

**[Translation: Original in Spanish]**

**Design Parameters for a Reparations Program in Peru**  
International Center for Transitional Justice (ICTJ) and  
Human Rights Association (Asociación pro Derechos Humanos–APRODEH)  
*September 2002*

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**EXECUTIVE SUMMARY**

**Importance of the Issue**

In the process of raising a new national awareness in Peru regarding past abuses, and building a legal-political framework more responsive to human rights, the issue of reparations must be included. The creation of the Truth and Reconciliation Commission (Comisión de Verdad y Reconciliación–CVR) and the mandate it was given represent a unique opportunity to move forward on this issue.

The time is right for the Truth and Reconciliation Commission—along with NGOs, churches, victims and their families, government officials, members of congress, the media, and other sectors—to learn about and debate the parameters referred to in this report. In fact, it is essential that at the same time as the reparations program process is being defined, a political strategy be designed and implemented with the main objective of bringing together and strengthening a political coalition to promote and defend this program and to thereby generate the appropriate political conditions to assure its sustainability over time. The political viability of a reparations program in the medium and long term will depend not only on the support of those who are already familiar with the issue, but also on a much wider sector of the population, whose understanding and support must be cultivated.

**Purpose and Context of the Report**

The purpose of the report submitted by APRODEH and the ICTJ is to contribute, from a theoretical perspective grounded in international experience, to the definition of a just and realistic framework within which Peruvian society as a whole may debate the best way to redress the incalculable harm caused to individuals and communities during 20 years of violence and repression. It seeks to provide parameters so that Peruvians can better answer the questions: What do reparations consist of? Why provide reparations and to whom should these reparations be directed? What elements should be defined in order to be able to design a reparations program that is effective and just? And how can it be made politically and economically viable?

States have a duty to implement comprehensive reparations for victims of human rights violations and international humanitarian law violations. These reparations may be addressed in the legal context, in which a court designs the measures, making them case-specific, to compensate the victims for the harm suffered. But when it is a matter of massive human rights violations with thousands of victims, it overwhelms the state's ability to provide compensation proportionate to the harm suffered through the application of legal standards, which is why reparations in this situation are generally

undertaken through state policy in the form of a reparations program. The report focuses on this latter context without ignoring the lessons learned from the legal context.

Despite our insistence on the importance of preserving ties between the reparations program and other justice measures (bringing the truth to light, sanctioning those responsible, institutional reform), in this document, the term “reparations” refers to measures that attempt to provide benefits directly to the victims. We recognize that other justice measures can have reparative effects that can be extremely important, but they are not the object of this study.

### **Objectives of Reparations Programs**

The general objective of the reparations program is to bring **justice** to the victims. The ideal in an isolated case of a rights violation is one of reestablishing the *status quo ante*. But there are situations in which this is not possible, either due to absolute limitations, like the impossibility of bringing an individual back to life, or because of less absolute but still severe limitations, such as a real lack of resources. In the latter case, the reparations program should focus as much as possible on the future; instead of attempting to set a price on the victims’ lives, it should attempt to contribute to the survivors’ quality of life. The reparations program also includes three specific objectives:

- First, **recognition**. The reparations program should contribute to reaffirming the status of individuals as citizens. For that, it is indispensable to first recognize them as *individuals*, not only as members of a group, but as unique and irreplaceable human beings. Reparations become the manifestation of recognition of the pain and suffering experienced by victims of human rights violations.
- Second, **civic trust**. The reparations program should contribute to the reestablishment of trust amongst citizens, and between them and their institutions. In this sense, reparations constitute a manifestation of the serious effort to establish relationships of equality and respect.
- Lastly, **social solidarity**. The reparations program should contribute to promoting the kind of empathy that is characteristic of an individual willing and able to put himself or herself into another person’s place. Reparations can be viewed as an expression of this kind of interest and as a way of generating this kind of solidarity.

### **Limitations of Reparations Programs**

Reparations programs also have their limitations. Because they are generally designed when it seems possible (or necessary) to reform everything, it is easy to want to set more goals for a reparations program than it can reasonably accomplish. The greatest temptation is to convert the reparations program into a way to cure structural problems on a national level, causing it to become a long-term development program, diminishing its reparative capacity and diluting its focus on victims.

It is necessary to raise general awareness of the reparations program's potential, but also of its limitations, through participatory processes that pay special attention to the victims' voices.

## General Conditions

With that in mind, we believe that the following constitute some of the general conditions of a successful reparations program:

- It should pursue as objectives justice, recognition, civic trust, and social solidarity.
- The measures should be designed after listening to the victims and taking into consideration cultural aspects.
- It should result from a fundamentally political process—in the broadest sense of the term—through which a coalition is brought together to promote and defend the reparations program and thereby generate the appropriate conditions to assure its sustainability over time.
- Based on international experiences and sources, it is possible to identify some of the minimal criteria that a reparations program should satisfy:
  - The program should have an **individual** component that may include monetary compensation.
  - The program should be **integral**. There are two important aspects of an integral program; one is **external integrity**, which has to do with the relation the reparations program should have with other mechanisms of transitional justice (attempts to obtain criminal justice, to bring the truth to light, and to recommend institutional reforms); and another is **internal integrity**, and has to do with the requirement that within the program, the different components should be coherent. (In the case of Peru, where there are various isolated efforts regarding reparations, it is imperative to organize all these initiatives into an overall program. The higher the level of coherence reached among the various legislative and executive initiatives, the greater assurance of a more comprehensive internal and external process, and a more efficient path toward appropriate goals for reparations.)
  - The program should satisfy the principles of **nondiscrimination and equal treatment**. The principle of nondiscrimination prohibits making *prejudicial* distinctions in the definitions of categories of beneficiaries or methods of redress. The principle of equity requires that equal cases be treated equally. Regarding these principles, international law rejects the notion that in order to receive reparations, the victims of human rights violations or international humanitarian law violations must have “clean hands.”

## Reparations Measures

Based on the different options for reparations, the following conclusions can be made regarding the advantages and disadvantages of each option.

1. Symbolic Measures

*Individual* (personal letters of apology, copies of Truth Commission reports, proper burial for the victims, etc.)

**Advantages**

- Constitute a way to show respect for individuals
- Express recognition for the harm suffered
- Low cost

**Disadvantages**

- May create the impression that by themselves they constitute sufficient reparations for the victims

*Collective* (public acts of atonement, commemorative days, establishment of museums, changing of street names and other public places, etc.)

**Advantages**

- Promote the development of collective memory, social solidarity, and a critical stance toward, and oversight of, state institutions

**Disadvantages**

- May be socially divisive
- In societies or social sectors with a proclivity toward feeling victimized, this feeling may be heightened
- May create the impression that by themselves they constitute sufficient reparations for the victims

2. Service Packages (medical, educational, and housing assistance, etc.)

**Advantages**

- Satisfy real needs
- May have a positive effect in terms of equal treatment
- May be cost-effective if current institutions are used
- May stimulate the development of social institutions

**Disadvantages**

- Do not maximize personal autonomy
- May reflect paternalistic attitudes
- Quality of benefits will depend on the services provided by current institutions
- The more the program concentrates on a basic service package, the less force the reparations will have, as citizens will naturally think that the benefits being distributed are ones they have a right to as citizens, not as victims

### 3. Payments to Individuals

#### **Advantages**

- Respect personal autonomy
- Satisfy perceived needs and preferences
- Promotes the recognition of individuals
- May improve the quality of life for the beneficiaries
- May be easier to administer than alternative distribution methods

#### **Disadvantages**

- If they are perceived solely as a way of quantifying the harm, they will always be viewed as unsatisfactory and inadequate
- If the payments fall under a certain level, they will not significantly affect the quality of life for the victims
- This method of distributing benefits presupposes a certain institutional structure (the payments can satisfy needs only if institutions exist to “sell” the services that citizens wish to purchase)
- If they are not made within a comprehensive framework of reparations these measures may be viewed as a way to “buy” the silence and acquiescence of the victims
- Politically difficult to bring about, as the payments would compete with other urgently needed programs, may be costly, and may be controversial as they would probably include ex-combatants from both sides as beneficiaries

There are those who think that reparations can also take the shape of development programs. We do not agree with that option, but to complete the analysis, the following may be said:

### 4. Development and Social Investment

#### **Advantages**

- Gives the appearance of being directed toward the underlying causes of the violence
- Would appear to allow due recognition to be given to entire communities
- Gives the impression of making it possible to reach goals of justice as well as development.
- Politically attractive

#### **Disadvantages**

- Has very low reparative capacity, as development measures are too inclusive (are not directed toward the victims) and they are normally focused on basic and urgent needs, which make the beneficiaries perceive them as a matter of right and not as a response to their situation as a victim
- In places characterized by a fragmented citizenry, these measures do nothing to promote respect for individuals as individuals rather than as members of marginal groups
- Uncertain success: development programs are complex and long-term programs—this threatens the success of the institutions responsible for

- making recommendations regarding reparations, which may lead to questions regarding the seriousness of the transitional measures in general
- Development plans easily become the victims of partisan politics

In principle, there is no conflict between symbolic and material reparations. In fact, ideally, these benefits can lend mutual support to each other, something that will be especially important in contexts characterized by scarce resources, where symbolic reparations will surely play a particularly visible role. Nor is there any conflict at all, in principle, between individual and collective measures. As long as there is a substantial individual component, the exact balance between the two kinds of measures should be established taking into consideration, among other factors, the kind of violence sought to be redressed. In those places where the violence was predominantly collective, it makes sense to design a program that also places special emphasis on these kinds of measures.

### **Strategies**

In addition to providing lessons on content, international experience suggests some procedural lessons on creating a successful reparations program.

- Scope. It should avoid being converted into an instrument to solve social and economic structural problems. This does not mean that outside the reparations program, it is not important to implement transitional policies that include solutions to social and economic problems. Likewise, the reparations program should of course avoid reproducing and perpetuating unjust structures in its design as well as its implementation (for example, making sure it has a gender focus).
- Types of violations. It is also essential, in order to determine the beneficiaries of reparations, to define the kinds of human rights violations that were committed and then link them to types of reparations accordingly. This is important because although recognition for every kind of violation is important, reparations programs cannot treat victims as a monolithic whole. Different groups of victims may deserve different kinds of benefits.
- Institutional framework. It is important to institutionalize the reparations program, as the first step toward its legal and political recognition. The enactment of a special law is recommended, with general terms including the program's scope, content, and financing. There should be a process for monitoring and oversight. When the program has a regional focus, it is highly preferable to have a decentralized application. The entity in charge of reparations does not have to be governmental but rather could be an autonomous or decentralized entity. It is important to design mechanisms for incorporating victims into the program who have not been identified during the course of the truth commission's work.
- Financing strategy. The main source of financing for the reparations program should come from the General National Budget, because that is the only realistic way to assure its effective application in the long term. This does not mean that other forms of extraordinary or transitory financing should be discounted, as they could be crucial in the start-up phase of the program. International experience shows that even the best-designed reparations program can easily fail without an adequate financial strategy. It is advisable

for someone to take the lead in a dialogue between the government, congressional representatives, academic sectors, human rights organizations and representatives of the international community, including international financial organizations. In this way, a joint financing strategy can be defined along with the concrete commitments of donors and the national government.

- Political strategy. It is important to devise and implement a political strategy aimed at assuring the political viability of the reparations program. This process is the responsibility of all social and political sectors with a stake in the program's success. The first objective of this strategy should be the strengthening of the alliance amongst supporters, i.e. amongst all those national and international sectors who in principle are natural allies of the program (including the Truth and Reconciliation Commission, non-governmental human rights organizations, the victims and their families, and governmental institutions committed to the process).

In order to strengthen this alliance it is necessary to establish a process of ongoing dialogue in the shortest time frame possible, including periodic meetings to evaluate the political process related to the reparations program.

Once the coalition of supporters is strengthened, the next step is to devise a concrete strategy to bring together a broad coalition at the national level in favor of the reparations program. To this end, it is necessary to have ongoing interaction with those political and social sectors that make decisions and distribute public policy. Based on international experience, these actors are the political parties represented in the government, the media, international donors (financial organizations and bilateral donors), union and agricultural sectors, indigenous organizations, grassroots organizations, church organizations and academic and professional sectors. In order to perform this task, it is necessary to carry out a division of labor within the coalition of supporters.

Lastly, as part of the reparations program's political strategy, a public relations strategy should be designed and implemented to allow citizens in general to have a precise idea of the nature, objectives, and scope of the program. In this way, the disinformation campaigns will be countered, and the population will become aware of the benefits of the reparations program in terms of consolidating democracy and strengthening respect for human rights.

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Joint Report by the  
International Center for Transitional Justice (ICTJ) and the  
Asociación Pro Derechos Humanos (APRODEH)  
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## Foreword

This research project was conceived in early 2002, in the context of a political transition brought about by the fall of President Alberto Fujimori's regime in November 2000. The installation of Valentín Paniagua's transitional government, followed by the election of the current President, Alejandro Toledo, gave rise to a real possibility for forging a new national consciousness in Peru regarding abuses of the past, and for cementing a political-legal framework more respectful of human rights.

The question of reparations is among the issues that call for a national response. What do they consist of? Why offer reparations, and to whom should they be directed? What elements should be defined in order to make it possible to design a reparations program that is effective and fair? And then, how can it be made politically and financially viable?

All of these questions are on the agenda. In certain specific cases of human rights violations, the state has begun to respond. For example, in the case of a group of people who were arbitrarily detained under antiterrorist legislation and later released through pardons, and in more than 150 cases dealt with by the Inter-American system for the protection of human rights, the state has already acknowledged responsibility, carried out public acts of atonement, earmarked some of the moneys recovered in the fight against corruption for victims' compensation, and agreed to reach settlements with the victims in order to provide reparations for damages and moral harm.<sup>1</sup> While these steps are positive, they still represent incomplete and isolated responses in the matter of reparations.

At the same time, the president has given the Truth and Reconciliation Commission (TRC) a mandate to bring to light the facts, processes, and consequences of past political violence. The very creation of the TRC and the mandate it was given represent a unique opportunity to advance toward a more clear and complete vision of the totality of victims to whom the state owes reparations, while helping to awaken and broaden citizen consciousness about this obligation. The Commission's mandate requires that when its final report is made public (in July 2003), it shall formulate "proposals for reparations and for restoring dignity to the victims and their families," which the executive is obligated to take into consideration.<sup>2</sup>

Given these circumstances, the Association for Human Rights (Asociación Pro Derechos Humanos—APRODEH) believed it was important to provide Peruvians with a conceptual framework and comparative information that would be useful in the Commission's work and also help the national debate on reparations. To that end, in April 2002 APRODEH and the International Center for Transitional Justice (ICTJ) undertook this study, gathering information and engaging in the analysis needed to provide that debate with well-founded, practical, and pertinent criteria.<sup>3</sup>

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<sup>1</sup> See Section V for a more detailed version of the current reparations context in Peru.

<sup>2</sup> Supreme Decree No. 065-2001-PCM of June 2, 2001, subsequently amended by Supreme Decree No. 101-2001-PCM of Aug. 31, 2001, Art. 1 and Art. 2(c). Article 7, Para. 3 of DS No. 065-2001 stipulates that "the Executive shall heed the recommendations of the Commission inasmuch as they are compatible with the law."

<sup>3</sup> See Annex 1 for a brief description of both institutions.

A team comprising two professionals with legal experience and two with a background in economics carried out this work. Two of the investigators worked from the Peruvian point of view and two from the international perspective, in order to understand the international experience without losing sight of the Peruvian context. The ICTJ contracted the international experts and APRODEH was in charge of contracting the Peruvian experts.<sup>4</sup>

The two institutions designed the project and the ICTJ was in charge of the overall direction of the study. To that end, the ICTJ allocated time for its research director and a senior associate to carry out the work. In addition to the systematic study done by APRODEH and consultants working on the project in Peru, team members held meetings in February and July with the Commission, nongovernmental human rights organizations, and some government officials. By publishing this report, APRODEH and the ICTJ hope to share their work widely within Peru, while making this study available so that other countries can put its contents to use.

## **I. Introduction**

This report does not attempt to prescribe a remedy for Peru or to make judgments about specific measures, which should be determined by Peruvians. Working from both a theoretical perspective and international experience, its object is more modest: to contribute to defining a just and realistic framework within which Peruvian society can debate the best method for redressing the incalculable harm caused to individuals and communities over 20 years of violence and repression. The debate on reparations does not take place in a vacuum, but must meet certain international and national legal standards; furthermore, it is possible to make use of the experience of other countries that have faced a similar challenge. To that end, the report includes an analysis of pertinent legal considerations and the experience of other truth commissions, without losing sight of the Peruvian legal, social, and economic context.

In addition to being directed to the Commission, the report also seeks to be useful to government authorities, which will need to formulate and implement a state policy in this matter. Likewise, we hope that the document will strengthen civil society's proactive capacity by providing input that may be useful in formulating reparations proposals.

The document begins with a conceptual vision of reparations, including their characteristics, terminology, and aims. The following section examines legal principles establishing the state's obligation to provide reparations to victims of human rights abuse and outline the challenges of reparations in light of massive, systematic abuses. Lessons are then extracted from relevant experiences in other countries under circumstances that, while not identical to those in Peru, offer important parallels. Finally, criteria is presented that may serve as a point of reference in the decision-making process for a national reparations program.

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<sup>4</sup> See Annex 2 for biographical information on team members.

## II. Conceptual Framework

### 2.1. The Concept of Reparations

Two contexts in which the term *reparations* is used are worthy of attention in this study. The first is the legal context, particularly that of international law, in which the term is used in a broad sense to designate all such measures as may be used to compensate victims for the harm they may have suffered as a consequence of certain crimes. To appreciate the breadth of the term's usage, one may consider the multiplicity of reparations contemplated under international law.<sup>5</sup> These include:

- *Restitution*, the object of which is to reestablish the victim's *status quo ante*. Depending on the circumstances of the case, this kind of reparations includes measures that seek to reestablish rights, such as liberty and citizenship, and conditions such as the victim's social situation and family life.
- *Compensation*, the essential and preferred component in reparations, especially at the international level. In the human rights field, every economically quantifiable harm should be compensated—be it economic, mental, or moral injury—whether it is the consequence of a violation of international human rights law or international humanitarian law.
- *Rehabilitation*, which includes measures such as necessary medical and psychological care, along with legal and social support services.
- *Satisfaction and Guarantees of Nonrecurrence*, especially broad categories that include such dissimilar measures as the cessation of violations; verification of facts; official apologies and judicial rulings that establish the dignity and reputation of the victim; full public disclosure of the truth; searching for, identifying, and turning over the remains of dead and disappeared persons, along with the application of judicial or administrative sanctions for perpetrators; and institutional reform.

The other context in which the term *reparations* is frequently used is in programs (sets of measures) designed for massive coverage. For example, it is well known that Germany, Chile, Argentina, and South Africa have established “reparations programs.” In this context, and despite the relation each one of those programs might have with other justice measures, the term is used in a narrower sense. Here, *reparations* refers to attempts to provide benefits directly to the victims of certain kinds of crimes. In this sense, reparations programs do not include, for example, truth processes, criminal law policy, or institutional reform.

The categories used in this context to analyze reparations are different than the categories established in international law. In the context of program design for massive coverage, the fundamental distinctions are between material and symbolic

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<sup>5</sup> These concepts are described in more detail and with citations in Section 3.2.2. See also Annex 3, *Final Report of the Special Rapporteur, Mr. M. Cherif Bassiouni: The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*. UN Docs. 56th session. Economic and Social Council on Human Rights. E/CN.4/2000/62, of January 18, 2000.

reparations, and individual or collective distribution. Material and symbolic reparations may take different forms. Material reparations can take the shape of compensation; e.g., payment in cash or negotiable or exchangeable instruments, or service packages such as education, health, and housing. Symbolic reparations may include official apologies, rehabilitation, changing the names of public places, establishing commemorative days or other acts of homage, and creating museums or parks dedicated to the memory of the victims.

Thus, there are two significantly different contexts for using the term *reparations*. In the realm of definitions, the fundamental question has more to do with the advantages of understanding a term in a certain way than with correcting a particular definition. In the case at hand, the advantage of the broad legal definition lies in the fact that it provides an incentive to design reparations programs that are integrated with other justice measures, a subject we will return to later. Nevertheless, this breadth also has its price: it is difficult to design a reparations program while including as necessary components all those measures contemplated as reparations under international law.

The more restricted definition, typical in discussions, has advantages and disadvantages. One advantage is that it suggests certain limits in the responsibilities of those who design such programs, which in principle makes their mission possible. Nevertheless, it has the disadvantage of running the risk of completely disconnecting the reparations program from other justice measures. Despite the importance of preserving links between the reparations program and other justice measures, in this document the term *reparations* refers to measures that attempt to provide benefits directly to victims. This definition is in contrast to measures that may have reparative effects, and that may be extremely important (such as punishing those guilty of human rights violations, or institutional reform) but do not distribute a benefit directly to the victims.

