



# Alive in the Demand for Change

**TRANSITIONAL JUSTICE AND  
PREVENTION IN PERU**

June  
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**Cover Image:** An Andean woman marches in a protest in Lima, Peru, against a mining project in the Andean region of Cajamarca on July 25, 2012. (Enrique Castro-Mendivil/Reuters)

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*Julie Guillerot*

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## About the Research Project

This publication is part of an ICTJ comparative research project examining the contributions of transitional justice to prevention. The project includes country case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone, as well as a summary report. All six publications are available on ICTJ's website.

## About the Author

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## About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit [www.ictj.org](http://www.ictj.org)

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# Introduction

From 1980 to 2000, Peru experienced both an internal violent conflict and political authoritarianism, which, while not entirely concurrent, were closely related phenomena. A transitional period, brought about by revelations of government corruption and demands for economic improvement and a return to democracy, began in 2000 and saw a new political and legal framework emerge out of a combination of democratic elite interests, the human rights movement, and respect for the state's international obligations.

This framework included a Truth and Reconciliation Commission (TRC; also known as CVR, for *Comisión de la Verdad y Reconciliación*), whose analysis identified and described certain characteristics of the previous decades:

- the massive scale of violence and human rights violations;
- the concentration of that violence on indigenous communities;
- the shared responsibility for those violations among both insurgent groups and state institutions;
- the occurrence of the conflict and violations under democratically elected governments and a dictatorship;
- the invisibility of the violence affecting indigenous communities, reflecting a long history of marginalization, exclusion, and racism; and
- the continuity of political elites and parties at the helm of government and Congress into the post-transition period.

The TRC's investigation revealed significant and long-standing socioeconomic, geographic, and educational divisions within Peruvian society that both caused the political violence and were reinforced by it. Further, it painted a picture of victims as socially and economically excluded and placed the political violence within the context of almost two hundred years of domination, marginalization, and oppression of members of the Andean and native populations.

In order to mend these human rights violations and social fractures, the CVR recommended truth, justice, reparations, and guarantees of nonrecurrence. The commission sought to play a complementary role to that of criminal justice. It envisioned reparations as an expression of society's efforts to establish relations of equality and respect and to restore citizenship rights. To this end, it called for institutional, legal, educational, and other reforms as prevention guarantees that would address the conditions and root causes of marginalization and abuse.

The CVR's *Final Report* received weak political backing, in part because it raised questions about the complicity or silence of almost all national sociopolitical actors and institutions, revealing the existence of

ghosts that society as a whole did not want to confront. Unable to dispel the narrative of the violence and conflict that had been crafted by the authoritarian regime, the CVR's message returned to the domain of civil society, particularly human rights nongovernmental organizations (NGOs) and victims' organizations.

However, Peru has implemented a wide range of transitional justice processes over a 20-year time frame. These have included, with a relative degree of comprehensiveness, elements of truth, criminal justice, reparations, and institutional reforms directed at guaranteeing nonrepetition in a particularly complicated context for acknowledgment and prevention. The characteristics of the country's internal armed conflict posed specific challenges, as did the broader democratic transition, which never truly attempted to create a pluralist society based on a new social pact that included all Peruvians in the benefits and obligations of citizenship. Implementation of transitional justice policies is not necessarily seen, at the highest levels of the state, to be a part of a post-CVR agenda; at the same time, such efforts can be characterized by discontinuity and dependence on persistent pressure from well-organized victims' groups and civil society organizations. Nevertheless, while major efforts still need to be made, in particular toward institutionalizing respectful culture, values, and behaviors in the practice of the officials who are in charge of these policies, certain formal advances now seem difficult to reverse.

Although this makes the Peruvian case a valuable experience for examining the preventive effect of transitional justice, such an analysis is not easy because, as elsewhere, it is inherently difficult to draw strict causal links between transitional justice efforts and other types of implemented policies or changes in behavior and values. Therefore, this study is not limited to the implementation of transitional justice policies or the recommendations made by the 2001–2003 truth commission, as it also explores how other policies reflect the lessons that have been learned from the conflict. In taking this approach, the study veers away from a strict transitional justice analysis. This is necessary because, if the experience of Peru is to serve in understanding transitional justice, attention must be paid to those more profound causes and factors that not only facilitated the eruption of the conflict but also help to explain its differentiated impact among victims and affected communities. In this way, the Peru experience can help the nascent discipline of transitional justice to examine more in depth its core elements and its capacity to address the different natures of the injustices that are reflected in each context.

The CVR's message is framed within the social, political, and cultural dynamics within Peru and to the international community's agenda on development and rights. Other public policy decisions can therefore be linked to the CVR's call to bridge societal divides, even if they are not framed as a response to the *Final Report*, including laws addressing indigenous peoples' rights and social programs directed toward marginalized populations. The tension between guaranteeing inclusive social programs and pushing economic growth, however, has remained at the core of the post-transitional period. The persistence of wide gaps in income, basic service access, and life opportunities points to structural determinants and the absence of cultural or attitudinal institutional transformations.

The past 20 years have been marked by significant public protests and social conflicts, with relatively rapid moves from claims to violent confrontations. That these conflicts differ from the past in being highly fragmented, diverse, and locally based, and that none of them have involved violence on the level of the 1980s or 1990s, is significant from a preventive standpoint. At the same time, however, these conflicts revolve around basic economic, social, and cultural rights, in contrast to the CVR's mandate, which was focused on



violations of civil and political rights. If the transitional justice agenda has played a role in catalyzing civil society, its connections to economic, social, and cultural rights or socioenvironmental and indigenous organizations have been slow to develop. The state's response to social conflict has included declaring states of emergency and placing the restoration of internal order in the hands of the armed forces, which are granted extensive powers, suggesting that the use of public force during the years of political violence still conditions the way it has been used in social conflicts since. Moreover, the progressive criminalization of social protest and the promotion of a discourse that seeks to disqualify and delegitimize protesters, sometimes labeling them "terrorists," also harken back to the armed conflict. Nevertheless, the coercive arm of the state has restrained itself, and the number of wounded and dead as a result of social conflicts has substantially decreased.

This study contends that there is a *before* and *after* the CVR's *Final Report*. That is, policies and actions that contribute to preventing the recurrence of widespread political violence and abuses have been developed that would not have been possible without the existence of the CVR. In the absence of relevant cultural or attitudinal institutional transformations, however, such advances ultimately depend on the benevolence and will of government officials and on persistent advocacy from victims' groups and human rights organizations. There are signs that the CVR's narrative has, to a certain extent, penetrated a broader stratum of the population and political class, and that the transitional justice process has had a positive impact on society's internal and external control of the actions of public and private institutions. The process of change remains unfinished.

This study is based on in-depth interviews with 42 experts, practitioners, activists, and officials, and a focus group of 12 representatives of grassroots organizations of displaced persons, conducted in Lima, Ayacucho, and Ica, as well as a review of relevant literature, international resolutions and reports, and national legislation and official documents.



# Into and out of Armed Conflict and Authoritarianism

## The Period of Violence

**B**etween May 1980 and November 2000, Peru was the scene of both an internal armed conflict between two insurgent groups and state forces and an authoritarian period. The overlap between the two was not complete, as the armed conflict arose during the restoration of democracy after a period of military dictatorship, while the authoritarian regime began only halfway through the period and extended several years after both insurgencies were defeated. However, the phenomena were closely connected.

The conflict began when the Shining Path (SL) embarked on what it called an “armed struggle” against the “old State” and “class enemies” that were seen to be exploiting and manipulating the country’s multiple social gaps. To this must be added the fact that the violence occurred while the country was emerging from 12 years of military rule and while free elections were being organized, in which, for the first time, the illiterate population was going to participate and the right to vote was finally going to be truly universal.

Rapidly, in areas where the Shining Path intervened, any manifestation of individual dissent led to selective executions and assassinations, and any manifestation of collective dissent resulted in massacres or the destruction of entire communities. The emergence in 1984 of the Tupac Amaru Revolutionary Movement (MRTA) added to the violence. The behavior of the two groups was always fundamentally different, with the MRTA generally not attacking defenseless civilians, though it still committed selective executions, hostage-taking, and kidnappings.

The state lacked the capacity to contain the insurgency, which within a few years had spread across the country, mostly in rural communities in the poorest areas. As early as 1982, the democratically elected government opted for the militarization of the conflict, gradually abandoning its powers and prerogatives to the armed forces.<sup>1</sup> The army initially implemented a strategy of indiscriminate repression against the

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<sup>1</sup> Comisión de la Verdad y Reconciliación, *Informe Final* (Lima: CVR, 2003), Vol. 1, 76–71. For further details on the political and institutional actors, see Vol. 3, Ch. 2.

population that was suspected, rightly or not, of belonging to the Shining Path, and the conflict was typically fought in rural and traditionally marginalized areas in the Andes highlands and Amazon basin, inhabited mostly by indigenous peoples. Later, the security forces adopted a more selective strategy through the declaration of states of emergency in different regions of the country. These declarations were continuously renewed over the following decade, delegating ample political and military powers to military commanders, contributing to the perpetration of numerous human rights violations of a systematic or widespread nature in certain places and periods. Over the years, the conflict progressively spread into the middle-class, mestizo-dominated coastal cities.<sup>2</sup>

In 1990, Alberto Fujimori was elected president on a platform of populism, criticism of the traditional parties that had failed to bring economic stability and peace, and iron-fist rule, exploiting the fear that had been created by the conflict. He used this approach throughout his presidency to concentrate power in his hands and to unleash repressive policies that secured his hold on that power, even when the intensity of the internal conflict declined with the capture of leaders of the Shining Path and the MRTA as a result of the intelligence work of the National Police.

