view of the emergence of continuous conflicts and violent protests. However, it has instilled the public process with a dynamics that is not adequately related to what happens in the traditional political arena, dominated by the political parties represented in Congress. This political system disjunction has been affecting the education, adoption and execution process of more consistent public decisions. On the one hand, it distracts the capacity of the official policies to prioritize important political projects; and on the other and, it severs social organization possibilities to have the State make effective decisions, favoring its interests.

Here, we should mention two bodies playing a key role in keeping the CVR recommendations valid: on the one hand, the NGOs that are part or collaborate with the National Human Rights Coordinator. Their professional quality, their strong closeness to the victims, many of them spread across Andean or Amazonian towns of difficult access, have been a key factor for the transitional agenda continuity in the difficult political environment described. On the other hand, the Ombudsman's Office, the State institution created by the 1993 Constitution, during the Fujimori regime, has had, however, a continuous path until today aimed at playing its role in an equally professional and courageous manner. The Ombudsman's Office is the recipient of CVR documentation, and it regularly assesses the human rights situation in the country.

It is in this context that the victim organizations that emerged after the work performed by the Truth Commission³⁴ have found an opportunity to gain presence or, at least, to maintain themselves as valid actors, particularly in regional scenarios. Their work has been changing over time. Initially, and even until now, they are focused on the claiming their right to reparations. Nonetheless, little by little they have broadened their range of interests towards the cultivation of memory and the affirmation of an identity exceeding or surpassing the strict condition as victims. Memory initiatives have gradually become a constant ingredient in the public space in the regions that were most affected by violence, and this contributes to keeping the agenda in force,³⁵ although always in competition with other more notorious agendas in mass media, such as territorial claims and opposition to large investment projects in extractive or agro-exports industries.

Having said this, its limited scope of influence should also be recognized. Circumscribed to regional scenarios, its capacity to make effective public decisions is not too large. First, because in regional areas they find the same limitations than other collectivities or interest groups: chaotic representation systems, weak regional and local authorities, scarce technical capacity for public opinion enforcement. Second, because given the inexistence of large national political parties lacking the necessary political mediation bodies to be successfully heard at the Legislative and Executive Branch. To this, of course, we should add the already

33 On the uniqueness or precariousness of the mediation and political representation system of current Peru, it would be useful to see Martín, T. (1999). *Democracia sin partidos. Perú 2000-2005*. Lima: IEP. Also illustrative, although circumscribed to the capital city, the text: Romeo, G. (1999). *Las nuevas reglas de juego. Transformaciones, sociales, culturales y políticas en Lima*. Lima: IEP.

34 The *Movimiento Ciudadano para que No se Repita* gathers more than 600 organizations. See its website at <http://www.paraquenoserepita.org.pe/pqnsr/node/1>. The Reparations Council registers its first annual report, in 2007, 35 victim organizations. See http://www.registerdevictimas.gob.pe/archivos%5CInforme_Anual_Anexos_7.pdf

35 On the blooming and sense of the memorial initiatives in the period see: Reátegui, F.(coord.).(2010). *Los sitios de la memoria. Procesos sociales de la conmemoración en el Perú*. Lima: IDEHPUCP. Available at: http://idehpucp.pucp.edu.pe/images/publicaciones/los_sitios_de_la_memoria.pdf

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mentioned social and cultural factors. We are referring to the survival of ethnicity-based exclusion and marginalization standards, which make the most influential social sectors look with indifference at these organizations' claim for rights. The division of the country is still a limitation, not only for this agenda, but also for the consolidation of democracy, broadly speaking.

Saying this does not mean either orphanhood or absolute irrelevance of victim organizations. These keep a certain validity, due, among other factors, to the cooperation and support bonds joining them with other civil society sectors with more power and resources, such as non-governmental organizations, certain universities and the Catholic and Evangelic Church progressive sectors.

e) Balances and Military Power

This extra-institutional dynamics of the social discontent during the García Administration allowed the conservative discourse, and that of its allies, to emphasize an important point in its agenda, which would prove successful: on the one hand, there is a warning in the sense of not allowing protests affect the course of progress that the country would follow, that is, "our growth model," and on the other and, and in direct correspondence, it emphasizes the importance of the armed forces, and therefore, their image and prestige, as guarantors of this social order.