## 2.2. Reparations as a Political Project

Although reparations are a well-established legal measure in legal systems all over the world (including Peru), during periods of transition reparations indicate, in the final analysis, reconstitution (or a new constitution) of the political community to which citizens aspire. In this sense, they are considered more a part of an overall political project than simply the result of judicial process.<sup>6</sup>

There are two fundamental reasons for this: first, and from a negative point of view, a massive reparations program cannot reproduce the results that could be obtained through the legal system, as every legal system works on the presumption that law-breaking behavior is usually an exception to the rule. But this is not the case in attempting to design a reparations program, because it seeks to respond to violations that were not infrequent or exceptional. Legal standards in an ordinary system are not set up for this kind of situation. The state's ability to provide reparations to the victims in proportion to the damages suffered—the ideal that impels reparations under

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<sup>6</sup> When reparations are recognized to be part of a political process, what is understood by this term, among other things, is the (ideally deliberate) action of the distribution of public goods and benefits in the interest of all, instead of partisan action for the benefit of a few.

different legal systems—is limited, and is derailed when violations cease to be an exception to the rule.

Second, and from a positive point of view, adopting a political perspective on reparations allows for the possibility of defining goals that would not be as easy to pursue if the program sought only to compensate victims according to a legal prescription. Some of these ends, as this document details, have to do with a broad notion of justice that goes above and beyond satisfying individual claims, and involves recognition, civic trust, and social solidarity.

### 2.3. General Goals of a Reparations Program

#### 2.3.1. *Justice*

The most general aim of a reparations program is to do justice to the victims. In an isolated case of a rights violation, full reparations (see Section III) is an irreproachable ideal; i.e., to reestablish the *status quo ante*. The justification for this ideal is obvious: from the victims' perspective, it attempts to neutralize the consequences of the violation they have suffered. From another point of view, the ideal hopes to stop perpetrators from enjoying any benefit they may have derived from their criminal actions, or to obligate the state to take responsibility for having allowed, by act or omission, certain violations to occur. But there are situations in which reestablishing the *status quo ante* is impossible, whether because of absolute limitations, such as the impossibility of bringing the dead back to life, or less absolute but still severe limitations, such as a real scarcity of resources that prohibit simultaneously and fully satisfying the claims of the victims along with the claims of other sectors of society who also require, in fairness, governmental attention.

In the latter case, the state cannot simply ignore victims' claims under the argument that there are no resources to cover the corresponding costs. That would be the equivalent of admitting that it is not in a position to sustain a just regime. Its responsibility consists of designing a reparations program that can be said to satisfy the conditions of justice, even if the benefits may not be the same as those a court would require upon deciding isolated and infrequent lawsuits. But what does “satisfying conditions of justice” mean?

First, it is important to keep in mind that a reparations program like the Peruvian one is designed in the context of transition. Independent of the exact definition given to the notion of justice (and any definition will be essentially debatable), during a period of transition the search for justice will require some kind of effort to punish those guilty of human rights violations; understand and reveal the structures of the violence and the fate of the victims; reform institutions in such a way that the causes that may have contributed to the violence are eradicated and the violence is not repeated; and require efforts to grant reparations to victims. These are basic elements of transitional justice. (The precise balance is to a large degree a contextual matter.)



### 2.3.2. Coherence

It is important for an institution like the TRC to present a reparations program as part of an integrated, coherent process. The integrity of the program has two dimensions: external and internal. The external dimension refers specifically to the relationship that the reparations program should have with other mechanisms for transitional justice mentioned above—attempts to obtain criminal justice, truth processes, and recommendations for institutional reform.

It is worth emphasizing that from the victims' point of view, the reparations program is of particular importance, because reparations will be the most tangible proof of the state's efforts to remedy the harm they have suffered. Institutional reform will always be a long-term project and will affect the victims only indirectly. Criminal justice, even if it were completely successful in terms of the numbers of defendants sentenced (which is far from the case in the transitions studied) and in terms of results (which are affected by factors such as insufficient proof and persistent weaknesses in the judicial system), is in fact a struggle *against those responsible* rather than an effort *for the victims' benefit*. The victims will gain significant benefit from truth-seeking efforts, which may include the feeling of closure that stems from knowing the fate of loved ones along with regaining some degree of dignity and apology. But in the absence of other positive and tangible manifestations, the truth "alone" may be considered in many cases an empty gesture, both "cheap" and inconsequential. This is where the importance of reparations and an externally integrated plan comes into the transitional process.

It is worth noting that an externally integrated plan is a pragmatic necessity as well as a conceptual one; i.e., the components of the transitional program will have a greater chance of success if it has this kind of coherence. But beyond this practical aspect, there are reasons to believe that the components support each other. For example, it is not only that victims may view the attempt to bring history to light, in absence of reparative efforts, as an empty gesture. The reverse is also true, in that attempts at reparations in the absence of truth-seeking efforts may be seen as the state's attempt to "buy the silence" or acquiescence of the victims and their families. The same close relationship may be observed between reparations and institutional reform, in that democratic reform cannot be understood if it is not accompanied by efforts to respect the dignity of those citizens who were victims. By the same token, reparative benefits without reforms to diminish the probability that the violence will be repeated are nothing but payments of questionable utility and even legitimacy. Finally, the same bidirectional relationship is found between criminal justice and reparations. In this sense, from the victims' point of view, especially after an initial moment of possible satisfaction, convicting a few perpetrators without an effective effort to compensate the victims in some positive way could be viewed as an example of more or less inconsequential "vengeance." Reparations with no attempt to obtain justice could be viewed, once again, as distributing dirty money. These relationships exist not only between reparations and every one of the other components of transitional justice, but between each of them as well. Thus, arguments parallel to these can be made regarding the relationship between criminal justice and truth processes, and between each of these and institutional reform.

But reparations should also be coherent, or integrated, in another sense: to be able to accomplish some of the goals detailed below, a reparations plan must always be a complex program that distributes a variety of benefits, and the different plan components must each be integrated themselves. Thus, the plan should be internally coherent. Most of the known reparations plans distribute more than one kind of benefit. These may include symbolic and material reparations, and each one of these categories may include different measures and be distributed individually as well as collectively. Obviously, to accomplish the set goals, it is important that the benefits be part of a plan whose elements internally support one another.

#### 2.4. Specific Goals of a Reparations Program

Stating that the overall goal of a reparations program is to achieve justice is only the beginning of a deeper analysis of the objectives that this kind of program pursues. There are at least three more specific goals closely tied to justice that are simultaneously necessary conditions and consequences of justice. It can be said that legitimate measures of a reparations program are related to one of the following objects.

##### 2.4.1. *Recognition*

One of the fundamental objectives of transitional justice is to reaffirm (or in some cases, establish) the status of individuals as citizens. Because the reparations program attempts to contribute to justice, and because recognition is as much a condition for as a consequence of justice, reparations are tied to recognition. In order to recognize the status of individuals as citizens it is first necessary to recognize them as individuals. This means it is necessary to recognize them not only as members of a group (despite how important this might be), but also as unique and irreplaceable human beings. Citizenship in a constitutional democracy is a condition granted by and between individuals, each one of whom is conceived as having intrinsic value.

One of the ways to acknowledge another person outside, of recognizing the specific details of her way of life (which means recognizing her *agency*), is to acknowledge the way in which the person is affected by her surroundings. This means recognizing that she is not only subject to her own actions, but is also the object of the actions of others. In other words, there is a kind of injustice found, for example, not in the illegitimate privation of liberty, but in the absence of the consideration due to someone who is negatively and severely affected by another's action. This consideration is the kind of recognition to which we refer. It is hard to think of a regime that aspires to do justice without first achieving recognition among its members. It is in this sense that recognition can be considered as a condition of justice.

In the case of societies that have suffered massive violence, failing to acknowledge the pain of the victims and their surviving relatives is a kind of injustice, as it denies the one of the most basic kinds of consideration that gives status to an individual. Beyond that, it is in the best interest of a constitutional democracy for its members to recognize one another as individuals and as citizens. Refusing to grant victims this kind of consideration makes it impossible for members of society to mutually attribute this status to each other. In a constitutional democracy, citizenship rests upon equal

rights, and such equal rights mean that those who have suffered from a violation deserve special treatment in order to re-establish conditions of equality.

All the various transitional mechanisms are directed toward that goal, and criminal justice can therefore be interpreted as an attempt to re-establish equality between the criminal and the victim, because the criminal severed that relationship with an act that suggested superiority over the victim. One of the fundamental objectives of the truth-telling process is to recognize and acknowledge the suffering of the victims, and thus give back the dignity that those responsible for rights abuses tried to ignore. Finally, institutional reform is guided by the ideal of guaranteeing the conditions under which citizens can relate to one another, and to the authorities, as equals.

Reparations can contribute to justice because they constitute a form of recognition, and this affirms members of the community both as individuals and citizens. The exact shape this contribution takes is complex. On the one hand, it is one aspect of the close relationship that binds the different elements of transitional justice together; for example, the fact that reparations stop the truth process from being viewed as an empty gesture contributes to the truth being an effective form of recognition. But, aside from this supportive role, reparations can also constitute a form of recognition. They are, in a sense, the material form of the recognition that citizens owe to individuals who have suffered a violation of their most fundamental rights.

#### *2.4.2. Civic Trust*

Another legitimate goal for a reparations program as an instrument of justice is the formation or re-establishment of trust among citizens. This kind of trust is different from trust among intimates. Civic trust is an attitude that can be developed among members of a political community who remain, in spite of it, like “strangers” to one another.

Civic trust is more attenuated than the trust that develops in more intimate relationships. But, even so, it is still a crucial attitude within a social system, and especially necessary for the state to function under the rule of law. Just like recognition, trust is at the same time both a condition for and a consequence of justice. There are many ways to look at how a legal system depends on citizen trust: in the most general way, a legal system functions only when it accepts a high level of responsibility for holding to its basic legal standards. In other words, most social interactions are not directly mediated by the law itself, but to some degree by trust among the citizens.

Even more important, all legal systems rest not only on the trust that citizens have for one another, but on the trust they have in the legal system. First, in the absence of total(itarian) vigilance, the criminal justice system rests on the citizens’ will to report to the authorities crimes they have witnessed, and of which they have been victims. Of course, this willingness depends on their trust that the system will bring about the results they hope for. Finally, this is a complex kind of trust: in police investigations, the honesty of judges, the independence of the judicial branch (and the will of the president to defend and promote such independence), the legitimacy of laws, and the firmness (but also the humanity) of the prison system.

On the other hand, the legal system does not rest solely on the trust citizens have for one another and for the system. When it functions correctly, a legal system acts as a catalyst for both kinds of trust. To the degree that the law contributes toward stabilizing expectations, and by the same token lessens the risk of trusting others (especially strangers), it contributes toward generating trust among citizens. The catalytic role of the law in generating trust in legal institutions is clear when legal institutions, if they are reliable, give citizens a reason to trust in them to resolve future conflicts. This stems simply from the fact that trust is earned, and not arbitrarily granted.

The fundamental point is to clarify the relationship between reparations and civic trust (which, in its turn, may generate trust in institutions). Once again, for the victims, reparations constitute a manifestation of the serious efforts of the state and fellow citizens to establish relationships of equality and respect. Without reparations, victims will always have reason to suspect that even if the other transitional mechanisms are applied with some degree of sincerity, the “new” democratic society is being built on their backs. Reparations, in short, can be viewed as a legitimate method of accomplishing one of the goals of a just state—inclusivity, the sense that all citizens are equal participants in a shared political project.

#### *2.4.3. Solidarity*

Finally, another legitimate goal of a reparations program, once again considered as one of the ways to promote justice, can be forming or strengthening another attitude that—like recognition and civic trust—is also a condition and consequence of justice. We refer to solidarity.

Like trust, solidarity comes in different kinds and degrees. Social solidarity is the empathy characteristic of someone who is willing and able to put him- or herself in the place of another person. That this attitude is a condition of justice may be seen in the following way: impartiality, an indispensable requirement for one who sits in judgment, is inaccessible to someone who is not prepared to put herself in the place of the contending parties. Further, in a democratic system that acknowledges legitimacy in the simple balance of power, the only way to ensure that a law is legitimate is to make sure that it incorporates the interests of all those it affects. This implies having an interest in the interest of others.

Reparations can be viewed as expressing this kind of interest while creating this kind of solidarity. In societies that are divided and stratified (by differences between urban and rural sectors, and factors of ethnic and cultural identity, gender, and social class), reparations show interest, on the part of those who traditionally benefit most, in those who are traditionally less favored. Although it cannot be expected that the program will have the immediate support of the former group, this is where the program’s external integration can play an important role, as the process of revealing the truth may give rise to empathy for the victims. On the other hand, insofar as the victims feel they are being offered a “social contract” in which their dignity and interests are fully recognized, they will have reason to take an interest in common interests, thereby contributing to cementing the general conditions for a just society.

## 2.5. Limits of a Reparations Program

Because reparations programs are usually designed in times of transition when it usually seems possible (or necessary) to reform everything, it is easy to fall into the error of setting more goals for a reparations program than it can reasonably be expected to accomplish. Specifically, the most common temptation is to convert the reparations program into a way to solve structural problems on a national level. This occurs when a reparations program is transformed into a development program.

Strictly speaking, a development program is not a reparations program. In fact, development or social investment projects have a very low reparative capacity, as they are not specifically directed toward the victims, and usually attempt to satisfy basic and urgent needs, which makes the beneficiaries perceive them as a matter of right and not as a response to their situation as victims. Second, development plans suffer from a high level of uncertainty, because their goals are complex and long term. This threatens the institution making recommendations on reparations, and may even lead to questions about the seriousness of the transitional measures in general. Given the importance of reparations in a transitional process, proposing a reparations program with so little chance for success, or so long term, may raise questions about the commitment to renewing democracy. Although many countries in transition, including Peru, demand certain kinds of structural reform, this is not one of the appropriate or practical goals for a reparations program.

At this point, it is worth differentiating between reparations in the strict sense, and the reparative effects of other programs. Development, like criminal justice, may have reparative effects; nevertheless, this does not automatically make development fall under the responsibility of the reparations program designers. Naturally, it is worth reiterating that development should be integrated into other aspects of transition policies. Thus, the program should maintain internal and external integration and, as with all programs of a transition government, it should avoid reproducing and perpetuating unjust structures in its design and implementation. In the final analysis, a transitional government in a poor country will certainly also have a development plan, and ideally the reparations program will also be consistent with that plan. This paper emphasizes the importance of defining responsibilities, because the responsibilities of a reparations program, strictly speaking, are not the same as those of an investment or social development program.

Naturally, identifying the legitimate goals of a reparations program is not the same as determining how to accomplish those goals, although identifying them is instructive for program design. In any case, these objectives cannot be accomplished without satisfying the just claims of victims. After all, justice, recognition, civic trust, and social solidarity are conditions granted among citizens, not in spite of them. No reparations program will be successful without paying attention to the reasonable needs and aspirations of the victims. A democratic political community is neither simply a collection of individuals, nor a single transcendent unit. Constituting or reconstituting a democracy is always a process that requires citizens to guarantee the quality of life of all its members, especially those whose rights have been violated.

### III. Legal Considerations

To fully understand the human rights aspect of reparations, it is important to situate the topic in international law. This section analyzes international law with the aim of establishing, as far as possible, the legal parameters of the concept of reparations, and their practical extent, especially with regard to the state's obligation in the face of massive violations of human rights and international humanitarian law.

It is important to reiterate that there is a fundamental difference between a legal perspective on reparations and a "political" focus on the same subject, in the broad sense described above (see Section II). While the object of both approximations is to develop *just* reparations measures, the challenges are very different. The legal focus finds its natural context in a court that adjudicates individual cases and, therefore, although it may have an integral vision of the overall human rights situation, it concentrates its attention on the individual case. Its fundamental interest is ensuring justice for the victims participating in the case at hand. Designers of reparations programs do this in the overall universe of victims of grave and systematic violations. They do not have the luxury of ignoring questions about how the reparations program will provide for victims who have never had, and never will have, the possibility to access justice via the judicial system. Likewise, they must find a way to provide this service as one of society's urgent priorities.

Despite this distinction, international law serves to confirm the existence of the state's obligation to provide reparations. It also offers criteria that indicate how the state can fulfill this obligation by establishing a reparations program to respond to a legacy of massive and systematic human rights and international humanitarian law violations.<sup>7</sup> In this task, the jurisprudence and experience of the Inter-American Commission on Human Rights and Court of the Organization of American States become especially relevant for the case of Peru.

#### 3.1. The State's Obligation

What is the state's obligation toward victims of human rights violations? A state that is responsible for violating international law on human rights (ILHR) or international humanitarian law (IHL) is legally obligated, among other things, to grant the victims adequate, effective, and timely reparations.<sup>8</sup> According to international law, the violation may consist of an action or an omission. The resulting obligation to provide reparations for the violation includes the obligation to compensate victims for personal as well as economic damages.<sup>9</sup>

The obligation to provide reparations also extends to the case of damages caused by the violation of these same rights at the hands of individual perpetrators, including

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<sup>7</sup> We do not take a position as to the applicability of international humanitarian law to the actions of the Shining Path and the "Tupac Amaru" Revolutionary Movement. Nevertheless, for the purposes of this document, we presume that this field of international law sets standards, whether directly applicable or by analogy, that define the actions that create "victims" of these groups.

<sup>8</sup> *Final Report of the Special Rapporteur*, op. cit. and see Annex 3.

<sup>9</sup> See *Report of the International Law Commission 53<sup>rd</sup> session, 2001*. General Assembly Official Records, 56<sup>th</sup> Session. Supp. No. 10 (A/56/10), Chapter IV, subheading E, "Text of draft articles on the responsibility of States for acts internationally wrongful acts," Arts. 1–3; 28, 31, and comments.

insurgent groups and criminals. This responsibility stems from the fact that the ILHR imposes upon all states party an additional obligation: to guarantee the free and full exercise of the rights protected by international law.<sup>10</sup> This “obligation to guarantee” is a legal standard derived from the obligation to respect (not violate) protected rights, and can be transgressed only to the degree that the violation of a basic right can first be established. “The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>11</sup> The obligation to guarantee is the basis for the international responsibility that arises when a state does not prevent or adequately respond to the actions of *private actors*—e.g., members of insurgent groups or criminals—who seriously harm the full enjoyment of human rights.<sup>12</sup> Therefore, the following discussion presupposes equal treatment for all victims, whether of acts committed by agents of the state or insurgent groups.

### 3.2. Contents of the Obligation

When ILHR is violated, the state’s obligation includes that of granting victims “adequate, effective and prompt reparation;”<sup>13</sup> thus, it is fundamental to understand who the victim is, what the damages are to be remedied, and what the expression “adequate reparations” means. In order to respond to these questions, we refer to rulings adopted by the Inter-American Court of Human Rights since 1988, with emphasis on those in which the Court ordered reparations.

#### 3.2.1. *The Concept of “Victim”*

“A person is ‘a victim’ where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights.”<sup>14</sup> The primary victim’s immediate family members or dependents may also be

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<sup>10</sup> See, e.g., American Convention on Human Rights, Art. 1.1; International Covenant on Civil and Political Rights, Art. 2. Regarding Article 2 of the Covenant, the Human Rights Committee, in charge of ensuring its effective implementation, “considers it necessary to point out to states party the fact that the obligation outlined in the Covenant is not limited to respect for human rights, but rather the states party have also taken on the obligation of guaranteeing the enjoyment of these rights by people who are subject to its jurisdiction. This aspect demands that states party take concrete action so that persons may enjoy their rights.” *CCPR General Comment No. 3 on the Application of the Covenant at the National Level (Art. 2)*, adopted in the 13<sup>th</sup> session, 1981, Par. 1.

<sup>11</sup> Inter-American Court of Human Rights. *Velásquez Rodríguez Case*. Decision of July 29, 1988. Series C, No. 4 (1988), Para. 174.

<sup>12</sup> In effect, an illegal act in violation of human rights that is not initially directly imputable to the state, because it is the work of an individual (including a member of an insurgent group) or because the perpetrator of the deed has not been identified, may give rise to international responsibility on the part of the state, not for the act itself, but for lack of due diligence to prevent the violation or to respond in the terms required by the Convention. *Velásquez Rodríguez Case*, op. cit., Para. 172.

<sup>13</sup> Special Rapporteur, op cit., p. 9.

<sup>14</sup> Special Rapporteur, op cit., pp. 8 et seq. See also Dinah Shelton, *Remedies in International Human Rights Law*. New York: Oxford University Press, 1999, p. 195. “International courts have used their implicit powers to guarantee that the term ‘victim’ or ‘injured party’ be interpreted in such a way that the consequences of the harm can be eradicated, even where such consequences are collateral to the immediate harm.”

considered victims.<sup>15</sup> According to international law, a person's status as victim is not dependent on whether the individual responsible for the act has been identified. When there is a violation of human rights law, and respective state responsibility arises, victim status is independent of any relationship that might exist or have existed between the victim and the immediate perpetrator of the violation.<sup>16</sup>

One of the important consequences of this way of establishing the definition of *victim* is that it makes no allusion to the prior conduct of the person harmed. Thus, the question arises: What effect should the concept of "clean hands" have on reparations?<sup>17</sup> Supposing that the victim of the human rights violation has belonged to a group operating outside the law, or has participated in subversive activities, or that a member of the military has been the victim of international humanitarian law violations while committing abuses in the state's name, how will this conduct affect the state's obligation to provide reparations?