Fujimori's regime led a self-coup on April 5, 1992, dissolving Congress, dismantling checks and balances, and intervening in the judiciary and other institutions with the help of the military and with high popular approval. A period of political authoritarianism began with the adoption of anti-subversive legislation that introduced substantial changes in the national defense system, including a law related to the national intelligence service and a law regulating the status of military personnel. Within this legal framework for fighting terrorism, the Peruvian court system never adequately responded to human rights violations and even became a part of the repressive mechanism through procedures that violated due process and guaranteed impunity: disproportionate sentences, the creation of new crimes (such as aggravated terrorism and treason), and the use of "faceless" judges, amnesties, and sanctions or removals of those few judges who advanced investigations against military personnel.

It was at this time that an official version of the conflict was constructed around the "defeat of terrorism." This politically profitable narrative was based on a culture of fear, unquestioned praise of the role played by the military, and the justification of human rights violations as a lesser evil.

## The Fall of Authoritarianism and the Transitional Government

Fujimori's second consecutive reelection in 2000, in violation of the constitution and characterized by serious allegations of fraud, resulted in the deployment of a high-level mission of the Organization of American States and the establishment of a dialogue roundtable.<sup>3</sup> These focused on exploring "options and recommendations aimed at strengthening democracy [in Peru]," particularly measures to reform the administration of justice, strengthen the rule of law, and guarantee the separation of powers, which included addressing freedom of expression and of the press, reform of the electoral process, the supervision and balance

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<sup>2</sup> Ibid., Vol. 8, conclusion 55.

<sup>3</sup> Organization of American States General Assembly, Resolution 1753, June 5, 2000.

of powers, and civilian control of the intelligence services and the armed forces.<sup>4</sup> It should be noted that the human rights agenda, according to former member of the truth commission Sofía Macher, was circumscribed by the return to the contentious jurisdiction of the Inter-American Court of Human Rights and the release of political prisoners.<sup>5</sup>

Similarly, it was neither electoral irregularities nor human rights violations during the armed conflict that led to Fujimori's fall in September of that same year. Instead, it was the public revelation of the corrupt apparatus of his government and the subsequent risk of facing charges of corruption, together with massive protests demanding economic improvements and a return to democracy, that forced him to leave the country and resign from the presidency by fax.<sup>6</sup>

The National Assembly rejected the resignation but declared Fujimori "permanently and morally unfit" to govern, appointing an interim president, Valentín Paniagua, following the official line of succession.<sup>7</sup> This was an atypical transition, given that the different actors in the 20 years of armed conflict did not participate directly and did not have to negotiate terms with each other: The leaders of the Shining Path and the MRTA had been captured in 1992, while the leaders of the Fujimori government, Fujimori himself, and the high command of the security forces had fled the country or been imprisoned for acts of corruption. This led to the self-described "transitional government" of Paniagua, in power from November 2000 to July 2001, certainly a short-lived caretaker administration, but one with space to act and create a new political and legal framework. While the interim government marked an important stage in the recovery of democratic institutions, the reconstruction of the rule of law, and respect for human rights, this was the product not of significant public debate or demands but rather of the progressive democratic elite's interests.

Among other initiatives, the normalization of Peru's situation with respect to the bidding jurisdiction of the Inter-American Court of Human Rights, the ratification of various international treaties (such as the Inter-American Convention on the Forced Disappearance of Persons and the Rome Statute of the International Criminal Court), and the organization of free and clean elections are particularly of note. As part of the effort to recover democratic institutions, Paniagua's government presented a broad proposal to the Inter-American Commission on Human Rights (IACHR) intended to resolve a significant number of cases under its jurisdiction.<sup>8</sup> On a national level, the government agreed to establish an inter-institutional commission to follow up on the IACHR recommendations and design "a comprehensive program of non-monetary reparations" in 159 of the cases that were included in the IACHR–government joint press release.<sup>9</sup>

At the same time, the friendly settlement of other cases before the IACHR and the allocation of funds for this purpose, in response to IACHR recommendations and Inter-American Court on Human Rights sen-

4 Organization of American States, press release E-119/00, June 15, 2000; Organization of American States, press release on the *First Report of the OAS Mission to Peru Presented to the Ministers of Foreign Affairs*, July 21, 2000.

5 Interview with Sofía Macher, Lima, September 2019.

6 It was possible with the appearance of what are known as the "vladivideos" (the name given to the video recordings that Montesinos himself made of his illicit acts of corruption). These videos revealed the apparatus that had been devised by presidential advisor Vladimiro Montesinos to corrupt the private business sector, state sectors, and military commands.

7 Paniagua was the third in the line of succession, as president of Congress, and assumed the role after the first and second vice presidents had resigned, the latter due to the refusal of Congress to appoint him.

8 Inter-American Human Rights Commission, joint press release of the commission and the then minister of justice, Diego García-Sayán, unnumbered document, Feb. 22, 2001.

9 Supreme Decree 005-2002-JUS, Feb. 25, 2002.

tences, gave an important indication of political will and respect for the state's international obligations, including with regard to reparations to victims. This was reinforced by other initiatives of the government, which, at the beginning of 2002, decided to provide redress for the harms that had been caused to people who were prosecuted or sentenced by faceless courts or judicial decisions that violated due process of law, often called "pardoned innocent prisoners." It created the Special Commission to Assist Innocent Persons who were Pardoned, which was in charge of designing and implementing a "comprehensive program of non-monetary reparations" for this limited group of victims.<sup>10</sup>

Parallel to these initiatives, and very soon after the fall of the Fujimori regime, the transitional government created an inter-institutional working group in charge of preparing "legislative and other types of projects considered necessary for the establishment of a truth commission."<sup>11</sup> This working group, with 90 days to present a proposal, was made up of the minister of justice, who presided; the ombudsman; the minister of defense; the minister of the interior; the minister of promotion of women and human development; the national coordinator of human rights; and representatives of the Peruvian Episcopal Conference and the National Evangelical Council of Peru.

The initiative to create a truth commission was the result of an agreement between an articulate but not very large sector of civil society, in which human rights defenders and progressive democrats acted, and the political wing of the transitional government that supported the same causes.<sup>12</sup> For this sector, a truth commission was a fundamental ethical demand, as it had been a decade before when some from the sector created an Initiative Group against Impunity and worked vigorously for the establishment of such a commission.<sup>13</sup> In 2001, however, the commission was not a majority demand and therefore represented an important victory for the human rights movement.<sup>14</sup>

## The Truth and Reconciliation Commission's Findings

Based on the inter-institutional working group's proposal, the transitional government established the Truth Commission on June 4, 2001, with the charge of "clarifying the process, facts and responsibilities of terrorist violence and violation of human rights produced from May 1980 to November 2000, imputable both to terrorist organizations and to State agents. It shall also propose the initiatives aiming at strengthening peace and concord among Peruvians."<sup>15</sup> It was also expected that the Truth Commission would "pro-

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10 Ibid.

11 Supreme Resolution 304-2000-JUS, Dec. 9, 2000, Art. 1.

12 Indeed, the initiative was driven from the Ministry of Justice, headed at the time by Diego García-Sayán. Later he was a judge member of the Inter-American Court of Human Rights, of which he was president between 2010 and 2014. In 2016, he was elected United Nations Special Rapporteur on the Independence of Magistrates and Lawyers.

13 This group was made up of distinguished national individuals such as the priest Gustavo Gutiérrez, the psychoanalyst César Rodríguez Rabanal, the sculptor Víctor Delfín, the poet Washington Delgado, and Francisco Soberón on behalf of human rights organizations.

14 Rolando Ames, "Violencia, verdad... ¿reconciliación en el Perú?" in *Verdad, justicia y reparación. Desafíos para la democracia y la convivencia social*, eds. Gilda Pacheco Oreamuno, Lorena Acevedo Narea, and Guido Galli (Stockholm: IIDH-IDEA, 2005), 205-227; interview with Sofía Macher, Lima, September 2019.

15 The commission was created by Supreme Decree 065-2001-PCM, June 4, 2001. In Peru, then, the truth commission was created by an executive power act and not by a law, as had happened in other experiences, for the simple reason that at that time the new parliamentary majority had not started to work, and in Congress the Fujimori majority could have had a negative influence on the contents of the commission's mandate. See the text of Supreme Decree 065-2001-PCM, Art. 1 (English translation by the TRC's website: <http://cverdad.org.pe/ingles/lacomision/cnormas/normas01.php>).

mote national reconciliation, the rule of justice and the strengthening of the constitutional democratic regime.”<sup>16</sup> The commission’s makeup was the product of neither political negotiations between the parties to the conflict, for the reasons mentioned previously, nor a public consultation process, but instead was the result of private conversations between Paniagua and a coalition of human rights defenders and progressive democrats in the transitional government. President Alejandro Toledo, whose government took office in July 2001, ratified the creation of the commission but changed the name to the Truth and Reconciliation Commission (the CVR), thus clearly giving the body a new objective: “laying the foundations for in-depth national reconciliation, clarifying facts, and restoring justice.”<sup>17</sup> The membership of the Truth Commission was also increased from seven to 12 commissioners.<sup>18</sup>

The CVR’s mandate was as follows:

a) to analyze the political, social and cultural conditions as well as the behavior, which, from society and the State’s institutions, contributed to the tragic violence situation undergone by Peru; b) to contribute to clarification by the respective jurisdictional organs, when it corresponds, of human rights crimes and violations by terrorist organizations or some State agents, seeking to establish the whereabouts and situation of victims and identifying as possible, the presumed responsibilities; c) to prepare redress and ennoblement proposals for victims and their relatives; d) to recommend institutional, legal, educational and other reforms as prevention guarantees, so that they are processed and undertaken by legislative, political or administrative initiatives; and; e) to establish follow up mechanisms of its recommendations.<sup>19</sup>

There were therefore three main axes in its work: historical memory and truth, justice, and guarantees of nonrepetition in the form of recommendations to the government for reparations and institutional reforms.