CVR opponents have tried to file specific accusations against the military as an attempt to affect the image of the armed forces and weaken its role in general, and the internal order control, in particular. This discourse affirms that there was a "persecution" against those who fought for democracy, and there has been a drive towards the perception that the Judiciary, harassed by human rights NGOs, treats the military men accused more severely than the members of *Sendero Luminoso*. This discourse facilitated, undoubtedly, the effective resistance of military authorities to the judicial prosecution attempts for human rights violations, by simply denying fundamental information for trials. However, it is also true that these have not made a point in demanding such information. Thus, there has been a tacit convergence between the Office of the Public Prosecutor and the Judiciary, as well as the Executive Branch's inclination not to support the action of justice.

The reconstruction of the military power over the last few years is linked, as already mentioned, to the claim for a "strong hand" in view of social protests. However, according to the police and the armed forces, their role as agents of that "strong hand" would be handicapped by the human rights culture and the crime litigation policy. Our intention here is to stress this surreptitious bond between the defense of the internal order and the idea that the military and the police require or deserve certain immunity guarantees for their actions.

f) State Sub-systems

Finally, we cannot omit that just as force co-relations in the official policies conspire against a greater progress of the transitional agenda, without entirely neutralizing it, there are other barriers (and opportunities) in the structure of the State.

In fact, it is still possible to prove that, in spite setbacks in judicial matters, there are sectors in the administration of justice that struggle to conduct criminal proceedings, especially in the regions where violence affects more severely. A case such as Los Cabitos headquarters (where arbitrary detentions, torture, and extrajudicial executions took place) shows the tenacity of a local judiciary acting without following the tendency imposed by the capital city up to a certain point.

Likewise, different regional Governments, such as Huancavelica and Ayacucho, have made efforts to develop, in the middle of their economic limitations, several measures in favor of victims and aimed at an effective confrontation of the violent past. It is, thus, about several State fields acting with a certain relative autonomy with respect to the national tendency.

However, the limitations to this phenomenon should be considered. The relative autonomy of these state sectors does not necessarily obey to a particular Peruvian State bureaucratic complexity, which would cause the administrative sector to operate independently from politics. It is a more reasonable hypothesis to think that this is due to the political system fragmentation, leaving certain governmental machinery areas loose, otherwise aligned to national politics. It is in those areas in which active civil organizations live, where very heterogeneous leadership emerges, and in which the transitional agenda tries to advance, though slowly and in a fragmented matter.

g) Change of Government and the Transitional Justice Process

Since the end of July 2001, Peru has a new national Government. Ollanta Humala's electoral victory solved an electoral dilemma linked to the concerns about the future of democracy and the respect for human rights. Humala defeated Keiko Fujimori, daughter of a former president convicted for serious human rights violations, and a candidate surrounded by emblematic characters from his father's former authoritarian Government.

Since this Government is just beginning while this chapter is being written, besides mentioning the new President's commitment, ratified by him when he took over, only a brief comment is made. Humala has taken social inclusion as his flag. Making a balance of previous politics, he pointed out that economic growth is valuable, but it has not benefitted the majorities, yet it has reproduced the strong tendencies towards inequality and exclusion. This shift in the Government's direction and the presence of ministers in the first cabinet with a track record coherent with this concern, represent a relevant and encouraging milestone.

Democracy and human rights have an intrinsic relationship with the struggle for social justice in our countries, but we know that the latter does not guarantee by itself the materialization of the first two. This is about complex objectives with their own areas, and there are too many reasons for the Peruvian human rights movement to continue being cautious and protecting its autonomy to remain loyal to its mission in the next few years. At the same time, it is clear that a spirit of justice and fight against discrimination, as previously discussed, should allow for convergences with the transitional justice agenda. We could say that unexpectedly, due to the electoral results, a more promising future has opened before all of us who follow this path. This speaks of the importance of the events, and also of the limitations and possibilities of making drastic social changes.