Relevant standards and experience indicate that the reparations required by national and international law should not be invalidated by the fact that the victim of a violation did not have "clean hands." First, the principle of nondiscrimination demands that all reparations be carried out without any prejudicial distinction between the victims.<sup>18</sup> Second, human rights principles cannot be applied selectively, which confirms that every person who suffers a violation of these rights may receive reparations despite the legality or morality of the individual's actions. It is very illustrative that in the Inter-American system, once a violation of the American Convention and the concomitant obligation to provide reparations is established, there is no known case in which the Court has decided to suspend or modify its determination based on the identity or conduct of the victim.<sup>19</sup> In determining whether

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<sup>15</sup> Dinah Shelton. *op cit.*, pp. 183 et seq.

<sup>16</sup> Special Rapporteur, *op cit.*, pp. 8 et seq.

<sup>17</sup> "Clean hands" refers to the concept, present in some legal contexts, by which the prior conduct of a victim is one of the factors that determines his or her rights. In the context of this discussion, this factor is irrelevant, as reparations are supposed to compensate for the violation of human rights, which belong to every human being to the same degree, independent of past conduct or choices.

<sup>18</sup> This principle of nondiscrimination in the interpretation and application of international human rights law and international humanitarian law is one of its guiding principles. In the case of the obligation to provide reparations, it means that the reparations will be subject to internationally recognized human rights norms that apply without any prejudicial distinction (of race, gender, ethnic origin, language, political opinion, religion, economic class), and that any measure at the national level should integrate and respect the principle of nondiscrimination at all times.

<sup>19</sup> The jurisprudence of the Inter-American Court supports this conclusion. In several rulings, the Court has ordered compensation and other reparations measures in favor of victims of violations whose "hands" were not necessarily "clean"; e.g., convicted prisoners and alleged guerrillas. The judgments that illustrate this fact are many and very telling. One of the clearest examples is the *Bámaca Velásquez Case*, Reparations, Feb. 22, 2002, Series C No. 91, in which the victim, who was captured during armed combat between guerrilla combatants and members of the Guatemalan military, received, along with his family members, the maximum allowable reparations. Other examples of victims who were allegedly involved or implicated in subversive or criminal activities and still received compensation from the Court may be found in *Neira Alegria Case*, Reparations, Sept. 19, 1996, Series C No. 29; *Castillo Páez Case*, Reparations, Nov. 27, 1998, Series C No. 43; *Loayza Tamayo Case*, Reparations, Nov. 27, 1998, Series C No. 42; *Castillo Petruzzi Case*, Judgment, May 30, 1999, Series C No. 52; *Benavides Cevallos Case*, Judgment, June 19, 1998, Series C No. 38; *Durand and Ugarte Case*, Reparations, Dec. 3, 2001, Series C No. 89; *Cantoral Benavides Case*, Reparations, Dec. 3, 2001, Series C No. 88; *Barrios Altos Case*, Reparations, Nov. 30, 2001, Series C No. 87.



a victim has the right to receive reparations, the Court limits itself to defining the state's conduct and the consequences to the individual affected.

### 3.2.2. *Adequate Reparations*

According to international law, the responsible state is obligated to provide comprehensive (integrated) reparations for the damage caused by the illegal act. Damage includes any harm caused, both economic and personal.<sup>20</sup> The obligation imposed on the responsible state is to provide “integrated reparations,” according to the longstanding rule of international law set forth in the *Case Concerning the Factory at Chorzów*, in which the responsible state should attempt to “wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed.”<sup>21</sup> The Inter-American Court defines *reparations* as the generic term that includes the different ways in which a state can face up to the international responsibility it has incurred, either by restitution, rehabilitation, compensation, satisfaction, or guarantees of nonrecurrence.<sup>22</sup>

The *adequacy* of any given reparations measure depends on the specific context of a case and/or the circumstances in which they are granted. To be adequate, it is important that measures be equitable and in harmony with the overall objectives of reparations. An important criterion for analyzing the “adequacy” of reparations is the principle of proportionality, according to which “reparations should be proportionate to the seriousness of the violations and the harm suffered.”

The examples cited below (ordered according to the various components of legal reparations) arise in the regional legal context, e.g., the Inter-American Court, where the subject of adequate reparations is studied and decided on a case-by-case basis. The breadth of the concept of reparations in international law, and the wealth of methods of reparations the law defines, exemplify the concept of reparations that are integrated both internally and externally, as defined in Section II. These methods offer a wide range of possible measures, while showing us the way in which the Court has related certain kinds of harm to certain kinds of reparations.

#### Restitution

On several occasions, the Court has ordered restitution; some of the more notable measures include liberating arbitrarily detained persons,<sup>23</sup> vacating criminal judgments based on procedural irregularities,<sup>24</sup> and eliminating judicial precedents resulting from a criminal procedure that violated judicial guarantees.<sup>25</sup> The Court has

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<sup>20</sup> See “Text of draft articles on the responsibility of the States for internationally wrongful acts,” 2001, *op cit.*, Arts. 28, 31, and comments.

<sup>21</sup> *Case Concerning the Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17*, p. 17.

<sup>22</sup> See Section II.

<sup>23</sup> *Loayza Tamayo Case*, *op. cit.*

<sup>24</sup> *Castillo Petruzzi and Cantoral Benavides Case*, *op. cit.* See also *Hilaire et al. Case*, Judgment June 21, 2002, Series C No. 94, where the Court demands that all petitioning prisoners given the death penalty be granted new trials under reformed and modified criminal legislation in order to incorporate judicial guarantees and other protections under the American Convention.

<sup>25</sup> *Loayza Tamayo Case*, *op. cit.*; *Suárez Rosero Case*, Reparations Judgment, Jan. 20, 1999, Series C No. 44; and *Cantoral Benavides Case*, *op. cit.*

also twice ordered the reinstatement of employment for public employees or, if that is not possible, the opportunity to access employment alternatives matching the conditions, salaries, and compensation they had at the time of their unfair termination.<sup>26</sup>

### Rehabilitation

The Court has considered the propriety of rehabilitation measures in several recent cases. For example, the Court recognized a cash settlement for future medical treatment for a torture victim and her two children, who were also seriously affected by the act and needed medical and psychological treatment.<sup>27</sup> More recently, in another case in Peru, the Court ordered that surviving victims of a massacre and their family members be granted the cost of various kinds of public health services: outpatient consultations, diagnostic procedures, medications, specialized health care, surgery, childbirth, post-traumatic rehabilitation, and mental health.<sup>28</sup>

### Compensation

As one of the most common kinds of reparations, compensation has been broadly developed within the Inter-American System: all 29 of the reparations cases studied include, without exception, some kind of compensation for economic or personal damages.

*Economic Damages.* This category includes all damages that can be valued *objectively* in monetary terms. Damages are divided into two kinds: loss of profits and consequential damages. Loss of profits refers exclusively to the loss of future income. In the case of the dead or disappeared, the object is to provide reparations for income that, had the violation not occurred, would have become the property of the victim, “based upon the income the victim would have received up to the time of his [or her] possible natural death.”<sup>29</sup> In cases where the victims have not died but the violation resulted in disabilities that affect their ability to be fully employed, the Court tends to compensate based on reduced salary and those benefits to which they were entitled under the relevant national legislation.<sup>30</sup> The concept of consequential damages generally covers expenses that victims and their families incur as a direct consequence of the acts. In this sense, the Court has ordered the repayment of expenses incurred in the search for a disappeared or detained victim,<sup>31</sup> or for his funeral,<sup>32</sup> along with the costs of appearing before national<sup>33</sup> and international<sup>34</sup> courts.

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<sup>26</sup> *Loayza Tamayo Case*, op. cit.; and *Ricardo Baena Case*, Judgment, Feb. 2, 2001, Series C No. 72.

<sup>27</sup> *Loayza Tamayo Case*, op. cit., Para. 129.

<sup>28</sup> *Barrios Altos Case*, op. cit., Para. 42.

<sup>29</sup> *Velásquez Rodríguez Case*, Compensatory Damages Judgment, July 21, 1989, Inter-Am.Ct.H.R. Series C No. 7 (1990), Para. 46.

<sup>30</sup> See *Aguirre Roca et al. Case*, Judgment, Jan. 31, 2001, Series C No. 71 and *Blake Case*, op. cit.

<sup>31</sup> See, e.g., *Blake Case*, op. cit., *Homeless Children Case*, Reparations Judgment, May 26, 2001, Series C No. 77; *Bámaca Velásquez Case*, op. cit.; *Trujillo Oroza Case*, Reparations Judgment, Feb. 27, 2002 Series C No. 92.

<sup>32</sup> *In re Homeless Children*, op. cit.

<sup>33</sup> See, e.g., *Aloeboetoe Case*, Reparations Judgment, Sept. 10, 1993, Series C No. 15; *Niera Alegria Case*, op. cit.; *Case of the White Panel Truck*, Reparations Judgment, May 25, 2001, Series C No. 76.

<sup>34</sup> See, e.g., *Blake Case*, op. cit.; *Homeless Children Case*, op. cit.; *Baruch Ivcher Bronstien Case*, Judgment, Feb. 6, 2001, Series C No. 74.

*Moral harm.* Moral harm may be considered not only as a harm that can be given a monetary value, but also noneconomic harm, for which money cannot constitute reparations. As to the first category, certain moral harm is recognized and compensated in almost all the cases adjudicated before the Court.<sup>35</sup> It is worth noting that the Court may *infer* the existence of this subjective, emotional harm for the purposes of compensation, without further proof than the acknowledgement of the state's responsibility. Thus, for example, the Court has stated, "it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, as it is essentially human for all persons to feel pain at the torment of their child."<sup>36</sup>

Because in these cases, full restitution is not possible, the Court calculated a fair compensation, taking into consideration the specific circumstances and the seriousness of each case.<sup>37</sup> This compensation can be through a monetary payment or by providing goods or services with a monetary value.<sup>38</sup> But the Court may also take up other novel methods to compensate for personal injury. In *The Mayagna (Sumo) Awas Tingni Community* case, where the harm was "not susceptible to precise valuation" as it affected the indigenous community in its most traditional values, the Court ordered, nevertheless, that the harm be compensated with payments set "in accordance with equity."<sup>39</sup> In that case, the Court ordered that the state invest "as reparation for immaterial damages (...) the sum total of US\$50,000 (...) in works or services of collective interest for the benefit of the Awas Tingni Community."<sup>40</sup>

Along the same lines, the Court has expressed that reparations for noneconomic harm can be made "by carrying out acts or works that reach or affect the public, with results such as commemorating the victims, re-establishing their dignity, consoling their relatives, or transmitting a message of official reproof for the human rights violations at issue and of a commitment to ensure the violations are not repeated."<sup>41</sup> Finally, the Court has always insisted that the judgment "is in and of itself a form of reparation" for the victims, aimed at compensating noneconomic harm.<sup>42</sup>

### Satisfaction and Guarantees of Nonrecurrence

*Satisfaction.* The Inter-American Court has developed a wide range of measures to satisfy serious human rights violations. The most common and relevant include cessation of ongoing violations,<sup>43</sup> full and public disclosure of the truth;<sup>44</sup> searching

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<sup>35</sup> The only two cases in which there is no judgment for moral harm would be *Castillo Petruzzi Case*, op. cit., and *The Last Temptation of Christ Case*, Judgment, Feb. 5, Series C No. 73.

<sup>36</sup> *Aloeboetoe Case*, op. cit., Para. 76. See also *Castillo Páez Case*, op. cit.

<sup>37</sup> See, e.g., *Velásquez Rodríguez Case*, Reparations Judgment, July 21, 1989, Series C No. 7, Paras. 50, 51; *Castillo Páez Case*, op. cit., Paras. 78–90.

<sup>38</sup> *Homeless Children Case*, op. cit., Para. 84. See also *Barrios Altos Case*, op. cit., Para. 42.

<sup>39</sup> *Case of the Mayagna Awas Tingni Community*, op. cit., Para. 167.

<sup>40</sup> *Idem*.

<sup>41</sup> *Homeless Children Case*, op. cit., Para. 84 [unofficial translation of quoted text].

<sup>42</sup> *Case of the Mayagna Awas Tingni Community*, op. cit., Para. 166; *Aguirre Roca et al. Case*, op. cit., Para. 122. See *Castillo Páez Case*, op. cit., Para. 84, where it indicates further that this principle likewise prevails in the jurisprudence of the European Court of Human Rights. See also *Suárez Rosero Case*, op. cit., Para. 72.

<sup>43</sup> See, e.g., *Loayza Tamayo Case*, op. cit.

<sup>44</sup> See *Homeless Children Case*, op. cit.; *Durand and Ugarte Case*, op. cit.; *Cantoral Benavides Case*, op. cit.; *Bámaca Velásquez Case*, op. cit.; *Trujillo Oroza Case*, op. cit.; and *Barrios Altos Case*, op. cit.

for, identifying, and returning the remains of the dead and disappeared;<sup>45</sup> official declarations and apologies,<sup>46</sup> judicial decisions that establish the dignity and reputation of the victim, and applying judicial or administrative sanctions against perpetrators.<sup>47</sup> On certain occasions the Court has also required educational grants, or ordered the building of monuments or educational centers commemorating the victims and to benefit the society hit hardest by the violations.<sup>48</sup>

*Cessation of Violations and Guarantees of Nonrecurrence.* The primary obligation of a violating state is to put an end to the illegal activity—if the violation is ongoing—and to follow up with guarantees of nonrecurrence.<sup>49</sup> In the case already cited from the Mayagna Awas Tingni Community, where the state took economic advantage of communal property of an indigenous tribe in violation of community rights, the Court, to put an end to this violation, ordered the state to cease “carrying out (...) actions that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographical area where members of the Community live and carry out their activities.”<sup>50</sup> When the Court steps in to order measures to guarantee nonrecurrence of the violation, it tends to demand legislative or legal reforms.<sup>51</sup> When the existing legal norms of the local jurisdiction contradict the decisions of the American Convention or international human rights law, the Court may order their modification<sup>52</sup> or, in an extreme case, that such norms be annulled.<sup>53</sup>

### 3.3. Limits of the Law: From Individual to Mass Reparations

It is important to remember that the reparative measures described are the result of an analysis of what justice requires under two conditions vastly different from the ones facing those responsible for designing a reparations program. On the one hand, the

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cit., in which the Court orders the publication of the full judgment in the official newspaper or in a newspaper of national circulation. The Court has acknowledged that every person has a right to the truth, including the possibility that the victim’s family members come to know what has happened to the victim, and if applicable, where the remains are. In this sense, letting the truth be known “is a method of reparations and therefore an expectation that the state should fulfill to the victim’s family members and to society as a whole.” *Bámaca Velásquez Case*, op. cit., Para. 76. See also *Cantonal Benavides Case*, op. cit., Para. 69; *Homeless Children Case*, op. cit., Para. 100; and *White Van (Panel Blanca) Case*, op. cit., Para. 200.

<sup>45</sup>See, e.g., *Neira Alegria Case*, op. cit.; *Castillo Páez Case*, op. cit.; *Trujillo Oroza Case*, op. cit.; *Caballero Delgado and Santana Case*, Reparations Judgment, Jan. 29, 1997, Series C No. 31.

<sup>46</sup> See, e.g., *Durand and Ugarte Case*, op. cit.; *Bámaca Velásquez case*, op. cit.; and *Barrios Altos Case*, op. cit.

<sup>47</sup> See, e.g., *El Amparo Case*, op. cit.; *White Van case (Panel Blanco)*, op. cit.; *Garrido and Baigorria Case*, Reparations Judgment, Aug. 27, 1998, Series C No. 39; *Loayza Tamayo Case*, op. cit.; *Suárez Rosero Case*, op. cit.; *Homeless Children Case*, op. cit.; *Cesti Hurtado Case*, Reparations Judgment, May 31, 2001, Series C No. 78; *Durand and Ugarte Case*, op. cit.; *Cantonal Benavides Case*, op. cit.; *Trujillo Oroza Case*, op. cit.; *Bámaca Velásquez Case*, op. cit.; and *Blake Case*, op. cit.

<sup>48</sup> See *Aloeboetoe Case*, op. cit.; Reparations Judgment, op. cit.; *Trujillo Oroza Case*, op. cit.; *Cantonal Benavides Case*, op. cit.; and *Barrios Altos Case*, op. cit.

<sup>49</sup> See “Text of draft articles on the responsibility of States for internationally wrongful acts,” 2001, op. cit., Arts. 30, 34–37, and comments.

<sup>50</sup> *Case of Mayagna Awas Tingni Community*, op. cit., Para. 153. See also *Hilaire et al. Case*, op. cit.

<sup>51</sup> See, e.g., *Loayza Tamayo Case*, op. cit.; *Suarez Rosero Case*, op. cit.; *Trujillo Oroza Case*, op. cit.; and *Benavides Cevallos Case*, op. cit.

<sup>52</sup> See, e.g., *Castillo Petruzzi Case*, op. cit.; *Suárez Rosero Case*, op. cit.; *Last Temptation of Christ Case*, op. cit.

<sup>53</sup> See *Barrios Altos Case*, op. cit., Para. 44.

function of a body like the Inter-American Court demands that it judge cases on the basis of individual justice. This approximation to the *concept* of justice differs substantially from that which can and should guide those responsible for creating reparations programs to serve the victims and also society as a whole. On the other hand, an entity like the Inter-American Court has no option but to make case-by-case rulings; that is, the *method* of applying its concept of individualized justice is necessarily circumscribed by the legal process established for these ends. In contrast, public and civilian authorities faced with responding to and benefiting a much wider and more complex set of victims find themselves having to adopt other methods and forms of reparations that respond to the national reality.

These distinctions are crucial, as they force us to establish the precise relation between international human rights law and the challenge of responding to a legacy of massive and systematic violations through a reparations program. We know that the majority of human rights conventions are not conceived or set up to respond to a massive or systematic pattern of violations, but rather were promulgated to address violations on an individual level.<sup>54</sup> Nor has general international law formulated clear legal standards or principles on this question. Nevertheless, there is a kind of emerging consensus among professionals in this field, supported by international experience, on cases where serious human rights violations have been massive and systematic. A national program that combines different individual and collective forms of reparations may be the most appropriate and effective way for the state to fulfill its obligation to compensate victims. This practice follows the rule of international law, while also substantially contributing to the development of new legal standards in the international arena regarding the state's obligation to provide reparations.

These legal considerations and the jurisprudence of the Inter-American Court of Human Rights serve to clarify the extent of state responsibility on the national level for human rights violations. They also provide a framework for designing and implementing a national reparations program like that in Peru. The usefulness of international law derives from its function of setting parameters to guide the formulation of reparation policies and programs. The following are some of the most relevant guidelines established in this framework:

- Legal considerations underscore, first, the existence of the state's obligation to implement integrated reparations for victims of human rights violations and violations of international humanitarian law. This obligation is separate and independent of the state's other international and national duties, which may include fighting poverty in general and providing a program of compensation and medical care for its own agents who are injured or killed in the line of duty.
- The individual compensation component is key to any reparations scheme, even when the state also takes on the responsibility of other measures. The concept of collective reparations is also valuable, especially in the context of a

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<sup>54</sup> Christian Tomuschat. "Individual Reparation Claims in Instances of Grave Human Rights Violations: The Position under General International Law," *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights* (A. Randelzhofer & C. Tomuschat eds.). Kluwer Law International, 1999, p. 20.

harm that is characterized by its collective impact on either a cultural or geographic area.

- The extent of the concept of victim is clearly treated in international human rights law and can serve to outline the categories of beneficiaries of a reparations program. The notion of “clean hands” has no place in a reparations program consistent with the state’s international obligations.
- The legal principles of nondiscrimination and equal treatment serve to establish parameters for designing and implementing a reparations program. The foregoing discussion makes it clear that it is illegal to make *prejudicial* distinctions in defining categories of beneficiaries and kinds of reparation. To be adequate, the reparations measures adopted must at least be equitable in character and in their distribution.

#### **IV. The International Experience in Reparations Programs**

While the international experience in defining and applying reparations programs is limited, it provides a wealth of lessons to be drawn from the variety of programs designed and implemented, the varying results obtained, and the economic, social, political, and cultural differences where those programs have taken place.<sup>55</sup> Analyzing these experiences is relevant for Peru, which has taken on the historic obligation of providing reparations to victims of human rights violations that took place during the period of political violence. The following is an examination of the central themes in designing a reparations program in light of the main experiences in this field.

##### **4.1. Defining the Parameters of the Reparations Program**

In this area, international experience indicates that most reparations programs have had as their main objective the victims and/or their family members and have therefore not attempted to extend their reach to other kinds of social and/or economic objectives.<sup>56</sup> The exception is Guatemala, where the reparations program recommended by the Comisión de Esclarecimiento Histórico (Commission for Historical Clarification—CEH) would have the key mission of contributing to national reconciliation by instituting civilian, socioeconomic, and moral programs. Furthermore, some reparations programs have included specific objectives generally associated with health and education.

Given that the victims’ socioeconomic conditions are closely related to structural factors tied to economics and the overall distribution of countries’ wealth, this focus on victim-centered reparations programs may be subject to criticism. Nevertheless, it has an enormous advantage in that it allows efforts to be centered on the victims of human rights violations, and not on the causes that form the basis for their economic situation, the correction of which is a medium- and long-term process. Additionally, the fact that reparations programs are victim-centered does not mean that the organizations in charge of carrying out the recommendations could not also devise recommendations tending to correct long-term structural problems.

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<sup>55</sup> Argentina, Chile, Guatemala, and South Africa are the cases that formed the basis for this analysis of international experience.