The commission’s independence insulated it from a certain degree of political pressure. It also received significant resources, with a budget above US\$13 million and a staff of more than 500 highly educated and motivated professionals. The commission conducted investigations and advanced cases for criminal prosecution while identifying broader patterns of violations that led to the clarification and assignment of political responsibility. It implemented an effective outreach strategy, in collaboration with civil society, reaching the most affected areas and receiving testimonies of almost 17,000 victims. It organized public hearings that

<sup>16</sup> Ibid.

<sup>17</sup> Supreme Decree 101-2001-PCM, para. 2 (English translation by the TRC’s website: <http://cverdad.org.pe/ingles/lacomision/cnormas/normas04.php>).

<sup>18</sup> The TRC finally involved Salomón Lerner Febres, philosopher, rector of La Católica University (appointed president of the CVR); Beatriz Alva Hart, lawyer, former parliamentarian of the Republic; Enrique Bernales Ballesteros, doctor of law, constitutionalist, executive director of the Comisión Andina de Juristas; Carlos Iván Degregori Caso, anthropologist, professor at the Universidad Mayor de San Marcos, researcher at the Instituto de Estudios Peruanos; Gastón Garatea Yori, priest of the Brotherhood of Sagrados Corazones, president of the Mesa de Concertación de Lucha contra la Pobreza; Alberto Morote Sánchez, engineer, former rector of the University of Huamanga; Carlos Tapia García, engineer, researcher, political analyst; Rolando Ames Cobián, sociologist, researcher, political analyst; Monsignor José Antúnez de Mayolo, priest, former apostolic administrator of the Archdiocese of Ayacucho; retired lieutenant general Luis Arias Grazziani, expert in national security issues; Humberto Lay Sun, architect, leader of the National Evangelical Council; and Sofía Macher Batanero, sociologist, former executive secretary of the Coordinadora Nacional de Derechos Humanos. In addition, Luis Bambarén Gastelumendi, the bishop of Chimbote and president of the Peruvian Episcopal Conference, was appointed as an observer.

<sup>19</sup> Supreme Decree 065-2001-PCM, Art. 2.

brought national attention to the voices of victims, and it launched a process of consultation with victims to define its reparations proposals, giving more legitimacy and support to what it recommended. Finally, it pioneered the inclusion of a gender approach to investigations and other activities, even if applying such an approach transversally to all its tasks was difficult.

The CVR presented the result of its work to the country in August 2003. Its *Final Report* consists of nine volumes analyzing the causes and consequences of the internal armed conflict and demonstrating the gravity of the human rights violations that occurred during that period. Most of the CVR's findings were in sharp contrast to widely held views about the nature of conflict in Latin America and to the way Peruvian society viewed itself.

One such finding was that the Shining Path was not only the immediate and fundamental cause of the armed conflict but also the primary perpetrator of abuses.<sup>20</sup> In contrast to other countries in South and Central America, in which state agents were the main perpetrators and only a small fraction of violations was committed by subversive groups, in Peru the CVR attributed to the Shining Path 54 percent of victim fatalities.<sup>21</sup> The commission also found that the police and army were guilty of human rights violations, including systematic and widespread violations in certain places and periods. This provoked the army's outright rejection: It always recognized some errors and excesses, but it was absolutely not ready to acknowledge systematic and widespread violations. This rejection was officially expressed by one of the commissioners, a retired air force general and Toledo's presidential advisor on defense affairs at that time, who signed the *Final Report* under reservation and whose dissent letter was attached to it.<sup>22</sup>

Another finding concerned the number of victims. Until that time, it had been estimated that between 25,000 and 30,000 people had died or disappeared. According to the CVR's calculations, however, the number is far higher, most likely in the region of 69,280, meaning that this was the country's bloodiest conflict, civil or international, since independence.<sup>23</sup>

In its attempt to record human rights violations that were suffered specifically by women, and to acknowledge that the violence affected women and men in different ways, the CVR found that although women were not the principal victims of violations committed by insurgent groups or state forces, they did suffer a set of crimes and outrages that exacerbated previous conditions of ethnic, social, and gender inequality, and to which they were particularly vulnerable because of their gender.<sup>24</sup> The CVR's *Final Report* documented how women were subject to sexual violence in different forms by state forces and insurgent groups. Since these types of crimes are typically underreported because of victims' feelings of guilt or shame, or their fear of stigmatization or ostracism, this documentation is particularly significant. These violations affected not only women's bodies, sexuality, and mental and reproductive health but also their relation-

20 Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 8, conclusion 12.

21 Ibid., conclusion 13. To arrive at this number, the CVR took into account the 23,969 dead and disappeared people who were reported to the CVR in the 16,917 testimonies that were collected during its work.

22 Letter from Commissioner Luis Arias Graziani, cited in Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 8, 385–389.

23 Ibid., conclusion 2.

24 The crimes that most affected women were murders and extrajudicial executions (50 percent), followed by detentions (27 percent) and torture (23 percent), while rape was sixth most common (10 percent), after kidnappings (17 percent) and disappearances (16 percent). The sociodemographic profile of women who were directly affected by human rights violations was relatively similar to that of men: Most female victims (73 percent) spoke Quechua as their mother tongue, 80 percent lived in rural areas, 34 percent were illiterate, and 48 percent were between the ages of 10 and 30.



ships with their families and communities. Women were often rejected, abandoned, or abused by partners; rejected by their families; and stigmatized by the community and seen as impossible to marry.

The CVR also found internal displacement to be the quantitatively most important violation, and the modality of the forced transfer of captive populations by the Shining Path to its camps affecting mostly indigenous populations.<sup>25</sup> According to the commission, “approximately 70% of all internally displaced persons in Peru belonged to peasant communities, native communities, of rural and indigenous origin, ethnic groups that had a special relationship with their lands and territories and that, therefore, saw their way of life radically affected.”<sup>26</sup> It recognized that “displacement affected people in the exercise of their individual and collective fundamental rights, especially in aspects such as equality and non-discrimination, life and personal security, personal freedom, subsistence, needs related to circulation, personal documentation, property and land issues, family and community values, and self-sufficiency.”<sup>27</sup> The resettlement processes that followed were traumatic, with displaced populations facing marginalization, unemployment, prejudice—especially ethnic and cultural discrimination—loss of identity, and extreme poverty.

Although none of the actors in the Peruvian conflict had clear ethnic motivations, ideologies, or claims and, according to the CVR, the conflict itself cannot be characterized as an ethnic or racial one, the commission’s investigation made undeniable the special incidence of political violence in Andean and Amazon regions and communities.<sup>28</sup> This comes to what is undoubtedly the Peruvian Truth and Reconciliation Commission’s central conclusion, which concerns the sociodemographic profile of the conflict victims but also the internal armed conflict itself: the interrelationship between five wide fissures that divide the country and that, in a way, both caused the conflict and were reinforced by it.<sup>29</sup>

In the first place, there was a direct relationship between a person’s poverty and social exclusion and the likelihood of being a victim of violence, which shows a connection between the *socioeconomic divide* and the form the violence took.<sup>30</sup> Furthermore, the departments that were most hit by violence were the poorest in the country’s interior—Ayacucho, Junín, Huánuco, Huancavelica, Apurímac, and San Martín (accounting for 85 percent of the victims)—which shows that socioeconomic divisions were closely related to *geographical* ones.<sup>31</sup> Added to this was the *rural–urban divide*, given that 79 percent of victims lived in rural areas and 56 percent worked in agriculture.<sup>32</sup> The fact that the mother tongue of 75 percent of victims was Quechua or another native language illustrates the effects of the *ethnocultural divide*.<sup>33</sup> Finally, the consequences of the

25 Although there are no exact and official figures on the extent of the phenomenon of displacement, the CVR estimates that around half a million people left their places of origin as a result of the process of violence. Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 6, 646.

26 *Ibid.*, 662.

27 *Ibid.*

28 To reach this conclusion, the CVR took up the definition of ethnic conflict used by Rodolfo Stavenhagen, the sociologist, anthropologist, and pioneering defender of the human rights of indigenous peoples: “The term ethnic conflict encompasses different social and political situations and can be defined as such a confrontation where two or more groups in conflict distinguish themselves and their adversaries based on ethnic differences, such as language, race, color, religion, nationality, or lineage. In this way, ethnic identity is used as an effective symbol of political cohesion and mobilization, and it becomes a central factor in the confrontation.” Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 8, 119.

29 The country should almost be considered as if it were made up of three different nations, one located in the coastal plains and cities, another in the Andean highlands, and a third and even less visible one located in the Amazon basin to the east of the Andes.

30 Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 8, conclusion 4.

31 *Ibid.*

32 *Ibid.*, conclusion 5.

33 *Ibid.*, conclusion 6.

*education gap* are revealed in the fact that 68 percent of victims had not finished secondary school or were illiterate.<sup>34</sup> Thus, the profile of the victim was somebody who was poor; who lived in rural communities in the poorest and most marginalized departments of the country, located in the Andes or Amazon basin; who was indigenous; and who was illiterate. In sum, it was a picture of the socially and economically excluded.

Since the violence unequally impacted different geographic spaces and different strata of the population, the CVR concluded that “together with the socioeconomic gaps, the process of violence revealed the seriousness of the ethnic-cultural inequalities that still prevail in the country” and different dimensions of the marginalization, discrimination, and racism affecting indigenous peoples of the Andean and Amazon regions.<sup>35</sup> It exposed the deep disdain for indigenous communities and cultures held by both the Shining Path and the armed forces when indigenous people were not loyal or submissive to their ideological views or their hold on power. It also highlighted the prior invisibility of those communities in the eyes of broader Peruvian society in the coastal cities, which had remained for years unaware of the extreme degree of violence and human rights violations that were committed against them.

The prejudices that were revealed by the CVR’s *Final Report*, combined with the remoteness of the affected communities from not only power and decision-making spheres but also infrastructures and basic services, in a highly centralized country, made it possible to ignore the violence and keep it low among the country’s political priorities.

## Root Causes of the Violations: Underlying Societal and Structural Factors and Permanent Risks

According to the CVR, “the tragedy suffered by the populations of the rural, Andean and jungle in Peru, Quechua and Asháninka, peasant, deprived and poorly educated was not felt or assumed as their own by the rest of the country; this reveals, in the opinion of the CVR, the veiled racism and attitudes of contempt that persist in Peruvian society almost two centuries after the birth of the Republic,” a society that has never been able to be satisfactorily integrated.<sup>36</sup>

The roots of the lack of integration, social gaps, and subsequent delegitimization of the state can be traced back to the country’s independence and the founding of the Republic in 1821. “[The] Republic had the capital sin of being born without the Indian and against the Indian,” summarized José Carlos Mariátegui.<sup>37</sup> Independence was not the fruit of a social revolution, much less of an indigenous movement; it broke with colonial domination only to impose creole domination, leaving the structures of the former unscathed. “The demands of the indigenous people were not taken into account, and Independence and the Republic did not mean for them any significant improvement in their social condition; in many cases it represented rather a worsening of the relative situation, and the colonial structures of internal domination remained in

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34 Ibid., conclusion 7.

35 Ibid., Vol. 1, 70.

36 Ibid., Vol. 8, conclusion 9.

37 Cited by Nelson Manrique Gálvez, “No hay una sino muchas crisis. Los orígenes sociales de la violencia política en el Perú,” in *El tiempo del miedo. La violencia política en el Perú, 1980–1996* (Lima: Fondo Editorial del Congreso del Perú, 2002), 60.

force.”<sup>38</sup> Independence did nothing more than reinforce differences based on appearances, origins, titles, and income. “The consideration of the Indian as an inferior being arose openly, who had to be protected or punished and who was not necessary, due to impossibility, to incorporate into republican life,” argues Alberto Flores Galindo. “The marginalization of the illiterate, then, will actually be the marginalization of the Indian with respect to the electoral system.”<sup>39</sup> This colonial heritage persisted through violence and racism in daily life.<sup>40</sup> According to Nelson Manrique, the type of deeply exclusive and segregationist state that was generated at that time, which inherited and endorsed an anti-indigenous colonial discourse and considered whites to be intrinsically superior, still remains in force.<sup>41</sup>

The fundamental relationship between the problem of indigenous domination and the survival of a latifundist system and a semifeudal economy was not addressed in the first century of the Republic.<sup>42</sup> Nor was it addressed between the 1930s and 1960s: Unlike other Latin American countries, Peru did not experience social or political transformations in this period, largely because it did not have a bourgeois class. Peru’s social dynamics remained stagnant as a result of civil–military governments controlled by the oligarchy.

The question of social and cultural integration was not seriously raised except during the military government of Juan Velasco Alvarado, from 1968 to 1975, which responded to multiple social pressures from worker and student movements and large peasant mobilizations through a series of reforms, such as agrarian reform, nationalizations, educational reform, officialization of Quechua as an official language, and legal recognition of the Andean and native communities.<sup>43</sup> As the CVR would explain: “Without a national and inclusive educational system or popular revolutions such as the Mexican or Bolivian, the greatest processes of social and cultural integration have arisen from authoritarian projects such as that of General Juan Velasco Alvarado.”<sup>44</sup>

The Velasquista project failed, however, mainly affecting these same social sectors “that previously had not had access to social mobility, due to obstacles not only social and economic but also ethnic-racial, who then had the opportunity to know the rights they formally had and were entitled to, but [were] denied in everyday reality.”<sup>45</sup> Again, as the CVR would conclude:

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38 Ibid., 57. In this regard, José Carlos Mariátegui also noted: “The Republic has pauperized the Indian, has aggravated his depression and has exasperated his misery. The Republic has meant for the Indians the rise of a new ruling class that has systematically appropriated their lands. In a race of agrarian customs and soul, like the indigenous race [sic], this dispossession has constituted a cause of material and moral dissolution... Creole feudality has behaved, in this regard, more avidly and harsher than Spanish feudality.” José Carlos Mariátegui, “El problema del indio,” in *7 ensayos de interpretación de la realidad peruana* (Marxists Internet Archive, 2000), 9.

39 Alberto Flores Galindo, “La tradición autoritaria: violencia y democracia en el Perú,” in *La tradición autoritaria: Violencia y democracia en el Perú* (Lima: SUR Casa de Estudios del Socialismo—APRODEH, 1999), 12.

40 Ibid., 15.

41 Manrique, “No hay una sino muchas crisis,” 57. Manrique adds, “A state of a minority that governs for the minority, excluding the great majorities from the exercise of political power; who finds it normal that minorities simply do not have political expression and, even worse, that minoritized majorities.”

42 Mariátegui, “El problema del indio,” 7.

43 Manrique, “No hay una sino muchas crisis,” 53–60.

44 Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 1, 73.

45 Manrique, “No hay una sino muchas crisis,” 55. Manrique considers that there is a direct relationship between these sectors that are affected by the truncation of the state modernization project and those who found in the Shining Path a channel of political expression.

The state's accelerated expansion and presence in the economic, political, and social spheres had not reached marginal areas, such as the rural Andean area, through infrastructure or services, but only through obligatory military service or the primary school system.... The country's economic policies had widened the gap between rich and poor, particularly in rural Andean areas. Finally, the expansion of the education system was not matched by a degree of economic growth that could ensure a formal labor market big enough to absorb the qualified population; the result was a "myth of progress."<sup>46</sup>

The 20 years of political violence from 1980 to 2000, then, emerged from, exposed, and exacerbated almost two centuries of domination, marginalization, and oppression—whether of a cultural, social, economic, or political nature—of members of the Andean and native populations.

In presenting the CVR's *Final Report*, the commission's president, Salomon Lerner, argued:

To assume the moral obligations that emanate from this report—the *obligation to do justice and to make the truth prevail, the obligation to close the social gaps that were the background of the misfortune experienced*—is the task of a statesman, that is, of a man or a woman determined to govern to improve the future of their fellow citizens.... We also present [the *Final Report*] as a mandate from the absent and forgotten to the entire Nation. *The story told here talks about us, what we were and what we must stop being. This story talks about our tasks. This story begins today.*<sup>47</sup>

The report's underlying message was, then, that the country could not continue to be managed in the same way without running the risk of deepening these divisions and furthering the delegitimization of the state. The message is unfortunately difficult to accept in all its magnitude and consequences for the political, economic, and social elites of the country, insofar as it questions a political, institutional, economic, and social system that is beneficial to those elites.

## The Pathway to Reconciliation

According to the CVR, the pathway to reconciliation in Peru lies precisely in overcoming the different social fractures that were exposed by the armed conflict and highlighted in the commission's *Final Report*. Indeed, in the volume containing its recommendations, titled *Toward Reconciliation*, the CVR proposes to the state ways to prevent violence from recurring in an almost chronological sequence of "truth—justice—reparations—guarantees of no repetition." The post-commission agenda should therefore involve the implementation of its recommendations on criminal justice, reparation measures for victims and their families, and institutional reforms.

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<sup>46</sup> Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 1, 73.

<sup>47</sup> Presentation speech of the *Final Report* of the CVR, August 28, 2003, Lima, available on the CVR website: [http://cverdad.org.pe/informacion/discursos/en\\_ceremonias05.php](http://cverdad.org.pe/informacion/discursos/en_ceremonias05.php); Emphasis in the citation is the author's.

Regarding criminal justice, precedent had been set primarily by the prior decision of the Inter-American Court of Human Rights on the merits of the Barrios Altos case, which declared the two amnesty laws incompatible with the state's international obligations. Consequently, it was possible, on the one hand, to reopen a large number of cases, and on the other, for the CVR to play a truly complementary role, and not act as a substitute for criminal justice.<sup>48</sup> In this sense, the Peruvian experience seems atypical as, for the first time, a truth commission did not just hand its full archives to the judicial system or function in parallel with it. Instead, the CVR performed 47 initial investigations of representative cases of the most serious human rights violations that had been committed and officially presented them, duly documented "with the evidence that has served to form a conviction on the presumed criminal responsibility of the people identify as probable agents of crime," to the Public Prosecutor's Office.<sup>49</sup> It encouraged the office "to open in the shortest term (30 days) the corresponding investigations against the alleged perpetrators of the crimes investigated by the CVR," clearly demonstrating its relationship with criminal justice.<sup>50</sup> The work was not exempt from internal challenges in defining appropriate investigative strategies and coordinating with other truth-seeking efforts made by the commission, however. It also created a strained relationship with the public prosecutor, who was reluctant to work with an ad hoc institution with huge resources. This resistance to accepting the validity of the CVR's investigations for prosecution purposes may have affected the continuation of the investigations that were initiated by the CVR after it finished its mandate.