<sup>56</sup> An outline of the different programs may be found in Annex 4.

The foregoing suggests the need for distinguishing between reparations and social policies, or more generally, between reparations and structural transformation. To the degree that reparations programs are centered on the question of reparations for human rights violations and do not attempt to solve the structural problems of injustice and exclusion from which countries traditionally suffer, they will have greater economic and political viability. This lesson is relevant if one keeps in mind that in some of the negative experiences (e.g., Guatemala) governments have, for political and economic reasons, sought to identify social programs with reparations programs.<sup>57</sup>

Second, international experience shows that an additional factor influencing the scope of reparations programs is the definition of the beneficiaries of these programs and the period covered. Reparations programs in Argentina, Chile, and South Africa identify human rights victims, and/or their family members, as principal beneficiaries and clearly establish the time frame in which the relevant violations occurred. Nevertheless, in each case, the operative definition of *victim* differs. In the case of Argentina, the beneficiaries are children and/or family members of the dead and disappeared, as well as persons placed under the control of the Poder Ejecutivo Nacional (National Executive Power—PEN) or civilians who were detained during the state of siege. In Chile, the main beneficiaries are the immediate family members of those detainees who were disappeared or executed for political reasons, to the exclusion of other kinds of victims.<sup>58</sup> In the case of South Africa, the beneficiaries are the victims included in the Truth and Reconciliation Commission report, which was limited to investigating “serious human rights violations,” defined as “death, disappearance, torture or severe abuse against any person,” thus excluding from the reparations program other violations that were part of the Apartheid<sup>59</sup> regime.

The Guatemalan experience differs in that, according to the CEH, the beneficiaries should be those who “suffered directly and personally from human rights violations and acts of violence tied to the civil armed conflict.”<sup>60</sup> Based on this definition, the beneficiaries could rank in the hundreds of thousands,<sup>61</sup> even though the report indicates that in cases based on individual economic loss one must establish an order of priorities for beneficiaries, taking into account the seriousness of the violation and the victims’ economic condition and social vulnerability, with special attention to the elderly, widows, minors, and others in vulnerable situations.

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<sup>57</sup> This association is related, in part, to the government’s ironclad resistance to including individual reparations measures in the reparations program, as well as severe budgetary constraints that prohibit the funding of new programs.

<sup>58</sup> The Commission excluded approximately 40,000–50,000 cases of nonlethal torture carried out under the dictatorship. The Commission separated out and approved a total of 2920 cases, of which 2279 related to deaths and disappearances.

<sup>59</sup> The Truth and Reconciliation Commission collected approximately 22,000 testimonies from victims and declared approximately 18,000 eligible for reparations. Simon Kimani, *Overview of the Reparation Programme in South Africa*. Mimeo, 2002.

<sup>60</sup> See *Memory of Silence. Report of the Commission for Historical Clarification: Conclusions and Recommendations*. Guatemala, 1999.

<sup>61</sup> The Commission for Historical Clarification estimated that there were approximately 160,000 executions and 40,000 disappearances. Furthermore, it determined that in Guatemala, genocide had been committed against different Mayan populations. During the years of conflict, and especially during the 1980s, more than 400 communities were razed, and political repression resulted in the exile of over 300,000 Guatemalans, of whom 50,000 were recognized as refugees in camps in Southern Mexico (CEH, 1999).

Without a doubt, the Commission for Historical Clarification used the above definition in an attempt to avoid excluding any victims. However, in practice that definition created a negative effect for the reparations program because the government, along with some business sectors, feared that its implementation might endanger the fragile macroeconomic stability accomplished over the last few years.

There are two important lessons to be learned from the foregoing analysis with regard to defining beneficiaries. The first is that beyond financial considerations and the magnitude and type of human rights violations that have taken place, this definition is influenced by the mandate given to truth commissions. It may be restricted, as evidenced in the cases of Chile and South Africa, and may be very broad, as in the case of the CEH in Guatemala. In this sense, it is important for the designers of the reparations program to consider these aspects at the outset.

The second lesson is that deciding who qualifies as beneficiaries is essentially a political decision affecting not only the scope of the program, but also the political capital of the Truth Commission and the program's credibility. In fact, international experience suggests that too narrow a definition of beneficiaries, like too broad a definition, can generate major political problems. As we have already pointed out, in Chile and South Africa there has been sharp criticism of the fact that the commissions applied a very narrow definition of beneficiaries and thus excluded numerous victims and substantially reduced the extent of the reparations program. The case of Guatemala, on the other hand, demonstrates that when the beneficiaries are not clearly defined, political difficulties emerge in establishing and carrying out the program because of the twin fears of fostering overly high expectations and facing extremely high costs.

#### 4.2. Reparations Measures

An important issue to point out in this area is that the balance between individual and collective measures and between material and nonmaterial measures is not always the same, but rather depends on the concrete situation in each country.<sup>62</sup> On the one hand, there are examples of programs based fundamentally on individual reparations of a monetary nature (Chile, Argentina), in which the benefits granted were substantial. This has to do, among other things, with the existence of a strong political will that enabled the mobilization of a substantial amount of financial resources. Nevertheless, these reparations programs are not only costly in financial terms, but they have been questioned politically because they excluded (or did not give equal emphasis to) other important aspects for the victims, such as justice and reparations for moral harm. In other words, the programs were not integrated enough, either internally or externally. This situation has contributed to the fact that in both cases the victims have developed strong feelings of frustration and disappointment, which has led to aborting, to a large degree, the reparations efforts adopted.<sup>63</sup>

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<sup>62</sup> See Annex 4.

<sup>63</sup> See Teresa Durán Pérez et al., *Muerte y Desaparición Forzada en la Araucanía: Una Aproximación Étnica*, KO'AGA ROÑE'ETA; Carlos Martín Beristain and Darío Páez Rovira, *Violencia, Apoyo a las Víctimas y Reconstrucción Social, Experiencias Internacionales y el Desafío Vasco*. Madrid: Editorial Fundamentos, 2000.



The foregoing suggests that within reparations, nonmonetary measures should be included that enable the victims to address the emotional and psychological problems stemming from the harm. If this is not done, many of them will feel dissatisfied and disappointed in the reparations program even if they receive monetary compensation. Likewise, the experiences of Argentina and Chile show that applying individual monetary reparations raises substantial technical problems related to eligibility criteria for beneficiaries. In fact, in both countries there have been complaints about the difficulties of obtaining benefits because of complicated paperwork and procedures, as well as requirements that are difficult for the victims to meet.<sup>64</sup> Thus, it is necessary to use expeditious and equitable procedures.

On the other hand, in the case of South Africa, the Truth and Reconciliation Commission presented proposals that included individual and collective measures, although the individual measures were essentially of a monetary character. Furthermore, given the precarious socioeconomic situation of most of the victims, the proposed reparations program distinguished between temporary emergency measures to be put into place immediately and more long-term measures, whether individual or collective. The temporary emergency measures (which are the only ones to be implemented to date)<sup>65</sup> took the form primarily of monetary payments because the majority of the victims indicated that they preferred monetary assistance to other forms of compensation.<sup>66</sup> Nevertheless, it has been strongly criticized because of the small amounts and delays in reparation payments.

Regarding the more long-term measures, the government and the African National Congress have resisted accepting individual monetary reparations. They tend to support collective measures, both symbolic and nonmonetary, arguing that it is not possible to quantify the suffering and that the combatants who fought against Apartheid did not do it for money.<sup>67</sup>

Several lessons may be extracted from the South African experience. The first is that in cases where the victims are in a situation of extreme poverty and exclusion, it

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<sup>64</sup> In Argentina, for example, in the beginning the original requirements for the victims included a request for past criminal records of the disappeared person from the Argentinean National Police and the requirement of a legal declaration of right of inheritance to prove the connection with the disappeared person. According to some human rights institutions, this paperwork stretched out the process for a period of two to three years.

<sup>65</sup> The final execution of the rest of the recommendations will depend on the decisions of the President of the Republic and the South African Parliament, who must decide how and whether the policy will finally be implemented. On this point, see Shadrack Gutto, "Constitutional, International and Comparative Law Perspectives on Reparation," *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa*. Johannesburg: Centre for the Study of Violence and Reconciliation, October 2000.

<sup>66</sup> The emphasis of the recommendations on monetary compensation is related to the fact that by the end of the process the survivors had high expectations of reparations in the form of monetary assistance and were critical that the perpetrators (who were granted amnesty) had received more benefits than the victims. See Brandon Hamber and Kamilla Rasmussen, "Financing a Reparations Scheme for Victims of Political Violence," *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa*. Johannesburg: Centre for the Study of Violence and Reconciliation, October 2002; and Nakia Elliot et al., *A Framework for Political Reparations in Peru*. Washington: Woodrow Wilson School of Public and International Affairs, March 2002. See also "Righting the Wrongs: Dealing with the Difficulties of Granting Reparations in South Africa," *From Rhetoric to Responsibility*, supra.

<sup>67</sup> See Kimani, op. cit. and Elliott et al., op. cit.

may be necessary to combine individual and collective measures while designing and implementing emergency measures geared toward alleviating the victims' difficult socioeconomic situation.

The second lesson is that one must take extreme care with emergency reparations measures. In situations where the government does not have a firm and effective commitment to the reparations program, the program risks being reduced to such measures or facing very prolonged delays between the emergency steps and longer-term measures. This result is very harmful, as it can put at risk the very viability of the reparations program. In this sense, it is important to make sure that there is a clear sequence established for the implementation of reparations measures.

The third lesson is that even if the individual monetary emergency measures are preferred by the victims who live in poverty, this does not mean that such measures are the most effective for solving their short-term problems, particularly when the amount of assistance is modest. In fact, the South African experience shows that when the monetary assistance is small (and arrives late), the victims are left dissatisfied because they do not feel a substantial improvement in their material or emotional condition.<sup>68</sup> In this sense, it is important to clearly identify and explain the specific objective of such measures and how they fit into the logic of the reparations program.

Finally, in Guatemala, although the reparations program proposed by CEH included individual and collective delivery of both material and symbolic measures, the program has not been implemented because of the last two governments' lack of political will. Instead, they are developing two governmental pilot programs in the regions most affected by the war and where there are large concentrations of population in extreme poverty. Due to the government's strong political opposition to individual monetary reparations, these projects do not include such measures, but mostly comprise community development projects.<sup>69</sup>

As to collective reparations measures, international experience suggests that such measures should be designed while taking cultural aspects into consideration. This is particularly important in countries such as Peru and Guatemala, which have large indigenous populations with their own culture. The case of Chile is illustrative of this aspect, as—according to some authors—it did not consider the impact of the economic benefits on the rural and indigenous populations.<sup>70</sup>

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<sup>68</sup> Furthermore, and just as in the cases of Argentina and Chile, some victims are of the opinion that the reparations were not accompanied by a process of justice, which has created frustration. According to Hamber, *op. cit.*, some of the victims' complaints and perceptions arose because in these cases the national process of moving forward and rectifying the past did not meld with the individual process.

<sup>69</sup> The project included the following components: programs to provide education, health care (including community mental health), productive activities, and infrastructure.

<sup>70</sup> According to Durán Pérez, *op. cit.*, economic compensation caused an imbalance in the delicate web of internal family relationships in traditional Mapuche society, where rapid acquisition of riches is frowned upon.

#### 4.3. Institutional Framework

The international experience provides valuable lessons. In cases where reparations programs have been implemented effectively (Argentina and Chile), laws were passed to create the program and regulate its implementation, operations, and functioning. In effect, in the case of Argentina, the government—through diverse offices, but particularly the Ministry of the Interior—issued and implemented a series of laws and decrees geared toward providing some kind of reparations to the victims of human rights violations.

In Chile, after the publication of the Rettig Report, the National Congress passed a Reparations Law that created the National Corporation for Reparations and Reconciliation with the object of coordinating, executing, and promoting the necessary actions to fulfill the recommendations contained in the Report of the National Commission on Truth and Reconciliation.<sup>71</sup>

In the case of Guatemala, on the other hand, while the Peace Accords identified the Secretary of Peace (SEPAZ) as the government office in charge of implementing compensation measures, there is still no law to bring a program into being, because there is no agreement on the program's content and scope. The compensatory pilot projects that SEPAZ is developing are fragile institutionally, legally, and financially. In any case, it is important to point out that in order to begin implementing these projects, in one case SEPAZ opened regional offices that, according to current studies, have been beneficial in terms of both implementation and efficiency. In this sense, a relevant lesson is that in cases where the reparations programs have a regional application, it is important to consider the possibility of establishing field offices in charge of follow-up and monitoring.

#### 4.4. Financing Strategy

International experience indicates that the decision to allocate resources to finance a reparations program is essentially a political one that, in principle, is not conditioned on the amount of resources available. Even in cases where there are severe financial restrictions, it is always possible to reassign a portion of the few resources available or come up with strategies to achieve a greater mobilization of internal as well as external resources, although the possibilities of financing reparations with external resources are limited.<sup>72</sup> On the one hand, we have the cases of Argentina and Chile, where financing of reparations programs has taken place without major setbacks because of the government's firm political will and supportive coalitions to provide reparations for the harm caused by military dictatorships. In fact, most of the Chilean reparations program has been financed by resources coming out of the state budget, and in Argentina the bulk of the compensation was financed by the state through the

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<sup>71</sup> The Corporation completed its work on December 31, 1996. After January 1, 1997, the Corporation was transformed into the *Continuity Program*, under the Ministry of the Interior. The Corporation was directed by a Superior Council, comprising seven advisors (one president designated by the President of the Republic and six advisors also designated by the President of the Republic with the agreement of the Senate). The institution had 15 posts and operated with government funds (although it also accepted international funding), thus it was subject to oversight by the National Auditor's Office.

<sup>72</sup> This is because from the point of view of international donors, the state should finance its reparations program because this step represents a concrete demonstration of its political commitment to redress the harm caused and to respect human rights.

issuance of public bonds.<sup>73</sup>

On the other hand, the cases of Guatemala and, to a certain degree, South Africa, are examples where the mobilization of financial resources and their redirection toward reparations programs has turned out to be problematic because the governments and some powerful sectors have not had the political will to follow the truth commissions' recommendations.<sup>74</sup> As noted above, in Guatemala the government has argued that there are no funds to finance the reparations program and it has been opposed to adopting individual measures. The position of the South African government and the business sector has been that a reparations program is not economically viable. According to some authors,<sup>75</sup> there seems to be an unspoken agreement between business leaders and the government that any reparations program will be too expensive.<sup>76</sup>

Forming coalitions to defend and promote reparations programs can influence the political will of governments. In this regard, one lesson learned is that in the end, the effective implementation of a reparations program will depend on the ability to form a broad social coalition to promote it. Certainly, forming this coalition presupposes designing and implementing a political strategy, which in many cases is not taken into consideration by truth commissions, nor considered by those who are generally in favor of reparations programs.

Of course, this does not mean that the financial dimension is not important, particularly in countries such as Peru where there are strong budgetary restrictions and/or macroeconomic imbalances that impose serious restrictions on fiscal management. In fact, international experience shows that the opposition that the political elite and government demonstrate toward a reparations program is partly based on the fear of putting too much pressure on public finances, which over the long term could lead to an untenable situation in finance and exchange. It is important to distinguish when this rationale is grounded in real fiscal arguments and when it is based mainly on political opposition to the program.

In countries where poverty and social and economic inequalities are extensive and profound, states find themselves subject to demands that exceed their future, as well as present, financial capacity. This means that the reparations program has to compete for resources with other programs and with projects that the government and politicians often consider more important. In order to make the reparations program

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<sup>73</sup> See Annex 4.

<sup>74</sup> In the case of Guatemala, the CEH recommended financing the reparations program by passing the tax reform established in the Peace Accords, which was to increase the taxes collected in the year 2000 by about 4 percentage points of the gross national product compared to 1995. Furthermore, it recommended redirecting social spending, decreasing military spending, and raising funds from the international community. In South Africa, the Commission recommended creating a Presidential Fund, which is to be funded from international resources, the national budget, and the interest earned by such resources. Furthermore, that Commission recommended a series of fiscal measures, geared toward mobilizing resources to finance the Presidential Fund (see chart in Annex 4).

<sup>75</sup> Hamber and Rasmussen, *op. cit.*

<sup>76</sup> According to Kimani, *op. cit.*, a year after the Truth and Reconciliation Commission made its reparations recommendations, the government announced that it had set aside a total of R600 million (\$80 million USD) to pay for three years of reparations, an amount that is only 20% of the total proposed by the Commission. At the end of 2002, only R35 million (\$3 million USD) had been disbursed in emergency reparations payments.

politically viable, it will be vital not only to clearly establish the extent of the program, but also to design a realistic and coherent financing proposal, which should be backed up by solid arguments about the positive social, political, and economic effects that would be derived from implementing reparations measures.

The third important aspect of defining a financing strategy for the reparations program is to link the financing to both political and implementation time frames, because this is the only way to successfully overcome the problem of short-term scarcity of resources. There are two critical moments for financing the reparations program. The first is at the beginning, when an adequate amount of resources is required to finance the setup or expansion of the office that will be in charge of implementing and monitoring the program, and any emergency reparations measures, along with individual or collective measures that are designed to be implemented on a one-time basis (pensions, symbolic measures, etc.). The second key moment is when the more long-term and costly components of the reparations program are initiated. To ensure continuity, it is necessary to mobilize a flow of resources for a more or less extended length of time, which can be effected only through financing that is designated under the national budget. Obviously these phases are related, because the more time that passes before the program is started, the less likely its implementation becomes.

Several implications may be drawn from the foregoing analysis. First, it is not indispensable to the financial viability of the reparations program to have the sum total of resources all at once; what is really important is to ensure an ongoing flow of funds. Second, the financial viability of reparations programs, which tend to be characterized by their high cost and long duration, will depend fundamentally on the resources coming from the national budget. Nevertheless, in the short term, financial resources coming from international donors and those of a transitory nature (funds from privatization, repatriation of illicit capital, debt conversions or exchanges, etc.) may represent an important source of financing for reparations programs, especially at the beginning. Third, it is necessary to devise a timeline for implementing the reparations program that details the need for the required financing in each phase of the process.

#### 4.5. Political Strategy

Probably the most important lesson from international experience is that beyond financial, technical, and institutional restrictions, the effective implementation of reparations programs derives from a complex political process involving sectors in favor of the program as well as those who reject and/or question it based on technical, ideological, or political reasoning. The situation is further complicated when the process of defining and applying the reparations program coincides with electoral periods or changes in government, because generally in those cases the correlation of political powers in the country is modified, affecting the margin the government has to maneuver in order to implement public policies. The worst-case scenario is when government or political coalitions who are formally in favor of the reparations programs lose political ground to opposing sectors. When this occurs, the possibilities of the reparations program being carried out are drastically reduced.

For these reasons, it is vitally important that a political strategy be devised and implemented simultaneously with program design. The political strategy should have

the principal objective of forming and/or expanding a political coalition to promote and defend the reparations program and thus bring about the necessary political conditions to ensure its sustainability in the long term.<sup>77</sup>

## V. The Case of Peru and the Challenge of a National Reparations Program

This section does not intend to identify all the factors of the Peruvian context that would have to be taken into consideration in designing a reparations program. In fact, it makes sense to wait for the TRC to first fulfill its mission to document as fully as possible the process of violence, specific events, consequences, and responsibilities before venturing very far into this field. Nevertheless, it is worth noting a few existing reference points that serve to especially highlight some of the challenges facing the TRC, government, and society as a whole in searching for the best way to make reparations to the victims and together with them.

### 5.1. The Legal and Political Distinction

Shortly after the normalization of its situation regarding the contentious jurisdiction of the Inter-American Human Rights Court, the Peruvian government presented a proposal to the Inter-American Commission on Human Rights (IACHR)<sup>78</sup> to resolve a substantial number of cases under IACHR jurisdiction. The Peruvian government's commitment to these cases has helped define the scope of its duty under international obligations, including, among other things, acknowledging its responsibility and redressing the harm and consequences to the victims. At the same time, the conduct of the state in the friendly settlement of some of these cases,<sup>79</sup> including the designation of funds for this purpose<sup>80</sup> in response to recommendations of the IACHR and Court decisions,<sup>81</sup> has sent an important signal of political will and respect for the state's international obligations.

These steps can have a positive impact on citizen trust. When the state accepts its role in human rights violations and resolves the cases in accordance with standards set by international law, it sends a message that it will not again engage in violations and will make effective the judicial processes to which victims are entitled. Nevertheless, by settling some cases through friendly settlements or reparations plans in accordance

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<sup>77</sup> See Section VI.

<sup>78</sup> See Inter-American Commission on Human Rights, Joint Press Release from the Commission and the then-Minister of Justice Diego García-Sayán, unnumbered document, dated February 22, 2001. Through this document, the Peruvian government committed itself to seek integrated solutions in more than 50% of all the Peruvian cases before the IACHR. Some of these cases have been resolved through friendly settlement.

<sup>79</sup> See, e.g., *In re Mariela Barreto* (IACHR case 12.095) or *In re Leonor La Rosa Bustamante* (IACHR case 11.756).