According to the CVR's conception, reparations are understood as state gestures and actions on behalf of society that seek to acknowledge the harm done to victims and to reassert their dignity and, above all, their status as full citizens. Reparations constitute the materialization of the acknowledgment of their pain and suffering as victims of human rights violations. They also constitute an expression of society's efforts to establish relations of equality and respect. Ambitiously, "the Comprehensive Reparations Plan [PIR-CVR] should be one of the instruments that serves to strengthen the process of consolidation of an inclusive democracy and the future of national coexistence," one of the instruments that leads to "a new social pact and toward reconciliation."<sup>51</sup>

The PIR-CVR's general objective was "to repair and compensate for the violation of human rights as well as the social, moral and material losses or damages suffered by the victims as a result of the internal armed conflict." That is, it was directed to

recognize the condition of victims who suffered the violation of their human rights during the internal armed conflict, in order to restore their citizenship rights, and contribute to the reestablishment of civic trust and social solidarity; contribute to the moral, mental

48 This function was not explicitly included in the legal mandate of the commission, but its members adopted this extensive interpretation based on the language of Article 2.b of its creation decree, which defined the commission's objectives, including the directive "to contribute to the clarification by the respective jurisdictional organs, when it corresponds, of crimes and human rights violations committed by terrorist organizations or some State agents..., and identifying, as possible, the presumed responsibilities."

49 Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 9, 118–119.

50 Ibid. See also Eduardo González, "The Peruvian TRC and the Challenge of Impunity," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (New York: Cambridge University Press, 2006), 70–93.

51 Julie Guillerot, "Hacia la reparación integral de las víctimas del conflicto," in *Informe sobre la situación de los DESC 2002–2003 en el Perú: Dos años de Democracia... y ¿los DESC?* (Lima: APRODEH and CEDAL, 2003), 85; Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 9, 147–148.

and physical recovery of the surviving victims of human rights violations as well as the relatives of the dead and disappeared persons as a result of the internal armed conflict; repair economic and social damage to the most affected individuals, families and communities, caused by the internal armed conflict.<sup>52</sup>

To this end, the PIR-CVR is composed of six programs: symbolic repairs, health reparations, education reparations, restitution of citizens' rights, economic reparations, and collective reparations. Each includes a justification, a specific objective, a list of beneficiaries to whom it is addressed, and the details of the components and measures it comprises.

The CVR's mandate to make recommendations was not limited to forms of reparations to victims but included "recommending institutional, legal, educational and other reforms *as prevention guarantees*, so that they are processed and undertaken by legislative, political or administrative initiatives."<sup>53</sup> As seen previously, the CVR responded to its mandate of "analyzing the political, social and cultural conditions as well as the behavior, which, from society and the State's institutions, contributed to the tragic violence situation undergone by Peru," by addressing the conditions of historical marginalization of the processes of cultural, social, economic, and political democratization, the centralization of power, and the absence of the state and basic services, all affecting the people of the Andes and the Amazon basin.<sup>54</sup> Proposed institutional reforms, therefore, addressed the root factors that caused or facilitated the conflict.

In this sense, the CVR's proposals for institutional reforms directed at "modifying the conditions that generated and deepened the internal conflict" are organized around four main themes:

1. consolidate the presence of the democratic authority and State services throughout the territory, collecting and respecting popular organization, local identities and cultural diversity, and promoting citizen participation;
2. strengthen a democratic institutionality, based on the leadership of political power, for national defense and the maintenance of internal order;
3. reform the justice administration system so that it can fully play its protective role of citizens' rights and constitutional order;
4. reform of the educational system to ensure quality and the promotion of democratic values: respect for human rights, respect for differences, the appreciation of pluralism and cultural diversity; and updated and complex visions of the Peruvian reality, especially in rural areas.<sup>55</sup>

Each one of these areas included several specific policy recommendations, containing as many as 53 policy proposals.<sup>56</sup>

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52 Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 9, 154.

53 Supreme Decree 101-2001-PCM, Art. 2.c.

54 Supreme Decree 065-2001-PCM, Art. 2.a.

55 Comisión de la Verdad y Reconciliación, *Informe Final*, Vol. 9, 123.

56 *Ibid.*, 123–146.

# The Transitional Process After the CVR

## The *Final Report*: Little Consensus

The CVR undertook its work in a broad, comprehensive, and complex manner—with academic and field research through the collection of testimonies and in-depth multidisciplinary truth-seeking studies; the organization of public hearings; an exhibition and exhumations; the incorporation of a gender perspective; and the preparation of cases for the judiciary—accompanied by the international and national human rights communities. The commission fulfilled its work in the little less than two years it was mandated. Its *Final Report* was first delivered to the then president of the Republic, Alejandro Toledo, in Lima on August 28, 2003, and the day after in a symbolic ceremony in Ayacucho. Seen internationally as a technical, independent, and solid institution, it became a reference for similar bodies that were created in later years and for transitional justice processes around the world. However, the CVR's *Final Report* and its work to amplify victims' voices and give them the credit and recognition that they so long had been denied did not touch the national popular, political, and media psyche as deeply as might have been expected from such a remarkable truth commission.

The CVR was, ultimately, unable to reverse either the indifference that Peruvian society had shown throughout the conflict to the violations that were perpetrated in the Andes and Selva or the initial resistance to its creation and composition. And certainly, the *Final Report* generated resistance from those sectors that were already against its existence. Although this topic would require a detailed examination that is beyond the scope of this study, some interlocking elements of analysis can be outlined.

Created quickly to take advantage of the political will that existed during the transition, the CVR was not the result of a national consultation process. This led, on the one hand, to a lack of full knowledge and understanding of the commission among the victims in particular and the public in general, despite the CVR's communication and outreach efforts, creating fertile ground for indifference, misunderstandings, frustration, or, worst of all, manipulation by ill-intentioned sectors. On the other hand, the CVR's rapid creation at the initiative of a progressive democratic academic elite from Lima has been associated with human rights NGOs' lobbying and success. For sectors allied to the "Fujimorismo," including the national mass media, this association was enough to automatically disqualify the commission and its *Final Report*, without even examining it; opponents smeared the commissioners in a vulgar but effective portrayal of an association between the Shining Path, communism, the left, human rights NGOs, and the CVR, the last ending up being described as defenders of SL. In the regions, most local press and radio stations denounced what they saw

as the centralism and elitism of the CVR, while its association with human rights NGOs worked against it according to a discourse in which human rights NGOs profit from the pain of victims.<sup>57</sup> These views persisted long after the presentation of the *Final Report* and remain common today.

While instruments such as the Yuyanapaq photography exhibition and the CVR's public hearings helped reach a wider audience, the format of the *Final Report* as a nine-volume, roughly 5,000-page work—which is clearly an instrument of the literate city, written in Spanish and disseminated only within the most integrated circles—reinforced the idea that it came from a group of actors who were outside the political establishment but still among the capital's elite sectors, like academia and civil society. Even the abridged version of the report, with a title in Quechua, *Hatun Willakuy (The Big Story)* but no version in any vernacular languages, is still almost 500 pages long, comprehensive and academic.<sup>58</sup> There is no official synthesis or translated audiovisual or radio version intended for the common public, leaving dissemination to the mass media and, mainly, the human rights NGOs, through summaries, short versions, and selection of certain parts of the text, which are always more conducive to interpretations and subjectivities.<sup>59</sup>

Another factor that complicated the general understanding and political acceptance of the CVR's narrative is related to its temporal mandate of 1980 to 2000. On the one hand, Abimael Guzmán and almost the entire national leadership of SL were captured in 1992, while Guzmán and the SL Political Bureau launched a proposal for a “peace agreement” to end the conflict in 1993. Thus, many see the inclusion of Fujimori's second administration in the CVR's mandate as mixing various processes that are not necessarily part of the armed conflict. Supporters of Fujimori even see it as a deliberate effort against his regime. On the other hand, the CVR had to critically examine the behavior of two democratic governments belonging to parties that had been long embedded in the Peruvian political tradition, and that continue to compete today in parliamentary and presidential elections.<sup>60</sup> Though completely justifiable from a legal human rights perspective, this provoked resistance from those political parties, leaving the report with weak political backing.

Furthermore, the *Final Report's* boldness and strong conclusions, consciously maximalist from legal and ethical perspectives, raised questions about the complicity or silence of almost all national sociopolitical actors and institutions, which created a communication barrier between the CVR and those entities.<sup>61</sup> The commission's mandate to collaborate with criminal accountability processes also increasingly strained its relationship with the national prosecutor, which grew resistant to the CVR's recommendations regarding

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57 Antonio Zapata Valsco, *La Comisión de la Verdad y Reconciliación y los medios de comunicación, Ayacucho y Lima*, Serie Sociología y Política (Lima: DED-IEP, 2010), 15–37.

58 It has an abbreviated English version as a result of the combined efforts of ICTJ, the Center for Civil and Human Rights of the University of Notre Dame, and the Institute of Democracy and Human Rights of the Peruvian Catholic University, available on the ICTJ website ([www.ictj.org/sites/default/files/subsites/peru-hatun-willakuy-en/](http://www.ictj.org/sites/default/files/subsites/peru-hatun-willakuy-en/)).

59 At the same time, the media's tendency to pursue sensationalism rather than awareness and sensitization resulted in a public debate focused on specific and controversial issues that were raised—or were supposedly raised—by the *Final Report*: whether the Shining Path was a political party, whether qualifying the period as an “internal armed conflict” gave rights to the *senderistas*, whether the human rights violations that were committed by the state armed forces had been systematic and generalized or simple “excesses,” whether the number of victims had been inflated or not, and so on.

60 That is, the center-right government of Fernando Belaunde (1980–1985) from Acción Popular and the center-left government of Alan García (1985–1990) from Alianza Popular Revolucionaria Americana, both representing the long democratic political traditions of 20th-century Peru.

61 This involved, for example, the left parties, the legislative power, the judiciary, the human rights movement, trade unions, business unions, women's organizations, the Catholic and evangelical churches, the media, the educational system, the teaching profession, and the universities. González, “The Peruvian TRC and the Challenge of Impunity,” 70–93.



prosecutions. Its success in investigating disappearances, exhuming mass graves, and leading the identification of remains also created rivalries with institutions that were supposed to continue those tasks.<sup>62</sup> In general, the commission was unable to improve the effectiveness or even the commitment of the permanent institutions that were responsible for pursuing accountability in the long term.

Finally, one of the most contentious issues surrounding the CVR to this day relates to the narrative of the conflict and its violence that is contained in the *Final Report*, which is radically different from the account that was promoted for more than 10 years by the Fujimori government. During the 1990s, Fujimori and the armed forces claimed absolute responsibility for the defeat of the Shining Path, and their political prestige was principally built on this alleged victory. According to this narrative, any violation attributed to the armed forces or the police was collateral damage, the price for peace and the result of individual excesses, without any institutional or political responsibility.

These two opposing narratives differ not only on the lessons that need to be extracted from the past but also on the political challenges the country faces ahead. According to Rafael Barrantes and Jesús Peña, this goes beyond a strict analysis of the internal armed conflict:

The first holds a *memory for reconciliation* that it is open to democratic values and the realization of a just constitutional order and without exclusions; the second narrative presents a *memory of salvation*...[that] raises the possibility of compromising some democratic values in exchange for peace and order... In the Peruvian case, civil organizations linked to the armed and police forces, some members of the security forces—retired and active—, conservative sectors of the political right and the church, economic elites (among which some business unions stand out) and supporters of the dictatorial regime of Alberto Fujimori are *entrepreneurs of the memory of salvation*; on the other hand, human rights organizations, some professional unions, progressive sectors of the political spectrum and the church, various intellectuals and victims' organizations are *entrepreneurs of memory for reconciliation*. On the other hand, the media are also agents or entrepreneurs related to one or another memory; in this role they not only guide their editorial lines, but also shape the news.<sup>63</sup>

The *Final Report* was unable to dispel the narrative that had been built during the authoritarian regime, which is deeply rooted in popular memory. For a traumatized population and middle class, which feared and felt threatened by what they saw as uncontrolled subversion and terrorism, the memory of salvation better captures their experiences than a reexamination of their own deep-rooted biases, racism, and responsibility. While the commission's message affects the hegemonic political and cultural pretensions of various groups in power, which have access to the media, the *Final Report* has further polarized public dis-

62 Ibid.

63 Rafael Barrantes and Jesús Peña, "Narrativas sobre el conflicto armado en el Perú: la memoria en el proceso político después de la CVR," in *Transformaciones democráticas y memorias de la violencia en el Perú*, Colección Documentos de trabajo, Serie Reconciliación No. 2, (Lima: IDEHPUCP, 2006), 17.

course, leading to political and sectoral public decisions that are consistent with a certain reading of history and political gains, depending on the sensitivity of officials to one or the other memory.<sup>64</sup>

In addition to the supporters of these two conflicting narratives, there are those who simply call for society to “not dig up the past anymore,” to “turn the page,” to “not sow more hatred among Peruvians.” The general attitude of many Peruvians toward victims, who are often poor, uneducated peasants, speaking an indigenous language, in a society marked by racism and discrimination, continues to be closer to contempt for human dignity than to a real capacity for empathy.<sup>65</sup> No less significant was the linkage the commission drew between the conflict, the invisibility of the fate of most of its victims, and the historical marginalization of part of the country. Its open indictment of racism implicated not only the institutions that were directly questioned but society as a whole, which was presented with an ugly picture that called into question its self-image since its foundation as a country and even its democratic traditions. Again, the *Final Report's* most profound findings revealed the existence of ghosts that society as a whole did not want to confront. Thus, the backdrop is the indifference of the majority.

President Toledo's 2003 speech on the *Final Report* captures the delicate balance between all these positions.<sup>66</sup> While he officially asked forgiveness from the victims, which was one of the commission's recommendations, he added that “we were not part of the government,” ignoring the principle of state continuity and dropping all sincerity and solemnity, which is fundamental for this type of symbolic act to fulfill its objective with victims. Likewise, Toledo failed to recognize that law enforcement violations were systematic and widespread in certain places and during certain periods, as concluded by the CVR. He preferred to promote the notion that “some members of the law enforcement agencies have committed painful excesses,” terms that were much gentler to the ears of the same law enforcement agencies that, during his rule, maintained power and some of whose agents from earlier years still held their positions.

As suggested above, the period that began in 2000 has deliberately not been organized around a rhetoric that conceives transition in all its complexity and magnitude. The democratic transition, and the consequent public debate, were fundamentally directed to the problems of the electoral process and legislation, corruption, and the independence and supervision of the powers of the state. They did not address the creation of a pluralist society based on a new social pact that includes all Peruvians in the benefits and obligations of citizenship or in respect to a return to democracy after not only a dictatorship but also an armed conflict and the comprehensive resolution of human rights violations that were committed during the recent past. The transition was not seen as a multifaceted medium- and long-term process that would involve the responsibility of subsequent governments.<sup>67</sup>

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64 It should be noted that more than 80 percent of the media (traditional press, digital press, television, radio) belong to the same economic group, the corporation Grupo El Comercio, which has been facing a pending trial for undue concentration since 2014. To this day, these conflicting interpretations reappear on the public and political stage every time the CVR and its message, or some linked issues, are discussed. See Barrantes and Peña, “Narrativas sobre el conflicto armado en el Perú,” 37–40.

65 This was also illustrated by the reaction of several political leaders who, upon learning the number of people the CVR identified to have died or disappeared during the conflict, instead of being horrified, demanded that their identity documents be shown, when in 1980 more than two million Peruvians lacked such documents. In 2000, it was estimated that in the departments of Ayacucho, Huancavelica, and Apurímac, the lack of documentation still reached 20 percent.

66 Speech by the president of the Republic, Alejandro Toledo, on the *Final Report* of the Truth and Reconciliation Commission, Nov. 21, 2003.

67 See Félix Reátegui, “Batalla contra la memoria: instrucciones para liquidar una transición,” in *El incierto camino de la transición: a dos años del Informe Final de la Comisión de la Verdad y Reconciliación* (Lima: IDEHPUCP, 2005), 13–23.

Thus, it is not surprising that the first democratically elected government dedicated itself to the affairs of current politics and chose not to invest itself with historical responsibilities, in particular through the implementation of the CVR's recommendations. As Félix Reátegui, writing during the Toledo administration, two years after the report was released, put it: "We are faced with a government with various institutions and tasks of a transitional character, without this government and the various social and political sectors perceiving it as such."<sup>68</sup> It is similarly not surprising that the efforts around and attention to the issue waned under subsequent governments, despite civil society and victims' activism. The economic growth that was experienced by the country during those years received the most political attention and priority.

In the absence of political referents who fly the flag of human rights in general, and without political and institutional backing for the *Final Report*, the issues it raised returned to the field of civil society, particularly those who were already and previously convinced, human rights NGOs, victims' organizations, and a few public officials with a conscience.

## Implementation of the CVR's Recommendations: Dispersed and Diluted Resonance

Assessment of the commission's impact started early on. Four years after the CVR delivered its report, ex-commissioner Sofía Macher made an exhaustive review of the Toledo government's compliance with the 85 recommendations.<sup>69</sup> She concluded that "if we stick to a literal approach to the set of recommendations, only 17% satisfactory progress has been made and most of the actions carried out refer to the issue of reparations. An additional 42% have a still unsatisfactory development: they have not been fully met but have moved in the suggested direction. Of course, there have also been compliances that are only on paper and that have not been translated into practice."<sup>70</sup> Progress was nonexistent in some specific areas:

- improving access to justice for all by increasing the number of public defenders and judicial units and providing more resources to popular clinics;
- recognizing and integrating the rights of indigenous peoples and communities in the national legal framework;
- implementing an emergency plan for education designed to serve the most vulnerable populations in the poorest areas of the country;
- promoting a literacy plan with priority for adolescent and adult women in rural areas (the only recommendation that has a specific focus on women);
- redefining education in terms of content, methodologies, and coverage, placing an emphasis on the rural population; and
- increasing the quality of rural schools.

<sup>68</sup> Ibid.

<sup>69</sup> Sofía Macher, *Recomendaciones vs. Realidades: avances y desafíos en el Post-CVR Perú*, (Lima: Instituto de Defensa Legal, 2007).

<sup>70</sup> Ibid., 15.

Given the CVR's conclusions about the social fractures that allowed the conflict to happen, it is powerfully striking that it is precisely in the areas that directly have to do with excluded populations, with special emphasis on education, that no progress had been made in the four years after the delivery of the *Final Report*. According to Macher, this showed "a still insufficient social commitment and a fragile and elusive political will to produce the changes that are required."<sup>71</sup> It is evident that the report did not initially push the political establishment and public opinion, beyond the already convinced (human rights NGOs and victims' organizations), toward a deeper understanding of the realities that were reported or to reach the necessary consensus to fully implement its recommendations.