<sup>80</sup> See Emergency Decree No. 122-2001, published October 28, 2001, creating the Special Fund to Administer Moneys Illegally Obtained to the Detriment of the State (FEDADOI). The preamble to the decree states, "It is worth noting that important sectors of the population have been affected by some of the illegal acts..., and they deserve assurances of adequate reparations for the harm suffered, whether established by the appropriate [national] court ruling or a ruling of the Inter-American Court of Human Rights."

<sup>81</sup> Because Peru has rejoined the contentious jurisdiction of the Inter-American Court of Human Rights, it also reached a resolution on reparations in several cases that had underlying judgments requiring "integrated reparations agreements" without the need for a Court ruling on the subject; see, e.g., *Barrios Altos Case*, op. cit.; or *Durand and Ugarte Case*, op. cit.

with parameters established by the jurisprudence of the Inter-American Court, the state falls under enormous pressure to respond in the same way to all past abuses. At the same time, these cases raise similar expectations in those victims whose cases are beginning to come to light in the current truth commission process.<sup>82</sup>

The cases that went through the international process can constitute important indications of political will on the part of the state, but they do not point the way for a broad reparations program. As noted above, while the courts distribute relatively high and personalized benefits to individuals on a case-by-case basis, these benefits do not respond to the holistic notion of community that is sought within the transitional justice framework. A reparations program conceived in political and integrated terms—e.g., one that is responsive to the common interest—can contribute more directly to rebuilding community.

The executive's decision to establish a TRC with a mandate that includes the formulation of "proposals for reparations and dignification of victims and their families"<sup>83</sup> calls upon the state to pay attention to the political dimension of reparations by creating a program for this purpose. This program should fulfill its obligation to the broader universe of victims of human rights violations and political violence. It does so by taking into account criteria appropriate to this kind of political measure rather than by applying the same criteria that the IACHR and the Court use when deciding individual cases and focusing on the specifics of each one.

An agreement has been reached to establish an Inter-Institutional Working Group for Follow-up to the IACHR Recommendations (Comisión de Trabajo Interinstitucional para el Seguimiento de las Recomendaciones de la CIDH)<sup>84</sup> whose mandate consists of designing an "integrated non-monetary reparations program" in 159 of the cases covered in the joint press release referred to above. This initiative represents a step toward the design of a more general reparations program rather than a framework for case-by-case friendly settlement. Similarly, without waiting for the results of the TRC, in early 2002 the government launched an initiative to address the situation of "pardoned innocent prisoners" by creating another commission and charging it with designing and implementing an "integrated non-monetary reparations program" for this limited group of victims.<sup>85</sup>

The challenges are clear. First, how to carry out parallel judicial and group-specific processes on the one hand, and politically defined processes for broader programs on

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<sup>82</sup> See Annex 5 for a summary of some of the reparations proposals for arbitrarily detained victims and for the displaced.

<sup>83</sup> DS 065-2001, Art. 2, (c).

<sup>84</sup> The bulk of cases on the list covered in the Joint Press Release of the government and IACHR (159 cases from paragraphs (c) and (d) of the press release) have been submitted to this Working Group (created by Supreme Decree No. 005-2002-JUS of February 25, 2002) to "design an integrated non-monetary reparations program" for this group of cases, leaving any monetary measure to be resolved separately. This Supreme Decree was modified by Supreme Decree No. 006-2002-JUS of March 1, 2002 to allow for the incorporation of new Working Group members.

<sup>85</sup> See Supreme Decree No. 002-2002-JUS, published January 15, 2002, that creates the Special Commission for the Assistance of Pardoned Innocent Prisoners (Comisión Especial de Asistencia a los Indultados Inocentes—CEAI) and charges it with "designing and implementing an Integrated Non-Monetary Reparations Program to benefit those pardoned by the Commission created by Law No. 27234 [pardoning some people who were convicted of terrorism or treason, based on insufficient proof], along with their family members."

the other, knowing that the results cannot be nor should be the same? Second, how to harmonize the specific efforts in favor of reparations for the 159 cases before the IACHR and for the pardoned innocent prisoners, with the TRC's design for a general reparations program for the full universe of victims? The current thinking of the government is bifurcated, with initiatives dealing only with potential "non-monetary measures" for now and leaving "monetary measures"<sup>86</sup> undefined. The effectiveness of this approach is questionable because it profoundly limits the possibility of assuring an integral response.

The cases that went through the Inter-American system, receiving individualized attention, respond to a legal framework that establishes very clear criteria that the state must follow.<sup>87</sup> The individual victims in these cases have the right to insist that the state's response conform to criteria established in the jurisprudence of the IACHR, including measures of compensation based on loss of earnings or profits, economic damages, and compensation for moral harm. If these were sporadic and isolated cases, or if they accounted for the only group of victims on the horizon, developing an agreement along these lines would be viewed as normal, no matter how high the compensation. Nevertheless, the unique situation of this group of cases in a context in which there will be thousands of victims to attend to, necessarily introduces an additional component to the resolution of this situation.

One thing that stands out here is the access that some victims have had, in comparison to others, to legal representation, documentation, or proof of violations, and the economic and emotional support that allowed them to pursue an international legal process. This can be understood, on the one hand, as a reflection of "luck," contingent factors, or the relative privileges among certain kinds of victims (for example, an urban victim may have more access to legal representation), but also as a manifestation of the persistence and determination of these victims in their demand for justice.

From the state's point of view, logic dictates that it attempt to resolve these cases (and thus the first challenge) through designing and implementing a general reparations program to take care of the greatest possible universe of victims. For those whose cases are already in the process of being resolved in the Inter-American Court System (especially those who are not included within the mandate of the Working Group to Follow up on IACHR Recommendations and who hope to reach an individual settlement of their case), this response offers at least four disadvantages: (1) the program will not be immediately put into effect; (2) the compensation component will surely be diminished; (3) there are no guarantees of other kinds of integrated reparations such as they are understood in this context (including, for example, the investigation and punishment of those responsible); and (4) the measures available through a program would be less precise in responding to individual circumstances because they would be designed for a more generic group.<sup>88</sup>

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<sup>86</sup> In fact, calling the measures "non-monetary" in these cases refers solely to the point of view of the victim (in the sense that the victim does not receive money in cash) and not that of the state, which has to pay for expenses, whether by creating new services or using existing ones.

<sup>87</sup> See the Inter-American Court cases cited in Section III.

<sup>88</sup> For victims whose cases were submitted to the proposal of the Inter-Institutional Working Group on Follow-up to IACHR Recommendations, it is not clear at this point how the component referred to as "monetary" will be resolved, although they have the advantage of still being able to resort to the



An agreement recognizing the unique aspects of the victims' situation while also recognizing that they share an identity with a much larger universe might diminish the difficulty these cases pose.<sup>89</sup> In general, it would be desirable to design a coherent, integrated, and just reparations program that would reduce arbitrary distinctions between classes of victims and treat this group within the general framework of the program. It is worth pointing out that the state may, if it has the victims' consent and its program meets the general criteria, satisfy its legal obligation to provide reparations through a policy-based reparations program.<sup>90</sup> On the other hand, the victims retain their right to effective recourse at the national level, and their right to turn to the Inter-American system in connection with the violations they suffered, unless they voluntarily cede this right by means of a specific agreement or by allowing their situation to be addressed within the framework of an equitable reparations program.

Taking these principles into account, the range of possible options to resolve the first challenge to some degree include, for example, any of the following or a combination thereof:

- Leaving this group of cases on a parallel track without making them a part of the general reparations program and accepting as inevitable that this will imply a certain amount of contradictions and a lack of equitable integration.
- Negotiating a pause to allow the treatment of these victims within a general reparations program, possibly with certain procedural or timing advantages, submitting such a program not only to the approval of this group of victims but also, at an appropriate time, to the IACHR.
- Prioritizing attention to other aspects of justice in these cases; that is, to the components of reparations in the broader sense, and to the economic and moral harm resulting directly from the victims' efforts to bring these cases before an international body.
- Pursuing criminal and civil remedies against the responsible parties in these cases, so that they will contribute to the cost of reparations.
- Establishing a relation between the settlements in these cases and the access of these victims to a future reparations program, so that they would not be able to receive a double benefit.

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IACHR to insist upon a more integrated resolution of their cases. For victims who have not gone through a legal process, a reparations program would offer them some obvious advantages. For example, it would eliminate—for these victims—the need to wait for long and uncertain national and international processes, and to undertake the associated costs; likewise, it may be easier to obtain benefits under a program rather than proving all the elements of a violation before a court.

<sup>89</sup> It is worth pointing out that if, in order to resolve these cases, the State agrees to implement a general reparations program, the participation of the IACHR in this settlement and later oversight of its execution, could represent a kind of guarantee for all victims as to future implementation of the program.

<sup>90</sup> In fact, the actual treatment of the IACHR cases in the Inter-Institutional Working Group on Follow-up to the IACHR Recommendations already represents a step toward a solution forged in the reparations program framework and not the traditional case-by-case basis. While there still may continue to be differences over the mandate and composition of this group, it was created with the understanding that the petitioners (the victims) would participate in finding the solution.

If the IACHR cases heard by the Inter-Institutional Working Group on Follow-up to the IACHR Recommendations have one foot in the legal world of reparations and the other in the realm of general reparations policy, the work of the CEAI is even more squarely located in the camp of a general reparations policy. This group of cases illustrates the way in which some victims of human rights violations, whose right to compensation is already established by law,<sup>91</sup> can receive assistance through a process of reparations program design. In this sense, the CEAI's work has the opportunity to provide the TRC with important input on the consequences of this particular human rights violation, the identity and characteristics of the victims, and various appropriate reparations measures in these cases. Nevertheless, it might be advantageous to wait for the design of a more integrated general reparations program that encompasses this group. This would allow the design of a more integrated program; establish and balance priorities between groups of victims, kinds of harm, and measures; and might even go further in understanding the extent of this violation and the reparations to be granted (including the possibility of monetary reparations) than what the current mandate of the special commission includes. The disadvantages include making this group of victims wait when they are already expecting results, even if those results will be incomplete.

## 5.2. Giving Content to the State's Obligation

The Peruvian state's obligation (reflected in several international treaties ratified by Peru) to provide reparations for victims of human rights violations is incorporated into Peruvian law.<sup>92</sup> Nor is this an unfamiliar concept under national laws.

For example, the Civil Code provides in Article 1969 that: "*One who by intention or negligence causes harm to another is obligated to provide compensation (...)*," and according to Article 92 of the Criminal Code: "*Civil reparations shall be determined along with the sentence.*" In theory, at least, the door is open to seeking reparations for human rights violations in national tribunals in accordance with fundamental obligations the state has assumed under international law. Furthermore, judicial errors in criminal proceedings and arbitrary detentions, as mentioned above, expressly include the right to compensation under national law.

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<sup>91</sup> "*Principles and Rights of the Judicial Function: 7. Compensation, as determined by law, for judicial errors in criminal cases and for arbitrary detentions, without prejudice to the responsibility involved,*" Article 139 of the Constitution. See also see Constitutional Tribunal Judgment in Case No. 1277-99-AC/TC, July 13, 2000, recognizing the right of individuals who are pardoned to receive economic damages: "...thus, and assuming that the petitioners in the present case may without a doubt invoke their right to compensation, they are able to move forward immediately as individuals (...). Judgment: (...) the Action to Enforce is deemed WELL-FOUNDED and as a consequence it is ordered that the officials summoned fulfill the mandate to compensate them as acknowledged in Article 14 (6) of the International Covenant on Civil and Political Rights once it has been determined by a court of law the amount of reparations corresponding to each of the petitioners to receive benefits under Law No. 26655."

<sup>92</sup> See Constitutional Tribunal Judgment in Case No. 1277-99-AC/TC, July 13, 2000: *It is an incontrovertible fact for this Tribunal that when our National Political Constitution states in Article 55 that "Treaties signed by the state and in force form part of national law" and Article 200 (4) names treaties as part of the various legal standards with legal authority (without exception), we cannot avoid acknowledging that these treaties have incontrovertible legal weight and as a consequence they are fully applicable by Peruvian judges and tribunals.*"

Nevertheless, examples of human rights cases in the national courts, much less reparations for such violations, are scant. The law and practice in the matter of reparations do not argue against the establishment of a national reparations program, but neither do they provide guidance to aid the design of such a program. On the one hand, amnesty laws<sup>93</sup> and interference in the judicial system by those with political power have contributed to the fact that recourse to the courts is not effective today; instead, the courts fail to fulfill their role of providing a remedy to persons whose human rights have been violated. On the other hand, victims tend to avoid seeking recourse through the local courts, either because they do not trust in the administration of justice or they simply do not know how to proceed. Furthermore, they recognize that a process to obtain civil reparations for crimes involving human rights violations may take, on average, three years and that the costs generated may be greater than the compensation sought.

### 5.2.1. *The Concept of “Victim”*

One of the subjects requiring careful analysis in Peru is who should be considered a victim of human rights violations or international humanitarian law violations. Once again, the work of the TRC and others—such as civilian society, victims’ groups, and the CEAI—can make an important contribution to society’s understanding of the human rights concepts underlying this determination. Moreover, all of these voices will be key to determining which of these victims should be attended to, and in what manner, within the reparations program.

With regard to deepening convictions about human rights principles, it has been noted above how international legal standards of nondiscrimination and fair treatment operate in this context. These standards and international practices, which are also the law in Peru, have important consequences in this country, where the prevailing view has been that in order to be considered a “victim,” the person harmed must also be “innocent,” and where current compensation legislation tends to favor some victims over others. It becomes necessary to undergo a process of, on the one hand, understanding the truth about the past in order to understand what it means to speak of victims; and, on the other hand, to accept with conviction the faithful application of human rights principles. To date in Peru, this process of understanding and developing conviction is still under way, as is clearly manifested in the history of reparations measures and proposed laws on compensation and reparations for human rights violations. The first groups of persons aided by the state were in one way or another agents of the government who were harmed by actions of “subversive” groups.<sup>94</sup> Nevertheless, since the beginning of the political transition, measures taken by the president and proposals before the Congress indicate that the concept of who comprises “victims” is starting to expand to also include civilians and the victims of state agents.<sup>95</sup>

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<sup>93</sup> Law No. 26479, published June 15, 1995, and Law No. 26492, published July 2, 1995.

<sup>94</sup> Before 2001, several legal norms of varying rank were decreed to regulate the situation and the benefits corresponding to certain sectors of victims harmed by actions of subversive groups, who were mainly agents of one kind or another or officials of the Peruvian government: the local authorities, officials and public servants, members of the Armed Forces and the National Police, members of the Peasant Patrols (Rondas Campesinas), and Self-Defense Committees.

<sup>95</sup> Examples include cases of innocent people who were pardoned or had the right to presidential clemency or cases in which the IACHR issued reports. See summaries of laws (Annex 6) and proposed

The most important step taken by the Peruvian government in connection with the concept of victim has been in the resolution of some of the cases in the Inter-American system, which recognizes that every person who suffers a violation of human rights should be granted reparations without taking into consideration the legality or morality of prior actions. Such is the case of two recent friendly settlements reached by the Peruvian government to benefit former agents of the State Intelligence Service (Servicio de Inteligencia del Estado—SIE), both proven to be members of the paramilitary Colina Group [involved in numerous instances of human rights abuses]. Nevertheless, this vision is not yet widely shared. For example, in a bill pending before the National Congress, there is a proposal to grant benefits to victims of “terrorism,” specifying that “those who are responsible for human rights violations shall not be allowed to obtain any benefit under this law.”<sup>96</sup>

### 5.2.2. *Measures*

The adequacy of reparations measures is another subject worthy of special attention. In Peruvian jurisprudence, individual compensation holds a privileged place among reparations measures. National jurisprudence recognizes consequential damages (economic harm incurred at the time of the violation and generated thereby), loss of income or profits (the future income or earnings lost due to the harm suffered), and moral harm.<sup>97</sup>

In general policy terms, individual reparations measures granted through special laws and friendly settlements draw on a broader set of criteria<sup>98</sup> than the simple monetary compensation expected from an internal judicial process for damages. Thus, in this context in Peru, reparations have also included health services, education, and housing, as well as moral and symbolic measures.

### 5.3. National Strategies to Make Reparations Effective

In the Peruvian experience to date, while reparations measures have been implemented in the shape of benefits or compensation, they have not been based on the existence of an integrated overall plan. Rather, measures have followed the course

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laws (Annex 7) on the subject of reparations and compensation for the victims of violence and similar situations.

<sup>96</sup> Article 3, Bill No. 1230, presented on November 8, 2001 by the group *Perú Posible*. Also Article 6 of Bill No. 2342, which seeks to grant “benefits to members of the Peasant Patrols and Self-Defense Committees who struggled against and/or were victims of terrorism,” presented March 22, 2002 (again by the group *Perú Posible*), includes an exception to the benefits. In addition to contradicting principles of international human rights law, this distinction may contravene Article 2 (2) of the Constitution: “Every person has the right: 2. to equality before the law. No one may be discriminated against on account of origin, race, gender, language, religion, opinion, economic condition or any other condition.”

<sup>97</sup> In this matter, although Peruvian jurisprudence affirms the principle that reparations should be proportionate to the harm suffered, the practice of Peruvian judges would indicate that the amount of compensation is so low that even in the symbolic sense it does not comply with this principle. It is common, for example, for civil reparations to be as little as one thousand Peruvian soles [less than \$300 USD] for crimes resulting in death or 500 soles [less than \$150] for crimes of torture. See, e.g., the Supreme Court of Justice (Corte Suprema de Justicia de la República) First Transitory Criminal Chamber (Primera Sala Penal Transitoria) File No. 809-99.

<sup>98</sup> Special laws and bills of this kind are summarized in Annexes 6 and 7.

of events, the priorities of each successive government, and different visions of what “victim” means. At the other extreme, additional proposals are starting to emerge that place the subject of reparations within an overall framework of a sustainable peace proposal. It will be important to analyze whether the latter focus can resolve some of the difficulties already pointed out, because their guidelines as written to date are more relevant to social compensation or local development programs than to reparations for human rights abuses.

### *5.3.1. Financial Aspect*

Financial support for the reparations measures implemented to date has come from sources that do not represent a guarantee of sustainability for a national reparations program. For example, the resources earmarked for resolving IACHR cases come from FEDADOI, a special extra-budgetary source, and thus a temporary one. While it is possible to think that a part of the reparations program financing may come from FEDADOI resources or may be sought through creative or exceptional measures such as “exchange of foreign debt for reparations for victims of violence,” the subject of a financial strategy ends up being a challenge whose resolution is key to the success of any program.

### *5.3.2. Political Aspect*

The challenge of building a solid alliance that can forge and carry forward a political strategy on the subject of reparations has not yet been resolved in Peru. Nevertheless, some elements lend themselves to this important task. For example, for the past 20 years the existence of a network of human rights organizations, several of them members of the National Coordinating Body for Human Rights (Coordinadora Nacional de Derechos Humanos), has played an important role in the country’s political transition process. These organizations have wide experience in working with victims and have established relationships of cooperation and trust with them and their organizations. There are also some organizations created for the victims themselves and their family members. These and other like-minded civil society organizations constitute a central axis of forces that—given an adequate process of dialogue and consultation in alliance with the TRC and government officials committed to this matter—can help design and promote a reparations program and then work toward forming a broader national coalition. There is no internal consensus yet within this circle on fundamental reparations questions, and very few organizations have devised concrete proposals on the subject. Nevertheless, several NGOs are beginning to talk about reparations and are even organizing workshops with the participation of victims and their family members to deal with this issue, in coordination with the TRC.

On the other hand, the viability of a reparations program will not depend solely on these circles, but will need to build a broader alliance in support of the reparations program, an aspect covered below.

## VI. Criteria for the Formulation of a Reparations Program in Peru

As noted above, the reparations program should be conceived as an integral part of the process of transition toward a true democracy in Peru. The best way to ensure this is to encourage discussion about the nature of the program. This document attempts to contribute to that discussion by clarifying what the defensible goals are for a reparations program, what lessons may be derived from international law and experience, and how these elements can be used to identify the advantages and disadvantages of various alternatives.

### 6.1. General Criteria

Instead of offering specific recommendations on the content of a reparations program for Peru, this section attempts to shed some light on the alternatives available to the individuals in charge of its design.

1. We have insisted on the value of considering the reparations program as the result of a political process, understanding this term in a broad sense.
2. We have argued in favor of conceiving of the goals of the reparations program in terms of a complex notion of transitional justice built on (and generating) recognition, civic trust, and solidarity. This suggests, particularly for the TRC, that in formulating recommendations not only in the area of reparations *stricto sensu* but also in other areas (truth-finding, investigating and punishment for perpetrators, institutional reform, etc.), the Commission should aim for complementarity and try to integrate the whole package of recommendations.
3. The study of international law has allowed us to derive an understanding of the obligation to provide reparations and some of the minimal criteria that any reparations exercise should satisfy, including:
  - An individual component, including monetary compensation;
  - External and internal integration;
  - Distinguishing between a reparations program in response to the state's obligation toward a victim of human rights or international humanitarian law violations, and compensation programs in which the state offers compensation for the harm its agents suffered in the line of duty; and
  - Nondiscrimination, which means avoiding the notion of "clean hands" in the distribution of reparations for human rights and international humanitarian law violations.
4. International experience has been studied with a view toward extracting, among other things, procedural lessons to guide strategies for design and implementation of the reparations program. These are detailed below in Section 6.3.
5. In the case of Peru, there is an urgent need to give order to the various isolated and even incompatible reparations initiatives. The greater the coherence achieved among the different legislative and executive initiatives (ideally even incorporating them into a national reparations program), the greater the

internal and external integration of the process and the more efficient the path toward the end goals of reparations.