Later assessments, 10 years after the release of the *Final Report* and in the years since, show that the implementation of the CVR's recommendations remains unfinished, characterized by progress, setbacks, and even internal contradictions.<sup>72</sup>

### Comprehensive Reparations Plan

In the area of reparations, one of the few areas that are clearly assumed as part of a post-CVR agenda, the main advances are related to the design of a normative and institutional framework. Law No. 28592 (of 2005; also known as the PIR-Law) created the Comprehensive Reparations Plan, which established "the Normative Framework of the Integral Plan of Reparations for the victims of the violence that occurred during the period from May 1980 to November 2000, according to the conclusions and recommendations of the Truth and Reconciliation Commission Report."<sup>73</sup> This constituted an important milestone since it provided legal certainty and framed the process within the conceptual continuity of the CVR itself.<sup>74</sup> The regulation of the law—adopted a few days before Toledo's government came to an end, in part due to the sustained efforts of the human rights movement—developed the programs, principles, approaches, and criteria that should govern the reparation process, using a similar vocabulary and content to the CVR's recommendation.<sup>75</sup>

The governing body of the reparations policy was actually created before the adoption of the law: The High-Level Multisectorial Commission in Charge of the State's Actions and Policies Related to Peace, Collective Reparation and National Reconciliation (CMAN) is a collegial body, composed of various sectors of the executive branch and representatives of civil society and complemented by another such body, the Reparations Council, which has the sole function of preparing the Unified Registry of Victims.<sup>76</sup> Depending on the

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71 Ibid., 8.

72 See Defensoría del Pueblo, "A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso," Serie Informes Defensoriales—Informe No. 162 (2013); Sofía Macher, *¿Hemos avanzado? A 10 años de las recomendaciones de la Comisión de la Verdad y Reconciliación* (Lima: Instituto de Estudios Peruanos, 2014).

73 Law No. 28592, July 29, 2005, Art. 1.

74 "In general terms, the PIR-Law was sought to order the regulatory framework referred to reparations. It created and reorganized an organic structure and established roles and responsibilities to certain entities, including those created previously." Julie Guillerot, Reparations, Responsibility & Victimhood in Transitional Societies, "Reparations in Peru: 15 Years of Delivering Redress" (Sept. 2019), 15.

75 Supreme Decree 015-2006-JUS, July 6, 2006. Modified by Supreme Decree 003-2008-JUS, Feb. 21, 2008. These refer to executive regulations passed in accordance with the law for its implementation.

76 Supreme Decree 011-2004-PCM, Feb. 5, 2004. Its initial composition was modified twice. In the first one (Supreme Decree 024-2004-PCM, March 25, 2004, Art. 2), the number of representatives of civil society was increased, bringing the number of commissioners to 11. In the second (Supreme Decree 062-2006-PCM, Sept. 28, 2006), the number of representatives of ministries was increased, bringing the number of commissioners to 14.

goodwill and political support of the administration in charge, the CMAN passed through different periods and limitations in its institutional life, which impacted its leadership and capacity.<sup>77</sup> This was the case with the Reparations Council as well.<sup>78</sup>

The CMAN designs, coordinates (with national, regional, and local sectors), and supervises the implementation of the PIR-Law programs, and its executive secretariat is directly in charge of implementing the Collective Reparations Program (started in 2007) and the Individual Economic Reparations Program (started in 2011).<sup>79</sup> The Educational Reparations Program (started in 2012), the Health Reparations Program (started in 2006), and the Program for Promotion and Facilitation of Housing Access (started in 2012) are implemented by the sectors. Less clear are the exact responsibilities assigned to the implementation of the Citizen Rights Restitution Program.<sup>80</sup>

The Collective Reparations Program received the greater and earliest support from the state. It consists of financing small projects of a single investment of a maximum PEN 100,000, approximately US\$36,000, decided in a participatory manner by the community.<sup>81</sup> The program reduced the scope from what the CVR recommended, and although it contemplates four modalities, in practice the projects are essentially linked to infrastructure and technical-productive activities, with many being not very different from other public investment projects.<sup>82</sup> By the end of 2019, a total of 3,351 projects in 3,326 communities had been implemented, in 58.2 percent of the communities registered among the most affected.<sup>83</sup> In many cases, the projects that have been implemented have operational or sustainability problems, deficiency or delay in their execution, and little impact due to the unawareness of community members about the origin and reparative intent of the project.<sup>84</sup> Since 2016, and after more than 600 monitoring visits, the executive secretariat of the CMAN is working to correct the deficiencies, especially in the accompaniment of the communities before, during, and after the implementation of the project, with a series of protocols and guidelines to ensure symbolic, intercultural, participative, gender-sensitive, and reparative approaches.<sup>85</sup>

77 For example, the CMAN has undergone changes in its location in the state apparatus four times, and from May to October 2006, it simply stopped sitting. For more details, see Guillerot, “Reparations in Peru,” 21–22.

78 For example, at the time of its installation, its budget was not included in the budget document of the Presidency of the Council of Ministers, the sector to which the Reparations Council is ascribed. It has had to face changes in its institutional location between the Council of Ministers and the Ministry of Justice. And, from February to November 2018, it was left with four members and could not adopt decisions, since at least five members were needed to do so. For more details, see Guillerot, “Reparations in Peru,” 22–25.

79 According to the law, the PIR was composed of a citizens’ rights restitution program, an education reparations program, health reparations, collective reparations, symbolic reparations, and a program to promote and facilitate access to a solution of housing. In making use of the open formula contained in Article 2 of the law, the regulation incorporates the program of economic reparations.

80 This program has different components that require not just special legislation, which in some cases has been passed, but the implementation of special programs by the civil registry service, courts, or others.

81 This was equal to around US\$32,000 at the exchange rate of the time; in 14 years, despite inflation and changes in purchasing power, this amount has not been modified.

82 The most common are the construction or implementation of communal premises, medical posts, educational classrooms, truck paths, irrigation systems, livestock activities, and fish farming.

83 Secretaría Técnica de la CMAN, “Informe anual 2019” (2020), 7.

84 ICTJ-APRODEH, “¿Cuánto de ha reparado en nuestras comunidades? Avances, percepciones y recomendaciones sobre reparaciones colectivas en Perú (2007–2011)” (2011).

85 See Secretaría Técnica CMAN, “Lineamientos para la adopción de acciones diferenciadas en la implementación del plan integral de reparaciones a mujeres y población LGTBI” (2018); Secretaría Técnica CMAN, “Protocolo de intervención comunitaria en el Programa de Reparaciones Colectivas” (2019).

In response to the persistent demands of the victims, their organizations, and other NGOs, as well as the recommendations of the Ombudsman's Office, the Individual Economic Reparations Program was finally approved in 2011 and established the amount of individual financial compensation (PEN 10,000; approximately US\$3,600) to be given to the family of those who were killed or disappeared, to those who are permanently disabled, and to victims of rape. The program has been severely criticized by civil society on several fronts.<sup>86</sup> It was not until 2016, following the 5th Constitutional Court of Lima's decision, that victims could be granted economic reparations for each harm suffered.<sup>87</sup> The number of victims who have received these payments is not negligible: At the end of 2019, it was 85,975.<sup>88</sup>

The other reparations programs are implemented through general social programs, which in practice means not only that no special reparatory approach is taken, but also that victims must meet criteria based on their socioeconomic condition or that receiving a reparation benefit precludes their access to another government bonus.<sup>89</sup> This also limits coverage to those with the information and ability to complete an application and then qualify under the selection criteria, which is perfectly visible in regard to the number of beneficiaries of the reparation program in education, for example: Only 3,671 scholarships were granted from 2012 to 2018, against a total of 12,082 people registered in the Registry of Beneficiaries of Reparations in Education, showing the level of expectations among victims.<sup>90</sup> However, the 2016–2021 Multiannual Plan for Reparations in Education explicitly limited its coverage to a goal of 5 percent of the total of scholarships.<sup>91</sup>

The Health Reparations Program has the same original flaw, as it goes through a regular social program extending the benefits of the Comprehensive Insurance of Health to the victims or their relatives and the free delivery of medicines for the treatment of complex diseases derived from violence. In 2019, the Comprehensive Insurance of Health provided benefits to a total of 113,504 victims.<sup>92</sup> The number is impres-

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86 Mainly, critiques have centered on two points: (1) The question of the amount. Only in the case of direct victims (those with disabilities or victims of rape) have victims received 100 percent of the amount. In other cases (such as the death or disappearance of victims), the amount is divided between the family members (spouse, parents, and children), and thus the amount they actually received could be tiny. In any case, these amounts are negligible compared to other economic measures that have been delivered to members of self-defense committees (S/. 39,000) or recognized in special regulations for some officials and public servants, which reach up to US\$30,000. (2) The question of the deadline for the registration of beneficiaries (until December 31, 2011), which contradicts the inclusive and permanent nature of the Unified Registry of Victims. This provision also affects the principle of nondiscrimination and equality between victims, included in Article 6.d of the PIR-Law, when granting a differentiated and unjustified treatment for the beneficiaries of the Individual Economic Reparations Program who were not identified within the established deadline. Newly, because of the sustained pressure of victims, their organizations, national and international NGOs, and the Ombudsman's Office, an important advance was achieved: the issuance of Supreme Decree 012-2016-JUS, which allowed the reestablishment of the determination of beneficiaries of the Individual Economic Reparations Program and the reopening of the Unified Registry of Victims for this program.

87 On this interpretative issue, see Defensoría del Pueblo, "Análisis de la normatividad vigente sobre reparaciones económicas a beneficiarios con más de una afectación," Informe de Adjuntía No. 002-2013-DP/ADHPD (2013); Centro Internacional para la Justicia Transicional, "Reparación a víctimas de varias violaciones de derechos humanos" (2013).