The most difficult aspect in this sense may be the relatively limited group of cases before the IACHR that are awaiting settlement between the parties and subsequent approval of the IACHR. Justice would indicate that it is unfair for the resolution of these cases to differ dramatically from the solution for victims who participate in a reparations program. On the other hand, it is understandable that a solution forged under the case-based reasoning of legal proceedings might vary considerably from a broad-based solution to take shape under other criteria in the framework of an overall program, even when both arise in response to the same obligation on the part of the state. Nevertheless, there are options (as noted in Section V) that could resolve this set of cases, as long as choices are made with respect for the desires of the victims and with the IACHR's approval.

## 6.2. Alternatives and Their Costs: Advantages and Disadvantages of Methods of Reparations

The concrete details of the content of the Peruvian program should be the object of a future study, to be carried out based on much more detailed information than that which is currently available on relevant factors such as the profile of the victims.

Even so, it is possible to clarify what is at stake with each option of the concrete components. Based on the broad categories that distinguish the different methods of reparations, it is possible to reach the following conclusions on the advantages and disadvantages attached to each one.

### 6.2.1. *Symbolic Measures*

#### Individual Measures

These may include, for example: personal letters of apology, copies of the truth commission report, proper burial for victims, etc. Among the advantages of including these kinds of measures in a reparations program is the fact that such measures express a form of recognition and respect for the harm suffered. Even more, they are a way of expressing respect for the *individual*. Finally, this type of measure contributes to accomplishing these goals at little expense.

There is really no obvious disadvantage to including this kind of measure in a reparations program. Danger arises only if a reparations program is reduced to this kind of measure alone. As argued in Section II with regard to the special role that reparations plays for victims during a transition process, limiting reparations to this kind of measure will, effectively, fail to generate a sense of justice or the necessary conditions—recognition, trust, and solidarity—for it. Despite how impossible it is to provide reparations in exact proportion to the harm suffered, the contrast between the harm suffered and reparations by words alone practically ensures the failure of a program that provides nothing more than individual symbolic benefits.

On the other hand, it is especially important to listen to the victims' voices regarding symbolic measures, because while these should be understandable more broadly, if they do not resonate with the victims, they are doomed to failure.

### Collective Measures

It is also possible to distribute symbolic benefits of a collective nature. These may take the following forms: public acts of atonement for violations and acknowledgment of responsibility; commemorative days and changing the names of public places to pay homage to the victims; establishing museums and parks, etc. These kinds of reparations support the development of collective memory, can have some impact on creating a feeling of solidarity among the victims, and can promote the development of an attitude of critical oversight toward state institutions. All of this may be accomplished at relatively little expense.

The possible disadvantages include the possibility that it will turn out to be socially divisive. In societies with sectors susceptible to feeling victimized, these measures may reinforce this tendency. Likewise, there is a possibility that some sectors will think that these measures constitute adequate reparation.

#### *6.2.2. Service Packages*

Reparations can be distributed in the shape of service packages, which may include medical care, education, housing, and other services. This kind of measure can satisfy *actual* (and not only perceived) needs. It is possible to accomplish this objective with a high cost-benefit ratio if the program can take advantage of currently existing efficient institutions. Packages that are complete and integrated can also have a positive effect in terms of equal treatment. Finally, a reparations program that includes this kind of measure can promote the development of state institutions that can eventually provide services not only to the victims, but also to the community at large. A clear example of this possibility is mental health programs that could eventually cover illnesses unrelated to the violence.

Nevertheless, this method of distributing benefits entails certain risks. First, the service packages do not maximize the autonomy of the individuals, as direct payments can (at least in certain circumstances). In fact, designing a plan limited to this kind of benefit could lead to paternalistic attitudes that mistrust the citizens' ability to decide what is in their own interest. Further, the quality of the services would depend in large measure on the quality of existing institutions, many of which are known to be inadequate. Finally, the more the package focuses on providing basic services, the less reparative power it will have, because citizens will rightly consider that they are entitled to the goods being distributed because of their status as citizens, not as victims.

#### *6.2.3. Development and Social Investment*

Reparations also may be distributed in the shape of development plans and social investment. In fact, most governments find themselves tempted to convert a reparations program into precisely one of this kind (the Peruvian government is not exempt from this possibility). This because, first, reparations in the shape of social



investment create the appearance of being directed toward resolving the underlying causes of the violence. Second, this way of distributing reparations would appear to be a method of providing recognition to whole communities or regions. Third, it would seem as if goals of justice and development could both be accomplished simultaneously (for example, improvements in living standards, regional economic integration, etc.). Fourth, all of the above makes this method of reparations distribution more politically attractive than the alternatives.

Nevertheless, there are many powerful disadvantages in transforming a reparations program into a development and social investment program. This method of distributing reparations has an extremely low specific reparative capacity because development measures are too inclusive (not directed specifically toward the victims) and normally focus on basic and urgent needs, leaving the beneficiaries to perceive them as a matter of right as not as a response to their victim status. Second, in places characterized by a fragmented citizenry that does not acknowledge individuals except as members of traditionally marginalized groups, this method of reparations distribution does nothing to promote respect for individuals. Third, development plans have a high degree of uncertainty and are complex and long term. This threatens the institutions responsible for making recommendations on reparations, and can even lead to questions about the seriousness of transitional efforts in general. Finally, development plans are easily converted into fodder for partisan political struggles.

#### *6.2.4. Individual Payments*

Reparations can take the shape of payments to individuals, which have many advantages. First, payments respect the autonomy of beneficiaries because they can decide what to do with the compensation. Second, as long as the payments are above a certain minimum, they may give rise to satisfaction on the part of the beneficiaries because, among other things, the payments can address actual, as well as perceived, needs. Third, when the beneficiaries are individuals, this method of distributing reparations can promote the recognition of them as such. Fourth, once again, if they are above a certain minimum, the payments may improve the beneficiaries' quality of life. Finally, it is possible for this kind of a reparations program to be easier to administer than one that distributes service packages or development plans.

Nevertheless, there are certain risks to be avoided. First, if the payments are viewed simply as an attempt to quantify the harm, they will not only always be unsatisfactory (victims will have good reason to believe their suffering has been undervalued), but also inappropriate (the attempt to quantify victims' suffering will always be a questionable proposition). Second, if the payments fall below a certain level, they will not have an appreciable effect on victims' quality of life. Third, this method of distributing benefits presupposes the existence of a certain amount of institutional structure, because in the end, money can satisfy needs only if there are institutions to provide what the citizens need and want to buy. Fourth, if the payments are not part of an integrated program, they may be seen as a way of "buying" victims' silence or acquiescence. Finally, individual payments are difficult to "sell," as they compete with other urgent programs, may be quite costly, have no clear and strong support (victims rarely reach a level of organization sufficient to guarantee political influence), and could be controversial to the extent beneficiaries include combatants from different factions.

The possibility of making advanced, “interim emergency payments” to individuals, as in South Africa, has been noted above. Despite there being something positive in attempting to solve victims’ urgent needs, experience suggests that these measures are even more susceptible to the problems faced by cash payments in general. Furthermore, there is an additional risk that what is presumed to be simply an interim measure may easily turn out to be the only thing offered and, once distributed, the reparations program will be viewed as over.

#### *6.2.5. Seeking an Appropriate Set of Measures*

It is important to emphasize that these general methods of distribution for reparations program benefits are not mutually exclusive. In fact, it makes sense, especially in contexts characterized by severe budgetary restrictions, to design the reparations program so as to incorporate symbolic elements in addition to whatever material benefits it may include.

Presuming the reparations program will be designed to take into consideration ethnic and cultural aspects, or other diversity factors, it is vitally important for these sectors to participate in designing, implementing, and critically monitoring the program.

Further, the program can be designed so that it corresponds to the kind of violence it attempts to redress. If the violence was predominantly collective (directed against individuals as members of different groups), the program may justifiably include a substantial collective component. In any case, it is important to have an individual component, because no matter how effective the collective reparations may be, they never provide the degree of individual recognition that the victims, their families and a good part of civilian society would be justified in expecting. Despite the obvious fact that there is no ruling principle to determine an adequate balance between the different program components, program design should be guided by clarity about its internal as well as external integration, and by clarity about its objectives.

The distinction between collective and individual measures should not limit creativity, but invite it, because the two are not mutually exclusive. A combination of collective and individual measures can respond to the different facets of the harm stemming from one kind of violation, and contribute to the program being more integrated as a whole. By the same token, as long as the program is economically and logistically practical for the state, and manageable and beneficial to the victims, it could take into consideration the possibility of offering alternatives for victim groups to receive reparations collectively instead of as individuals.

### 6.3. Procedural and Strategic Lessons

International experience suggests some lessons on steps to follow to move a program forward that are independent of the program content. This section compiles the most relevant lessons.

### 6.3.1. *The Scope of Reparations Programs*

A reparations program should abandon all pretensions of solving long-standing social and economic problems such as poverty and inequality. The program should rather assume a *forward-looking focus* that allows victims to be placed in a better position in their struggle to obtain a better quality of life and allows society at large to reach a higher level of democratic justice. Nevertheless, given that the socioeconomic status of the victims is related to the overall functioning of the economic system, it is important for the TRC to include, in its final report, a special section dedicated to recommendations on such larger social problems.

One of the main elements that the TRC should consider when it decides on beneficiaries of the reparations program is the *kind* of human rights violations committed. For example, as mentioned in Article 3 of the TRC's mandate, the principal violations are presumed to include murder and abductions, forced disappearances, torture and other serious injury, and violations of the collective rights of Andean communities and natives. Nevertheless, the same mandate provides that "other crimes and serious violations of the rights of persons" may also be the subject of the Commission's work, so it is not out of the question for the TRC to identify other violations requiring some type of reparations measure.<sup>99</sup>

It is important to acknowledge every kind of violation. Nevertheless, reparations programs do not have to treat all victims as a monolithic whole. Different classes of victims can deserve different kinds of benefits. Reparations programs can take this into consideration, as long as distinctions made are not arbitrary or prohibited by law. The criteria for defining violations and benefits may take various aspects into consideration, such as the seriousness of the harm and the victim's degree of need, to mention just two.

As to the extent of the reparations program, it will be important to identify those areas in which access to benefits is or is not related to other compensation programs, insurance, and judicial or administrative processes. In general, it will be important to find a way for these various programs to be complementary and not cumulative. For example, this may include a decision to restrict a reparation program to those who agree to give up their right to file a civil suit against the state for damages and personal injury.

### 6.3.2. *Institutional Framework*

The most important point in this area is the need for the TRC to recommend institutionalizing the reparations program as the first step toward ensuring its legal and political recognition. In this sense, it would be advisable for the Commission to recommend that Congress pass a special law of general effect. Such a law should include the extent, content, and financial structure of the program, the creation and/or structuring of its lead institution, along with the offices in charge of implementing different program components, including the creation of regional offices.

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<sup>99</sup> In fact, by holding a public hearing on the subject of illegal and arbitrary detentions under anti-terrorist legislation, the Truth and Reconciliation Commission effectively explored other violations that it considered serious.

The program does not necessarily have to be the responsibility of a governmental entity, but could be an autonomous or decentralized body. In any case, the decentralized design and implementation of the program can be very important, especially when there are regional components to be executed. It is important for the entity to be effective, and protected against corruption and fraud, and to enjoy the trust of the beneficiaries. The institutional framework can be created as a new entity or within an existing one, but it should have the capacity to deal with reparations as such, and not dilute them by merging them into other programs. Whether the system for implementation is centralized or decentralized, it should keep its sights upon the reparations program as a separate concept.

It is important to consider creating a national office to monitor and serve as a watchdog with respect to program implementation; such an office should operate with the participation of representatives of different sectors of Peruvian society. It is also relevant to design mechanisms to incorporate victims into the program who are not identified during the course of the TRC's work, because international experience has shown that difficulties arise with closed lists of beneficiaries. This is even truer in the case of Peru, where it is very likely that because of various reasons (such as the difficulty of access, fear, lack of knowledge, etc.) victims may not have yet approached the Commission. This task could be one of the functions of a claims determination office.

All of these aspects of the program would benefit greatly from a participatory design process before making definitive choices as to alternatives. Discord—even between beneficiaries who are usually allied—in this matter can derail a project proposal, no matter how good it is.

### 6.3.3. *Financing Strategy*

The main source of reparations program financing should come from the National General Budget, because the program's magnitude, extent, and foreseeable duration are so great that it is the only realistic way to ensure its efficient implementation over the long term. Further, such financing would represent an important signal for international donors, who would be reluctant to take the place of national efforts but may well contribute to complementary financing. In this sense, it is important for the TRC to initiate a dialogue as soon as possible with state authorities in charge of formulating the budget, so that funds may be assigned to the program beginning in 2003.

Of course, this recommendation does not mean that other forms of extraordinary and transitory financing should be ruled out, as they can be crucial in the first stages of implementing a reparations program.<sup>100</sup> In this sense, proposals seeking the creation of a Special Reparation Fund are positive, as long as such a fund also receives a substantial and long-term flow of funds from the national budget.<sup>101</sup>

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<sup>100</sup> Of particular importance is the need to work toward the reparations program being assigned a fixed percentage of the funds administered by FEDADOI, which to date have not been allocated on a clear order of priority.

<sup>101</sup> We do not consider here other possible minor sources of income to the fund, but those could include, for example, mechanisms that allow private entities to contribute to the reparations program through the donation of funds or other material contributions. Likewise, the state can explore the

It is necessary to devise a financing strategy that takes into consideration a phased implementation of the reparations program, as this is the only way it will be possible to overcome heavy present and future budgetary constraints. In this sense, it will be necessary to carry out the financing of the program in stages and by component, with the goal not only to establish the amounts required, but also to plan the temporary flow of resources.

Based on this criteria, a dialogue process should be developed to discuss financing for the reparations program. The TRC should participate in this process, along with the government, congressional representatives, academic sectors, human rights organizations, and representatives from the international community, including international financial institutions. The main objective would be to jointly define a strategy for program financing while establishing concrete commitments from donors and the government. A concrete objective of the dialogue should be to incorporate program financing into prioritized state expenditures, and thereby include the program within multiyear macroeconomic and public planning frameworks.

There are advantages and disadvantages to having the TRC pursue and conduct this dialogue. On the one hand, the Commission wants its recommendations to be financially viable; also, by defining fundamental financial aspects prior to publication of its report, it can help avoid delays in implementing its recommendations. Further, the TRC's mandate makes it the central national actor on this subject, giving it both an overview of the issues and what may be a unique capacity to build bridges between victim groups and state sectors.

On the other hand, it is important to be clear about the respective areas of competency and responsibility pertaining to the Commission and the state. There is a risk that by taking a leadership role, the Commission's success will be judged on whether it is able to mobilize resources to fund the reparations program—a fundamental responsibility of the state and politicians—and not for the quality of its recommendations for the program itself. The Commission has to be careful not to lose its own identity and focus. There is also value in maintaining a certain distance between the Commission and the negotiation process for financing, so that the Commission can avoid being placed in the position of having to cede its principles in exchange for political viability on any of its recommendations.

International experience shows that even the best designed reparations program can easily fail without an adequate financing strategy. The Commission should at least participate in this dialogue and make sure that someone takes the lead. In the absence of anyone to take on this task, it should weigh the importance of taking the initiative itself. It is worth noting that the Commission can fulfill this role only after reaching consensus internally on the issues, and if it is united and decisive about the role it should play.

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possibility of recovering money or goods from persons or institutions responsible for human rights violations, which would be used to support the reparations program fund. Nevertheless, none of these sources will take the place of funds coming out of the state budget.

#### 6.3.4. *Political Strategy*

It is important to devise and implement a strategy to ensure the political viability of the reparations program. This is the responsibility of all social and political sectors committed to the success of the program, including the Commission, NGOs, and victim organizations. Likewise, this work should be carried out while the reparations program is being designed, so that when it is proposed to society at large, the political conditions favorable to its implementation will already exist.

The first objective of the political strategy for the reparations program should be to expand the *alliance of supporters*—all national and international sectors who are, in principle, natural allies of the program. This group includes the Commission, nongovernmental human rights organizations, victims and their families, governmental institutions committed to the process, along with national and international figures and/or institutions that have expressed their support for the reparations program.

To expand this alliance, it is necessary to promptly establish an ongoing dialogue that includes periodic meetings to evaluate the political process related to the reparations program in order to design concrete actions for intervention. Further, it is necessary to establish a common agenda for work on broadening the coalition in support of the program.

Once the coalition of supporters is strengthened, the next step is to devise a concrete strategy to form a broad national coalition in favor of the reparations program. To accomplish this, it is necessary to establish periodic meetings and ongoing communication with the political and social sectors involved, directly or indirectly, in political decision-making and the process of defining and implementing public policy and/or who have a decisive influence on national public opinion. International experience suggests that the principal sectors to take into consideration are: (1) political parties represented in Congress (including the ruling party or coalition); (2) the media (radio, press and television), including media owners and directors; (3) international donors, including international financial institutions and major bilateral donors; (4) union and peasant sectors; (5) indigenous organizations; (6) grassroots organizations; (7) church organizations; and (8) academic and professional sectors.

In order to fully cover all the foregoing sections, it is necessary to divide the work within the coalition of the supporters. This is where the pros and cons of a Commission leadership role come up again. The open process that the Commission has carried out regarding hearings, information campaign, credibility, and the quality of its final report will be key elements in furthering a consensus on the importance and propriety of reparations. The Commission's challenge is to put these factors (and whatever leadership role it decides to assume) to work on the development of a coherent strategy, without exceeding its area of competence and mandate, and without ceding its principles in the face of pressures that threaten the future political viability of the recommendations.

Finally, an important part of the political strategy for the reparations program will be the design and execution of a public relations strategy that allows the common citizen and politicians to have a precise idea of the program's nature, objectives, and extent.

In this way, it will be possible not only to counteract the disinformation campaigns that generally develop in the process of discussing a reparations program, but it will also be possible to educate the population about the benefits of reparations in terms of consolidating democracy and strengthening respect for human rights.

## **ANNEX 1**

### **Brief Description of the ICTJ and APRODEH**

The Association for Human Rights (Asociación pro Derechos Humanos—APRODEH, [www.aprodeh.org.pe](http://www.aprodeh.org.pe)), is a Peruvian nongovernmental organization founded in 1983 in response to the massive and systematic violations of human rights that were occurring in the context of the internal conflict. APRODEH is dedicated to the documentation, investigation, communication, and denunciation of cases of violations of human rights, emphasizing the importance of giving a voice to victims. The Association collaborates with solidarity networks and other social movements in all regions affected by the violence in the country. It has extensive experience on the issue of reparations, having represented petitioners in many cases that have reached the Inter-American system, and is currently part of a negotiation process with the government regarding reparations. Further, its Legal Department is developing with victims and their families a model “family situation profile form” with the goal of collecting and systematizing information on the needs and expectations of these persons with regard to reparations.

The International Center for Transitional Justice (ICTJ, [www.ictj.org](http://www.ictj.org)), is a nongovernmental organization with an international staff based in New York City. The Center’s principal mission is to promote accountability for human rights abuses arising from repressive regimes, mass atrocities, and armed conflict. The ICTJ works with governments, nongovernmental organizations, and international organizations as well as with other key actors, to provide comparative information, legal and policy analysis, documentation, and strategic research.



## ANNEX 2

### Investigation Team

#### *Project Directors*

##### **Pablo de Greiff**

Research Director, ICTJ. Dr. De Greiff also manages an extensive study on reparations for victims of human rights violations. A native of Colombia, he studied at Yale University and completed his doctorate in philosophy at Northwestern University. He recently served as associate professor of philosophy at the State University of New York at Buffalo. He has written on transitions to democracy, democratic theory, and the relationship between morality, politics and law. From 2000 to 2001 he was the recipient of a fellowship from the National Endowment for the Humanities, and was a Laurance S. Rockefeller Fellow for Human Values at Princeton University. He is author of the book *Redeeming the Claims of Justice in Transitions to Democracy*.

##### **Lisa Magarrell**

Senior Associate, ICTJ. Ms. Magarrell is a lawyer from the United States, with a Master of Law degree from Columbia University with a focus in international law and human rights. She has more than 20 years of professional experience in the field of human rights. Her work with the ICTJ centers on technical support for measures of transitional justice in Peru and in other countries, including the United States. Her previous work includes seven years directing the international legal work of the nongovernmental Human Rights Commission of El Salvador (CDHES), and more than five years in the United Nations Verification Mission in Guatemala (MINUGUA) overseeing compliance with peace accords.

#### *Members of the Research Team*

##### **Arturo Carrillo**

A native of Colombia, Mr. Carrillo is Adjunct Clinical Professor and Associate Research Scholar in the School of Law of Columbia University (New York), and Executive Director of the Colombian Institute for International Law (Instituto Colombiano de Derecho Internacional—ICDI). In Colombia he was the Attorney for United Nations Affairs at the Colombian Commission of Jurists (1994–1998), and Professor of International Human Rights and Humanitarian Law at the Higher School of Public Administration (Escuela Superior de Administración Pública—ESAP) (1996–1998). He worked for several years for the United Nations as a legal advisor for the Human Rights Division of the United Nations Observer Mission to El Salvador (ONUSAL) (1991–1994). He has published various works in both English and Spanish in the field of international law and human rights.

##### **Julie Guillerot Brimo**

Ms. Guillerot Brimo is a French lawyer. She obtained a Masters degree in Public International Law and completed her graduate studies in the International Protection of Human Rights at the University of Paris X Nanterre (France). She has served in the legal department of the French delegation of the Office of the High Commissioner for Refugees (UNHCR), the International Federation for Human Rights (FIDH) (Paris), and the Coalition for an International Criminal Court (CICC). Since 2000 she has

served as a researcher in the Legal Department of the Association for Human Rights (Asociación Pro Derechos Humanos—APRODEH) in Peru.

**Juan Humberto Ortíz Roca**

A Peruvian economist, Mr. Ortíz Roca completed his university studies in the School of Pontifical and Civil Theology of Lima (Facultad de Teología Pontificia y Civil de Lima) (philosophy) and in the Pontifical Catholic University of Peru (social sciences, economics). He undertook specialized studies in the monitoring and evaluation of NGO projects at the German Foundation for International Development (Berlin/Bonn). He is currently the head of the Economic Solidarity Department in the Solidarity Unit of the Bishops' Commission for Social Action (Comisión Episcopal de Acción Social—CEAS) and is a member of the team of advisors for the Latin American Council of Catholic Bishops (Consejo Episcopal Latinoamericano) in matters related to economics. He is a consultant on topics related to economic solidarity and economic and social rights, as well as on the study of economics. He provides advisory services for various NGOs in economic matters and institutional development and is the President of the Peruvian Network of Economic Solidarity (Grupo Red de Economía Solidaria del Peru).

**Alex Segovia**

A Salvadoran economist, Dr. Segovia has a doctorate in economics from the University of London and a Masters in Economics from Oxford University. He is currently Executive Director of Democracy and Development Consultants, a nongovernmental organization based in Guatemala. Between 1997 and 2000, he worked for the United Nations Verification Mission in Guatemala (MINUGUA), in which he played an important role in the process that culminated in the signing of the Fiscal Pact for Guatemala. He has participated in a number of research projects related to post-war transitions and to the impact of democratic openings on poverty and the distribution of wealth. His publications include articles on socioeconomic topics on El Salvador and Guatemala. He recently published a book on structural transformation and economic reform in El Salvador.

**Víctor Manuel Espinoza** (*consultant in the first phase of the investigation*)

Mr. Espinoza is a Chilean Professor of Philosophy, a graduate of the Masters program (“Magister”) in Political Philosophy at the University of Santiago de Chile. He is Executive Secretary of the human rights organization Corporation for the Promotion and Defense of People’s Rights (Corporación de Promoción y Defensa de los Derechos del Pueblo—CODEPU). He has more than 10 years’ experience as a researcher in human rights, social sciences, and politics.



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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:  
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF  
JUSTICE, IMPUNITY

The right to restitution, compensation and rehabilitation for victims of gross  
violations of human rights and fundamental freedoms

Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted  
in accordance with Commission resolution 1999/33

1. In resolution 1998/43, the Commission on Human Rights requested its Chairman to appoint an independent expert to prepare a revised version of the basic principles and guidelines elaborated by Mr. Theo van Boven with a view to their adoption by the General Assembly.<sup>1</sup> Pursuant to paragraph 2 of resolution 1998/43, the Chairman of the Commission on Human Rights appointed Mr. M. Cherif Bassiouni to carry out this responsibility.
2. The present report is submitted pursuant to Commission resolution 1999/33 in which the Commission requested “the independent expert to complete his work and submit to the Commission at its fifty-sixth session, in accordance with the instructions issued by the Commission in its resolution 1998/43, a revised version of the basic principles and guidelines prepared by Mr. Theo van Boven (E/CN.4/1997/104, annex), taking into account the views and comments of States and of intergovernmental and non-governmental organizations” and decided to continue its consideration of this matter at its fifty-sixth session under the agenda sub-item entitled “Independence of the judiciary, administration of justice, impunity”.

3. The independent expert's initial efforts in preparing a revised version of the draft guidelines and principles included an assessment of the previous drafts of the basic principles and guidelines elaborated by Mr. van Boven and their comparison with other United Nations norms and standards concerning victim redress.<sup>2</sup> Specifically, the prior drafts were examined in light of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), pertinent provisions of the Rome Statute of the International Criminal Court (A/CONF.189/9),<sup>3</sup> and other relevant United Nations norms and standards. This assessment was submitted to the Commission on Human Rights as the independent expert's first report (E/CN.4/1999/65), pursuant to resolution 1998/43.
4. In preparing the revision of the principles and guidelines, the independent expert benefited from the foundation provided by prior reports as well as by comments made by several Governments on the earlier draft that was the basis of the independent expert's revision. These comments were provided by the Governments of Benin, Chile, Colombia, Croatia, Germany, Japan, Paraguay, the Philippines, Sweden, and Uruguay. Comments were also received from various United Nations bodies, intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations.<sup>4</sup>
5. The independent expert held two consultative meetings in Geneva for all interested Governments, intergovernmental organizations and non-governmental organizations. These meetings were held on 23 November 1998 and 27 May 1999, respectively and were well attended. The comments made were useful to the independent expert who took them into account in formulating his revision.
6. On the basis of these consultations and prior comments, the independent expert circulated a first draft of his revision of the principles and guidelines on 1 June 1999 to all Governments, intergovernmental organizations and non-governmental organizations for their comments. A second revised draft was then prepared by the independent expert and circulated on 1 November 1999 to Governments, intergovernmental organizations and non-governmental organizations. The independent expert received comments on these drafts from the Governments of Argentina, Burkina Faso, Colombia, Cuba, France, Germany, Japan, the Netherlands, Peru, Singapore, the Syrian Arab Republic, and the United States of America. In addition, comments were received from the International Committee of the Red Cross and several non-governmental organizations and individual experts.<sup>5</sup> Based on the comments received on these two drafts, the independent expert drafted the principles and guidelines annexed to the present report.
7. The independent expert prepared the principles and guidelines in a manner that is in keeping with existing international law, taking into account all relevant international norms arising from treaties, customary international law, and resolutions of the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights.
8. The expert felt bound by the essential elements of the draft on which his mandate was based. That draft treated jointly the subjects of violations of international human rights law and violations of international humanitarian law. Prior drafts had used the terms "gross violations of

human rights” and “jus cogens violations.” However, a number of Governments and organizations felt that these terms were insufficiently precise, and as a result the independent expert has opted to refer to certain types of violations as “crimes under international law”. Principles 3 to 7, which make reference to “crimes under international law”, represent extant norms of international law. The principles and guidelines use the word “shall” for existing international obligations and the word “should” for emerging norms and existing standards.

9. The principles and guidelines were also drafted with a view to their being applied in light of future developments in international law. For example, the terms “violations”, “human rights law”, and “international humanitarian law” were not defined. Aside from the fact that these are well-understood concepts, their specific content and meaning are likely to evolve over time.

10. The independent expert extends his appreciation to those Governments, organizations and individuals who contributed comments during the drafting process and to the Office of the High Commissioner for Human Rights for its support.

#### Notes

<sup>1</sup> Pursuant to its resolution 1989/13, the Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted Mr. van Boven with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8), which ultimately resulted in draft basic principles and guidelines (E/CN.4/1997/104, annex). The Commission on Human Rights, in its resolution 1996/35, regarded the proposed draft basic principles elaborated by Mr. van Boven as a useful basis for giving priority to the question of restitution, compensation and rehabilitation.

<sup>2</sup> Mr. van Boven prepared three versions of the basic principles and guidelines on the right to reparation for victims. The first version is found in document E/CN.4/Sub.2/1993/8 of 2 July 1993, section IX. The second version is found in document E/CN.4/Sub.2/1996/17 of 24 May 1996. The third version is found in document E/CN.4/1997/104 of 16 January 1997. In addition, the independent expert examined the work of Mr. Louis Joinet, who, in his capacity as Special Rapporteur of the Sub-Commission on the question of the impunity of perpetrators of violations of human rights (civil and political), developed basic principles and guidelines on impunity. Two versions of these guidelines (E/CN.4/Sub.2/1997/20 of 26 June 1997 and E/CN.4/Sub.2/1997/20/Rev.1 of 2 October 1997) were analysed insofar as they related to reparation for victims of human rights violations.

<sup>3</sup> See also The Statute of the International Criminal Court: A Documentary History, M. Cherif Bassiouni (ed.), 1999.

<sup>4</sup> These bodies and organizations were: Catholic Women’s League Australia, European Court of Human Rights, Federación de Mujeres Cubanas, General Arab Women Federation, International Commission of Jurists, International Labour Office, International Police Association, International Rehabilitation Council for Torture Victims, Organization for Economic

Cooperation and Development, Redress Trust, Transnational Radical Party, United Nations Children's Fund (UNICEF), United Nations Economic Commission for Latin America and the Caribbean, United Nations Office for Drug Control and Crime Prevention, Unión Dominicana de Periodistas Pro la Paz.

<sup>5</sup> These organizations were: Amnesty International, Parliamentarians for Global Action-International Law and Human Rights Programme, International Centre for Criminal Law Reform, Redress Trust, Group Project for Holocaust Survivors and their Children, International Commission of Jurists and INTERIGHTS.

Annex

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND  
REPARATION FOR VICTIMS OF VIOLATIONS OF INTERNATIONAL  
HUMAN RIGHTS AND HUMANITARIAN LAW

The Commission on Human Rights,

Pursuant to Commission on Human Rights resolution 1999/33 of 26 April 1999, entitled “The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms”, in which the Commission took note with appreciation of the note of the Secretary-General (E/CN.4/1999/53) submitted in compliance with resolution 1998/43 of 17 April 1998 and the report of the independent expert (E/CN.4/1999/65),

Recalling resolution 1989/13 of 31 August 1989 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which the Sub-Commission decided to entrust Mr. Theo van Boven with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, which was contained in Mr. Van Boven’s final report (E/CN.4/Sub.2/1993/8) and which resulted in draft basic principles and guidelines (E/CN.4/1997/104, annex), and resolution 1994/35 of 4 March 1994 of the Commission on Human Rights in which the Commission regarded the proposed basic principles and guidelines contained in the study of the Special Rapporteur as a useful basis for giving priority to the question of restitution, compensation and rehabilitation,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights and humanitarian law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at article 11, and the Convention on the Rights of the Child at article 39,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples’ Rights at article 7, the American Convention on Human Rights at article 25, and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully

respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Recalling resolution 1989/57 of 24 May 1989 of the Economic and Social Council, entitled “Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, as well as Council resolution 1990/22 of 24 May 1990, entitled “Victims of crime and abuse of power”,

Noting that in resolution 827 (1993) of 25 May 1993 in which it adopted the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Security Council decided that “the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law”,

Noting with satisfaction the adoption of the Rome Statute of the International Criminal Court on 17 July 1998 which obliges the Court to “establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation” and obliges the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims, and mandates the Court “to protect the safety, physical and psychological well-being, dignity and privacy of victims” and to permit the participation of victims at all “stages of the proceedings determined to be appropriate by the Court”,

Recognizing that, in honouring the victims’ right to benefit from remedies and reparation the international community keeps faith and human solidarity with victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented point of departure, the community, at local, national and international levels, affirms its human solidarity and compassion with victims of violations of international human rights and humanitarian law as well as with humanity at large,

Decides to adopt the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law as follows:

- I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW
  1. Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, inter alia:
    - (a) Contained in treaties to which it is a State party;



- (b) Found in customary international law; or
  - (c) Incorporated in its domestic law.
2. To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:
- (a) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
  - (b) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
  - (c) Making available adequate, effective and prompt reparation as defined below; and
  - (d) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

## II. SCOPE OF THE OBLIGATION

3. The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, inter alia, a State's duty to:
- (a) Take appropriate legal and administrative measures to prevent violations;
  - (b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;
  - (c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;
  - (d) Afford appropriate remedies to victims; and
  - (e) Provide for or facilitate reparation to victims.

## III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW

4. Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.
5. To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate

legislation to facilitate extradition or surrender of offenders to other States and to international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.

#### IV. STATUTES OF LIMITATIONS

6. Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.

7. Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

#### V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

8. A person is “a victim” where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights. A “victim” may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.

9. A person’s status as “a victim” should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

#### VI. TREATMENT OF VICTIMS

10. Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.

#### VII. VICTIMS’ RIGHT TO A REMEDY

11. Remedies for violations of international human rights and humanitarian law include the victim’s right to:

- (a) Access justice;

- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

#### VIII. VICTIMS' RIGHT TO ACCESS JUSTICE

12. A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

- (a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;
- (b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

13. In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

14. The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.

#### IX. VICTIMS' RIGHT TO REPARATION

15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.

16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.

17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.

18. In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.

19. A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.

20. In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

#### X. FORMS OF REPARATION

21. In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.

22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

23. Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities, including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity; and
- (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

24. Rehabilitation should include medical and psychological care as well as legal and social services.

25. Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
- (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;
- (e) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial or administrative sanctions against persons responsible for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;
- (i) Preventing the recurrence of violations by such means as:
  - (i) Ensuring effective civilian control of military and security forces;
  - (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
  - (iii) Strengthening the independence of the judiciary;
  - (iv) Protecting persons in the legal, media and other related professions and human rights defenders;
  - (v) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;
  - (vi) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;
  - (vii) Creating mechanisms for monitoring conflict resolution and preventive intervention.

#### XI. PUBLIC ACCESS TO INFORMATION

26. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

#### XII. NON-DISCRIMINATION AMONG VICTIMS

27. The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.

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## ANNEX 4

### Content and Scope of Reparations Programs (RP): Argentina, Chile, Guatemala, and South Africa

| Area of RP         | Argentina   | Chile  | Guatemala   | South Africa   |
|--------------------|---|--|---|--|
| Objectives         | <ul style="list-style-type: none"> <li>- Provide economic assistance, academic scholarships, social assistance, and jobs to the children and/or relatives of persons disappeared during the repression</li> <li>- Alleviate the various family and social problems emerging from the forced disappearances of persons</li> </ul>  | <ul style="list-style-type: none"> <li>- Promote reparation of emotional harm to the victims of violations of human rights or of political violence</li> <li>- Provide comprehensive care in the public health system, deliver specialized mental health care, encourage the creation of self-help groups and actions</li> </ul>   | <ul style="list-style-type: none"> <li>- Contribute to national reconciliation through programs and projects of civil, socio-economic, and moral character</li> <li>- Restore dignity to the victims</li> </ul>   | <ul style="list-style-type: none"> <li>- Rehabilitate and restore victims' quality of life</li> </ul>  |
| Beneficiaries      | <p>1) Children and/or relatives of dead and disappeared persons that are on the list of the TC, in the Report of the Disappeared, or were disappeared or killed and then reported to the Office of Human Rights of the Government</p> <p>2) Persons under executive or civil authority who suffered detention by order of military courts during the State of Emergency</p> | <p>1) Immediate family of the victims (parents: father and mother; partners: spouse or live-in partner; siblings: brothers and sisters; descendants: sons and daughters) of the detained, disappeared, and executed for political reasons</p> <p>2) Persons who have undergone the following repressive situations: detention—physical and/or psychological torture; hiding (as a consequence of political violence); exile and return—exoneration for political reasons, as well as members of their nuclear family</p> | <p>Those who “suffered directly in their person violations of human rights and acts of violence related to the internal armed conflict.” However, it is provided that in the cases that proceed, there must be a prioritization of beneficiaries for individual economic compensation, taking into account the gravity of the violation, their economic condition, and their vulnerability in society, with special attention to the elderly, widows, minors, and those who find themselves in other situations of vulnerability. It is recommended that the identification of beneficiaries be guided by the criteria of transparency, justice, equity, speediness, accessibility, and participation</p> | <p>The 22,000 victims included in the TC's report, all of whom suffered grave human rights violations</p>  |
| Scope and duration | <p>The benefits were offered to the victims of political violence that occurred in the period 1976–1983; the duration of the program is indefinite</p>  | <p>The benefits were offered to persons affected by the political violence that occurred in the period 1973–1990 and included only those cases of disappearances of detained persons, executions, tortures resulting in death committed by the State or persons in service of the State, kidnappings and attempts against the life of persons executed by private persons for political reasons, excluding those cases of</p>  | <p>The Commission recommended the creation and implementation of a National Program of Reparation with a duration of at least 10 years, for the victims of violations of human rights and acts of violence related to the armed conflict, as well as their families</p>   | <p>The RP was focused on grave violations of human rights, defined as death, disappearance, torture, or severe maltreatment occurring to any person between Jan. 3, 1969 and Dec. 31, 1993</p> |

| Area of RP | Argentina | Chile  | Guatemala | South Africa |
|------------|-----------|--|-----------|--------------|
|            |           | torture where the person survived; the duration of the program is indefinite |           |              |



## ANNEX 5

### Proposals for Reparations by Some Victims' Groups and NGOs

| Type of victim  | Dimension | Reparation Measures   |
|---|-----------|---|
| <p><i>1. Pardoned or absolved people</i></p> <p>Group of Released Prisoners (Grupo de Liberados), CEAS and the Network of Innocent Released Prisoners (Red de inocentes liberados)</p> <p>Study Group (Grupo de reflexión)</p> <p>Association of Innocent Released Prisoners (Asociación de Inocentes Liberados, ANIL)</p> <p>Proposed Law on Compensation and Benefits for Prisoners Pardoned under Law No. 26655 ("Proyecto de Ley de indemnización y beneficios complementarios para indultados por la Ley N° 26655)</p> <p>CEAS</p> | Moral     | <ul style="list-style-type: none"> <li>• That the State (President of the Republic, Congress, and the Supreme Court) <u>ask forgiveness</u> from the released prisoners to provide public recognition and acceptance of responsibility in order to commit to promoting comprehensive forms of reparation.</li> <li>• That the State (President of the Council of Ministers) promote <u>public education campaigns</u> on the situation of the released prisoners. Said campaign should disseminate the history of the injustices committed, and should be directed at different levels of society (through various means of communication).</li> <li>• That the State (the National Prosecutor's Office) commit to <u>investigating and punishing judicially or administratively the persons responsible for violations of human rights</u> in the deprivation of liberty of innocent prisoners.</li> <li>• That the State (the President of the Council of Ministers) create, within a period of three months, a Multisectoral Commission with the participation of civil society (human rights organizations, the Catholic Church, protestant Churches, etc.) to undertake a <u>general revision of anti-terrorism legislation</u> in accordance with human rights treaties, and propose reforms and/or repeals. Priority should be given to innocent prisoners and those with arrest warrants.</li> <li>• That the Human Rights Ombudsman's Office (Defensoria del Pueblo) <u>produce a report on the annulment of criminal records and why the laws regarding this issue are not being followed</u>.</li> <li>• That the CVR establish a channel of private and public social communication, in order to foster participation in the campaign for making amends.</li> </ul> |
|   | Economic  | <ul style="list-style-type: none"> <li>• That <u>a fund for reparation be created</u> by:             <ul style="list-style-type: none"> <li>- A percentage of the national budget</li> <li>- Money recovered from corruption [FEDADOI]</li> <li>- A project to replace foreign debt with social investment and investment in human rights</li> <li>- Donations from individuals and national or international organizations</li> </ul> </li> <li>• The liberated have a <u>pension for life</u> equivalent to the <u>cost of maintenance of a family</u></li> <li>• A permanent pension to each of those affected, equivalent to a UIT</li> <li>• That monetary reparations be provided for the following:             <ul style="list-style-type: none"> <li>- <u>Pecuniary compensation for legal costs</u></li> <li>- Restitution of assets and money seized, or the payment of a one-time compensation equivalent to</li> </ul> </li> </ul>  |

| Type of victim | Dimension | Reparation Measures  |
|----------------|-----------|--|
|                |           | <p>1 UIT (in the case of inability to prove loss or material harm)</p> <ul style="list-style-type: none"> <li>- <u>Payment (“reconocimiento”) of loss of income</u></li> <li>- <u>Payment of costs for medicines, medical care, and psychological and social services</u></li> <li>- <u>Symbolic reparation for the years spent in prison based on 10 UIT a year for each year in prison</u></li> </ul> <ul style="list-style-type: none"> <li>• That the offering of SNP be considered for the released prisoners who request it for the time that they were in prison and were unable to find work after release</li> <li>• That they rehire public servants</li> <li>• That the <u>development of group projects for the generation of income be supported and financed</u></li> <li>• In the case of death, that the heirs have the right to compensation</li> <li>• <u>Monetary reparation equivalent to the minimum wage in force for each month that a person had been detained (Art. 2)</u></li> <li>• <u>Creation of a Compensation Fund</u> with contributions from the General Budget of the Republic and the donations of individuals and national or international organizations (Art. 9)</li> <li>• That the Human Rights Ombudsman’s Office administer the Compensation Fund (Art. 10)</li> <li>• That debts contracted with the State, as well as missed payment, costs and interests generated during the detention, be cancelled (Art. 6)</li> </ul> |
|                | Health    | <ul style="list-style-type: none"> <li>• That the State (Ministry of Health) <u>implement a system of free services</u> (health program, hospitalization, surgery, rehabilitation, and specialized services) that offer permanent comprehensive treatment to the released prisoners and their families</li> <li>• <u>Free insurance en ESSALUD (covered by the State), a comprehensive plan of action</u></li> <li>• <u>Psychological and psychiatric attention and treatment</u></li> <li>• <u>The availability of free health services for physical and psychological attention</u> that is offered by the IPSS and other state health services, in the same conditions as those that are insured (Art. 3)</li> <li>• Create a state program of health services directed at the problems of spouses and families that is decentralized, comprehensive, includes home visits, and is free</li> </ul>  |
|                | Legal     | <ul style="list-style-type: none"> <li>• That Law No. 26994, which regulates the <u>annulment of police, criminal, and judicial records</u>, be complied with immediately and automatically</li> <li>• Waiver of all payment for documents necessary for full readjustment</li> <li>• <u>Cessation of all existing judicial proceedings</u> against the beneficiaries</li> <li>• <u>Elimination of civil liability orders (“reparación civil”), fines, and legal restrictions (“inhabilidades”) imposed by the sentence</u></li> <li>• <u>Suppression of the order of seizure of assets and embargoes and the restitution</u> of assets seized at the time of detention</li> </ul>   |
|                | Education | <ul style="list-style-type: none"> <li>• That the State provide and waive fees for educational</li> </ul>  |

| Type of victim | Dimension | Reparation Measures  |
|----------------|-----------|--|
|                |           | <p>services for the released prisoners and their families</p> <ul style="list-style-type: none"> <li>• That the question of human rights be included in the school curriculum, so that society has an active role in the prevention and denunciation of these occurrences</li> <li>• That the State waive payment for educational rights for the released prisoners and their families, providing facilities for validation and adjustment of courses, and the obtaining of the corresponding academic degree</li> <li>• Scholarships for study for institutions of higher learning and occupational schools</li> <li>• That direct admission into state institutions of higher learning, and/or promotion of agreements with private institutions for the released prisoners and their families be made possible</li> <li>• That empowerment and updating of professional skills be facilitated for released prisoners and their families (for example, access to micro-credit for education)</li> <li>• Free education and direct admission into the university for the children of beneficiaries; immediate reintegration into secondary, technical, and university studies for those who lost their places because of detention</li> <li>• Free and direct access to educational institutions when academic requirements are met. Benefits for victims as well as their children (Art. 4)</li> <li>• In private educational institutions, the beneficiaries will be credited with reductions in their taxes</li> </ul> |
|                | Housing   | <ul style="list-style-type: none"> <li>• Free access to housing programs created, or to be created (My Housing and other programs)</li> <li>• Housing for the extended family in areas with easy access to employment and to modes of transport (Special Housing Program)</li> <li>• Adjudication of title that is free or below cost for pardoned prisoners without housing, with housing being contemplated and implemented in all of the national territory, giving consideration to the provincial zones affected</li> <li>• Donation of construction materials for housing</li> <li>• Facilitation of credit for the construction of housing by the Materials Bank, especially for the provincial zones affected</li> <li>• Waiver of taxes and fees for registration rights</li> <li>• Coverage by the housing programs of the State (Art. 7)</li> </ul>   |
|                | Labor     | <ul style="list-style-type: none"> <li>• Reintegration to the workplace of the affected, whether it is private or public, or labor capital equivalent to a UIT Provision of all work-related benefits in accordance with the time transpired will be sought</li> <li>• Promote job placements according to level of education</li> <li>• That the state support, finance, and offer training for the development of group projects for the generation of income</li> <li>• Promote restitution and equalization of benefits (payment of pensions and social security) that the workers ceased to cover because of their detention</li> <li>• Facilitate the inclusion of the pardoned prisoners and their families in the Labor Information and Placement system run by the Ministry of Labor (“MT”)</li> <li>• Facilitate the access to formation, training, and</li> </ul>   |

| Type of victim  | Dimension        | Reparation Measures  |
|---|------------------|--|
|   |                  | <p>constitution of PRODAME businesses to generate employment in the targeted population</p> <ul style="list-style-type: none"> <li>• Facilitate the incorporation into GOOLs of pardoned women and family members with responsibility for maintaining the family</li> <li>• Promote micro- and small business programs, prioritizing the raising of financial resources for them. Technical and professional training for the realization of these types of programs. The micro- and small businesses created by the pardoned prisoners should be able to be recipients of donations by individuals and/or organizations</li> <li>• They should be able to reintegrate immediately to their workplaces and have preferential option of work in all contracting by state entities if legal requirements are met (Art. 5)</li> <li>• In the case of beneficiaries that were State officials, they should receive pay that had not been paid during the time of detention. The sum should be deposited according to the “CTS”</li> <li>• That the State facilitate obtaining favorable marketing position</li> <li>• Facilities to teach in “CEOs”</li> </ul> |
| <p>2. <i>Displaced</i></p> <p>The Displaced of San Juan de Lurigancho</p> | <p>Work</p>      | <ul style="list-style-type: none"> <li>• Private institutions should prioritize the poorest in undertaking economic actions, etc.</li> <li>• In the towns of origin, the industrialization of local products should be promoted, with the help of public organizations (PAR, Ministry of Agriculture, etc.), helping commerce, internal consumption, and export</li> <li>• Put on fairs with the help of PAR</li> <li>• Increase job positions in the emergency assistance program (“A trabajar urbano”) with higher salary; promote sewing workshops and the raising of smaller animals</li> <li>• Provide seed money for women in social organizations (soup kitchens, food programs, etc.) to develop activities that are currently conducted in inhumane conditions</li> <li>• That the ministries and public and private institutions provide recommendations for jobs</li> </ul>   |
|   | <p>Education</p> | <ul style="list-style-type: none"> <li>• Award scholarships and tuition waivers for universities and institutions for the displaced and their children who are in the top rankings at secondary schools</li> <li>• Award half-tuition scholarships to those who enter university</li> <li>• Provide quality training that is sustainable to provide better qualifications and positions</li> <li>• Guarantee that the education system operate without discrimination</li> </ul>   |
|   | <p>Health</p>    | <ul style="list-style-type: none"> <li>• Programs for psychological attention for persons who have lived close to the political violence; family planning programs restarted</li> </ul>  |
|   | <p>Housing</p>   | <ul style="list-style-type: none"> <li>• Group compensation, with water, electricity, and local community housing projects</li> <li>• Construction of modules, donations of steel sheeting, and other materials for the reinforcement of housing that will make them more secure</li> </ul>  |

| Type of victim | Dimension | Reparation Measures   |
|----------------|-----------|---|
|                | Other     | <ul style="list-style-type: none"> <li>• Evaluate the necessity of the program of return for families that require it</li> <li>• The Truth and Reconciliation Commission should visit the most affected communities in the country and coordinate with organizations that bring together the affected (ASFADEL), community leaders, and others</li> </ul> |

## **ANNEX 6**

### **Legislation Relevant to Compensation (Insurance) or Reparation**

#### **1. By categories of beneficiaries**

##### 1.1 Local authorities, officials, and public servants

- Legislative Decree No. 398 (December 28, 1986), through which the public sector budget is approved for the year 1987, includes in its article 243 payments of compensation for officials and public servants that were victims of terrorism.
- Law No. 24767 (December 19, 1987), “Budgetary law for public sector organizations for the year 1988,” includes in its article 212 compensation for public servants and officials who were victims of terrorism.
- Supreme Decree No. 051-88-PCM (April 12, 1988) provides that officials, public servants, mayors, and aldermen (“regidores”) who were victims of accidents, acts of terrorism, or drug trafficking that occurred in the course of duty have the right to a special compensation.
- Supreme Decree No. 064-89-PCM (August 22, 1989) constitutes the Regional Councils of certification responsible for certifying in their jurisdiction cases of accidents, acts of terrorism, or drug trafficking in the course of duty.
- Supreme Decree No. 005-98-PROMUDEH (July 1, 2000) establishes requirements for procedure and obtaining of benefits.
- Law No. 27277 (March 3, 2000) establishes entrance vacancies at the universities for victims of terrorism, by which each university reserves a number of vacancies for officials and public servants referred to in Supreme Decree No. 051-88-PCM.

##### 1.2 Members of the Armed Forces and National Police

- Decree 19846 (January 1, 1973) unifies the pension regime for military police personnel for the armed forces with State services, modified by Law No. 24533 (June 20, 1986), Law No. 24640 (January 8, 1987).
- Law No. 24373 (November 24, 1985), through which members of the Armed Forces and National Police who have been killed or are killed in the line of duty on occasion of or as a consequence of their service, or their heirs, are eligible for economic benefits.
- Supreme Decree No. 013-87-SGMG-G (September 17, 1987) provides benefits to military and police personnel who are disabled or killed as a consequence of acts arising from narco-terrorism.
- Law No. 24916 (November 3, 1988) establishes the parameters of economic benefits for the heirs of members of the Armed Forces or National Police killed in the line of duty.
- Supreme Decree No. 058-90-PCM (June 15, 1990), through which an orphan’s pension is provided to single children over 18 of military and police personnel who were killed in the line of duty.
- Legislative Decree No. 737 (December 11, 1991) that offers incentives and exceptional and extraordinary recognition to members of the Armed Forces and National Police in service, in case of disability or presumptive death (“muerte de fecha”), modified by Law No. 25413 (March 12, 1992).

- Law No. 23694 (November 22, 1984) authorizes the Executive to assign housing for relatives of members of the Armed Forces and the Police Forces that are killed or have been killed in the line of duty. The regulation on adjudication of housing was approved by Supreme Decree No. 037-84-VC (August 14, 1984), modified through Supreme Decree No. 03-93-PRES (February 2, 1993).
- Law Decree No. 25964 (December 18, 1992) assigns housing for members of the Armed Forces and National Police who have become disabled in the line of duty.
- Supreme Decree No. 026-84-MA (December 26, 1984) regulates life insurance for personnel of the Armed Forces, is approved by Supreme Resolution No. 0300-85/MA/CG (July 8, 1985) and modified by Resolution No. 0499-DE-EP. Law Decree No. 25755 (October 5, 1992) unifies life insurance for members of the Armed Forces and the National Police. Supreme Decree No. 009-93-IN (December 22, 1993) specifies the parameters of Law Decree No. 25755.

### 1.3 Members of Peasant Patrols (“Rondas Campesinas”) and Self-Defense Committees

- Supreme Decree No. 077-92-DE (November 11, 1992) approves the organizing regulations for the Self-Defense Committees and allows for preferential state attention through compensation and pensions in the case of death, injury and disability arising from confrontations with terrorists.
- Supreme Decree No. 068-98-DE-S/G (December 27, 1998) fixes the amounts of compensation established by organizing regulations.
- Supreme Decree No. 040-DE/CCFFAA-D1/PERS (August 5, 1999) broadens the single text of the administrative proceedings of the Armed Forces Joint Command.

### 1.4 Norms referring to other victims

- Emergency Decree No. 044-99 (July 27, 1999) creates a national program of services to orphans of terrorist violence.
- Supreme Decree No. 046-89-TC (November 10, 1989) creates contingency funds of public service enterprises of urban transport that was damaged by terrorist acts.
- Supreme Decree No. 005-91 (February 3, 1991) provides that undeveloped lands that, as a consequence of subversive actions, were temporarily abandoned will no longer be affected or declared presumptively abandoned.
- Law No. 23585 (March 1, 1983) provides scholarships to students of establishments and private universities who have lost their parents or guardians.

## 2. By type of benefit

| BENEFITS          |   | Local authorities, officials, and public servants   | Members of the Armed Forces and National Police | Members of Peasant Patrols and Self-Defense Committees  | Civilian population   |
|-------------------|---|---|---|---|---|
| Symbolic measures | Promotion   | In case of death, official promotion to the immediately higher classification, level, or grade (Superior Decree No. 051-88-PCM) | no  | no  | no  |
| Service packages  | Restitution of property                                 | no  | no  | In accordance with expert appraisal (Supreme Decree No. 068-98-DE-S/G)  | Insurance system to cover damages to public transport vehicles  |
|                   | Welfare aid   | no  | no  | In case of death, injury or disability (Supreme Decree No. 077-92-DE)   | no  |
|                   | Social, productive and psychological support activities | no  | no  | no  | National Program of Service to Orphans (DU No. 044-99)  |
|                   | Housing   | Provision of housing  | no  | In case of death (provision of housing that is the family home) (Law No. 23695) (Supreme Decree No. 037-84-Vc and modifying norms) In case of permanent and absolute disability (provision of housing at a price no higher than 1% of its value) (Law Decree No. 25964) | no  |
| Education         | Provision of comprehensive scholarships                 | no  | no  | To the children that excel in their studies and are in the top rankings, regardless of the level or modality of their studies (Law No. 25134)   | no  |
|                   | Provision of scholarships for study                     | no  | no  | no  | Students of non-state educational institutions and universities who have lost their parent or guardian or person in charge of their education |



| <b>BENEFITS</b>   | <b>Local authorities, officials, and public servants</b>  | <b>Members of the Armed Forces and National Police</b>   | <b>Members of Peasant Patrols and Self-Defense Committees</b>   | <b>Civilian population</b> |
|---|---|--|---|----------------------------|
| Reservation of vacancies (public universities)  | For the beneficiaries of Supreme Decree No. 051-88-PCM (Law No. 27277)  | no   | no  | (Law No. 2385)<br>no       |
|   | <b>Payment to individuals</b>   |  |   |                            |
| Exceptional compensation  | Equivalent to total of gross salary at the time of the occurrence of the event (Law Decree No. 398). Equivalent to 14 UIT in case of death (Supreme Decree No. 051-88-PCM). Minimum amount of 7 UIT in case of permanent and temporary disability (Supreme Decree No. 051-88-PCM) | Provision of life insurance equivalent to 15 UIT in case of death or disability. (Supreme Decree No. 026-84-MA and complementary norms)  | <ul style="list-style-type: none"> <li>- 20,800 Peruvian soles in the case of temporary disability</li> <li>- 31,200 Peruvian soles in the case of permanent disability</li> <li>- 39,000 Peruvian soles in the case of death</li> </ul> (Supreme Decree No. 068-98-DE-S/G) | no                         |
| Pension (of availability or temporary cessation, retirement, or definitive cessation; of disability and incapacity) | Disability pension equivalent to total gross salary at the time of the occurrence of the event (Law Decree No. 398) (Supreme Decree No. 051-88-PCM)   | Disability pension equivalent to 100% of remunerations the person received during service (Law Decree No. 19846 and complementary norms)   | no  | no                         |
| Survivor's pension (for surviving spouse, orphan, and parents)  | Equivalent to total gross salary at the time of the occurrence of the event (DS No. 051-88-PCM)   | Equivalent to the remuneration for the next highest rank every five years, starting from the date of death, for 35 years computed from the date of entry into the ranks (Law Decree No. 19846 and complementary norms) (Law No. 24373 and complementary norms) | no  | no                         |
| Promotion   | no  | Economic promotion to the salary of the  | no  | no                         |

| <b>BENEFITS</b> | <b>Local authorities, officials, and public servants</b> | <b>Members of the Armed Forces and National Police</b>                | <b>Members of Peasant Patrols and Self-Defense Committees</b> | <b>Civilian population</b> |
|-----------------|--|---|---|----------------------------|
|                 |  | next higher class, every five years from the moment of the occurrence |   |                            |

ANNEX 7

Relevant Proposed Laws Pending Before the Congress of the Republic

| Proposed law number | Date of presentation               | Sponsor Group                      | Benefits   | Beneficiaries  |
|---------------------|------------------------------------|------------------------------------|--|--|
| 065                 | July 27, 2001<br>(ruling)          | No group                           | Benefits and other nonpensionable distributions accorded to officials and subofficials of the same grade in active service, whatever the time of recognized service of the deceased official upon the occurrence of the death  | The relatives of officials or sub-officials of the Armed Forces and the Peruvian National Police who were killed as a consequence of the fight against terrorism and illicit trafficking of drugs  |
| 1230                | November 8, 2001<br>(in committee) | Perú Posible                       | <p>- <b>For civilians:</b> Creation within 6 months of a commission in charge of identifying which benefits will correspond to these beneficiaries</p> <p>- <b>For the disabled from the Armed Forces and the Peruvian National Police:</b> Recognition of the same benefits as Defenders of the Nation in accordance with Law No. 26511; promotion of one grade and salary, plus 5 years up to the next higher grade, until 35 years of service have been completed, calculated from the date of the entry into the ranks; access to a loan will be permitted (the payment of interest should not exceed 10 current UIT) with presentation of a viable project of micro- or medium-enterprise, through the Economic Assistance Fund; training in work centers for reintegration into the work in State institutions and the private sector; opportunity will be given for them to conduct lectures in educational institutions of the Peruvian National Police and the Armed Forces and the educational institutions of the State, under the responsibility of the Ministry of Education</p> <p>- <b>For the members of Self-Defense Committees:</b> Preferential State service through welfare assistance, compensation, or pension for death or disability, by proposal of the Armed Forces Joint Command</p> | <p>Victims of terrorism:</p> <ul style="list-style-type: none"> <li>- Members of the Armed Forces</li> <li>- Members of the Peruvian National Police</li> <li>- Members of the Self-Defense Committees or Peasant Patrols</li> <li>- Civilians who suffered physical or psychological injury, when the acts or events of causation occurred after may 1980</li> </ul> <p><b>Contains an exception for benefits</b></p> |
| 2332                | March 21, 2002<br>(in committee)   | National Unity (“Unidad Nacional”) | Economic benefits corresponding to the remuneration of the next higher rank, every five years starting from the date of death (the remuneration will include all   | Heirs of the members of the Armed Forces and the Peruvian National Police who have died or may die in the line of duty   |

| Proposed law number | Date of presentation             | Sponsor Group | Benefits   | Beneficiaries  |
|---------------------|----------------------------------|---------------|--|--|
|                     |                                  |               | salaries, benefits, and bonuses that, under different categories and denominations, constitute the benefits that are received by the respective ranks of the military or police hierarchy, or such that may be created for benefit of the members of the Armed Forces and the Peruvian National Police on active duty  |  |
| 2342                | March 22, 2002<br>(in committee) | Perú Posible  | <p>Creation of a Commission charged with establishing the benefits that could be of <b>pecuniary as well as nonpecuniary nature</b></p> <p>Direct benefits: <b>provision of free medical services</b> in any State hospital or health center</p> <p><b>Support for reconstruction of infrastructure</b> of the towns affected by the political violence (with the resources of FEDADOI)</p>  | <p>Members of the Peasant Patrols and Self-Defense Committees who were victims of terrorist acts or indiscriminate violence by the Armed Forces or the Peruvian National Police starting from May 1980 (creation of an eligibility committee)</p> <p>Heirs of first, second, and third degree</p> <p><b>Contains an exception for benefits</b></p> |
| 2686                | April 25, 2002<br>(in committee) | Independent   | <ul style="list-style-type: none"> <li>- Declare July 16 a day of “National Atonement”</li> <li>- <b>Education</b> for children (totally free, whether in state or private institutions, until the completion of university studies)</li> <li>- <b>Health</b> (free medical services in MINSA or ESSALUD)</li> <li>- <b>Housing</b> (participation and provision of housing through housing programs for the social interest, constructed by the Mortgage Fund for Promotion of Housing and other programs, through which a percentage will be assigned to those who have been exonerated of all types of payments; those relatives who have already benefited from housing programs will continue to be exonerated totally from payments of debts)</li> </ul> | <ul style="list-style-type: none"> <li>- Homage to the thousands of fallen innocents and those affected by war of the '80s and '90s</li> <li>- Relatives (for the children, spouse, and parents of the victims—in this order of relation), for civilian victims as well as those in security forces</li> </ul>                                     |

|      |                                |                                       |   |   |
|------|--------------------------------|---------------------------------------|---|---|
| 2744 | May 1, 2002<br>(resolution)    | National Unity<br>("Unidad Nacional") | Preferred State services, through welfare assistance, compensation, or pension for death or disability, by proposal of the Armed Forces Joint Command   | The members of Self-Defense Committee who were killed, or suffered injury or disability, arising from confrontation with terrorists or terrorist incursion or have been killed selectively, starting from January 1 of 1982 (creation of eligibility committee)   |
| 2878 | May 14, 2002<br>(in committee) | APRA                                  | <ul style="list-style-type: none"> <li>- <b>Education:</b> Orphans enjoy free education in state institutions until the completion of their studies; their admission is not conditioned on any admission exam</li> <li>- <b>Housing:</b> The "My Housing" program contemplates preferential treatment for victims of terrorism, favoring access to houses constructed under this program</li> <li>- <b>Work:</b> Quotas will be established for access of victims of terrorism to the posts that are created through the "To Work" program and others that are created in the future</li> <li>- <b>Service contracts and acquisition of property by the State:</b> priority to be given in the granting of such benefits to proposals submitted by the victims of terrorism</li> <li>- <b>Health:</b> Free services, including psychological care, in State health centers</li> <li>- <b>Symbolic:</b> Victims of terrorism who died as a result of incursions by subversive groups to be declared "Martyrs of Democracy"; the streets, plazas, parks, and high schools to be named after the most representative victims of each locality</li> </ul> | <p>Those who have suffered physical, psychological, and material harm as a result of terrorist actions unleashed by the subversives starting in 1980</p> <p>Parents, spouses and/or children of officials and public servants who lost their lives as a consequence of subversive actions</p> <p>Minors orphaned as a result of subversive action</p> |