88 Secretaría Técnica de la CMAN, "Informe anual 2019," 4.

89 Interviews with a focus group of displaced people and with Luz Elena Roja, Ica, December 2019.

90 These figures are from a review of annual reports of the National Scholarship and Educational Loans Program at the Ministry of Education—PRONABEC, all of which are available online ([www.pronabec.gob.pe/publicaciones/](http://www.pronabec.gob.pe/publicaciones/)). Other modalities reserve spots for qualifying victims, without necessarily providing financial aid, at different levels of higher education, but coverage is, again, limited: In 2019, for example, 3,363 victims enrolled in different programs of technical or university studies, out of the 43,846 victims who were identified to be in need of completing a university-level education. Secretaría Técnica de la CMAN, "Informe anual 2019," 15. See also Consejo de Reparaciones, "Memoria Institucional. Todos los nombres 2006/2018," 2nd ed. (Nov. 2018).

91 Ministerio de Educación, "Plan Multianual de reparaciones en Educación para las Víctimas de la Violencia en el Perú: 'REPAEDUCA 2016–2021'" (2016).

92 Secretaría Técnica de la CMAN, "Informe anual 2019," 19.

sive, but the quality of the service in a historically underfunded public health network is highly deficient. Only in 2016 did the Health Ministry approve a specialized and targeted strategy through the “Guidelines for Mental Health Care for People Affected by Violence During the Period 1980-2000” to improve service and accessibility; its implementation in the regions prioritized by the PIR-Law was initiated in coordination between regional health offices and the regional offices of CMAN.<sup>93</sup> By 2019, 151 mental health community centers had been created, which are responsible for implementing a program for community mental health reparation and psychosocial support for victims.<sup>94</sup>

The Housing Reparation Program, according to the Ombudsman’s Office, is one of the least developed programs, since there is no specific regulation for its implementation.<sup>95</sup> Some measures were enacted that granted a bonus of 10 points to victims of terrorism to facilitate their access to the family housing bonus of the Own Roof Program, thus adopting the logic of a social program in which victims have to comply with certain prioritization criteria based on vulnerability factors and that precludes victims’ access to another government bonus.<sup>96</sup> The Housing Ministry reports 4,029 beneficiaries from the period of 2003 to December 2019, one fourth of them in the last year, showing a recent increase in government support to this program.<sup>97</sup>

As mentioned above, the Citizen Rights Restitution Program consists of a series of different measures seeking legal rehabilitation, adopted by different institutions that are not necessarily selected or coordinated by the CMAN. Soon after the *Final Report* was delivered, a law creating a special status of “absent due to enforced disappearance” was passed, allowing relatives to obtain a judicial declaration of absence to exercise their civil rights and receive social security benefits and claim inheritances.<sup>98</sup> However, the number of people who requested it is remarkably low.<sup>99</sup> This could be explained by the time that has elapsed since most disappearances, presuming that most families had already found other solutions, but also by the difficulties victims face in accessing courts. In recent years, the Ministry of Justice has resumed the implementation of other programs like the expunction of criminal records or the regularization of properties of certain victims. The existence of those efforts demonstrates that the matter remains in the purview of certain institutions, but the fact that there are still those who need assistance in addressing these issues shows an overall problem of implementation, persistence, and design.<sup>100</sup>

93 RM No. 250-2016/MINSA, April 2016; Ministerio de Salud, “Lineamientos para la atención en salud mental a personas afectadas por la violencia durante el período 1980–2000” (2016), 18; Secretaría Técnica de la CMAN, “Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016” (2017), 29.

94 Secretaría Técnica de la CMAN, “Informe anual 2019,” 20.

95 Defensoría del Pueblo, “A diez años de verdad, justicia y reparación,” 66.

96 Interviews with Luz Elena Roja and with a focus group of displaced people, Ica, December 2019. A focus group participant reported: “We have received due to the emergency of the earthquake [in Ica, in 2007] a poorly made house that we had to throw away and now they tell us that we cannot receive reparations in housing because we already received.”

97 Secretaría Técnica de la CMAN, “Informe anual 2019,” 23.

98 Law No. 28413 of Dec. 11, 2004.

99 Only 84 requests were received, of which 53 had been approved by the corresponding courts, and 15 of which have been registered in the special registry created at the National Registry Civil Registration of Identification and Civil Status. Defensoría del Pueblo, “A diez años de verdad, justicia y reparación,” 27. The total number of people who were disappeared during the armed conflict, reported by the National Registry of Disappeared Persons and Burial Sites of the Ministry of Justice, according to July 2020 figures, is 21,793.

100 See, for example, the yearly reports published by CMAN ([www.gob.pe/institucion/minjus/colecciones/2472-informes-anales-cman](http://www.gob.pe/institucion/minjus/colecciones/2472-informes-anales-cman)).

Perhaps the most significant progress in the restitution of civil rights can be seen in civil documentation. Over the years, the National Registry Civil Registration of Identification and Civil Status has launched several massive registration campaigns for those who are undocumented. It is particularly interesting that these campaigns included the use of flexible procedures and standards not only for providing civil documentation and identity documents to those whose registries were destroyed during the conflict, but also for the general registration of people living in the most affected and most marginalized areas. The approach addresses both a direct consequence of the conflict and an underlying and persistent consequence of historical marginalization with regard to accessing public services.<sup>101</sup> Over the last 20 years, these efforts have yielded significant results: The 2017 census shows that only 0.8 percent of the population aged 18 and over do not have a National Identity Document.<sup>102</sup> Nevertheless, geographical and cultural inequalities still affect indigenous people, as demonstrated by the numbers: In urban areas, this population is 0.8 percent and in rural areas 1.1 percent; the departments with the highest percentages are Loreto (2.5 percent), Ucayali (1.7 percent), Amazonas (1.6 percent), and Madre de Dios (1.1 percent), four of the five departments in the jungle area of the country.<sup>103</sup>

Given the competing narratives of the conflict discussed above, a key component of the Comprehensive Reparations Plan is the Program Of Symbolic Reparations And Memory. There have been some efforts at the central, regional, and local government levels. The most visible, active, and consensual in its narrative is likely the national Place of Memory, Tolerance and Social Inclusion, inaugurated in 2015. While many monuments, commemorative plaques, memorial spaces, and murals are appreciated and promoted, mostly by civil society, many are abandoned or have deteriorated due to the negligence of the authorities for preservation and promotion.<sup>104</sup> The CMAN is now taking a leading role, developing symbolic measures, adopting recently the “Guidelines for the Construction of a National Policy of Memory, Peace and Reconciliation,” and conducting a participative process in the creation of a National Memory Plan.<sup>105</sup> Still, it is too early to provide an assessment of the quality and impact of these new activities as symbolic reparations and whether they will be continued when government priorities change.

The Pedro Pablo Kuczynski and Martin Vizcarra administrations (2016–2000) implemented significant revisions that improved the reparations policy. During that period,

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101 Cristián Correa, International Center for Transitional Justice, “Reparations in Peru: From Recommendations to Implementation” (2013), 21–22.

102 National Institute of Statistics and Informatics, “Resultados definitivos de los censos nacionales 2017” (Oct. 2018), Vol. 1, 52.

103 The World Bank acknowledges the barrier of a “lack of staff ability and sensitiveness to deal with cultural differences of different ethnic groups (i.e., lack of knowledge of their different native languages, which can lead to mistakes in the documents, discrimination, disrespect against their customs, etc.)” World Bank, “ID4D Country Diagnostic: Peru” (2018), 13.

104 Defensoría del Pueblo, “A diez años de verdad, justicia y reparación,” 69. For example, the monument El Ojo que Lloro (in Jesus María, Lima), whose construction was led by civil society and financed by private enterprise and international cooperation resources, is receiving little state support in its maintenance and safety and has been vandalized several times.

105 Symbolic measures include accompaniment in the delivery of the remains of victims of forced disappearance or extrajudicial execution; facilitating coffins and coordinating funeral rituals; acts of public recognition in communities, in parallel with the collective reparations program; the holding of public forums on the process of violence and the challenge of reconciliation; and actions to ensure the reevaluation of places of local memory, through coordination with regional and local governments. The guidelines are available in Ministerio de Justicia y Derechos Humanos, “Lineamientos para una Política Nacional de Memoria, Paz y Reconciliación.” See also Secretaría Técnica de la CMAN, “Informe anual 2019,” 9–13; and the Memorias en diálogo website (<https://memoriasendialogo.pe/>).



the [CMAN] Executive Secretariat made an important effort to reverse the disorder of the reparations process and formulated a proposal—consensus with various organizations of victims, civil society and State entities—, which had a schedule, annual budget, goals and indicators to seriously address a reparations policy. Subsequently, important changes were seen in terms of transparency, coordination and incidence over other State institutions, relation with the victims and beneficiaries, and effective implementation of more than collective and economic reparations.<sup>106</sup>

Most of the improvements that were made in the PIR—in terms of the design of the content and implementation process; the expansion of measures, beneficiaries, or deadlines for registration; and indicators, monitoring, and follow-up—were ultimately only possible due to the close vigilance and lobbying of victims and human rights organizations and were dependent on the sensitivity of the officials on duty. The impact of the PIR is therefore highly mitigated, as reflected through the words of the victims themselves. “The economic reparation is not a worthy reparation,” according to one. “It is one more slap to the family members. The health reparation arrived, but the care is not good: They discriminate against us and there is no medicine. In education, what they talked about is not true: The scholarship is a raffle and is not enough for anything.”<sup>107</sup> Displaced people convey the same feelings. “All families are demoralized because there is nothing,” said one. “CMAN puts a lot of unattainable requirements for collective reparations, and local authorities do not cooperate with technical files.” “They put us on the social program,” said another. “That is not reparation.”<sup>108</sup>

It is worth questioning the real reparative value of measures that arrive late, without specificity, without comprehensiveness, and for which beneficiaries have to continue fighting for years. If it is clear that the political turmoil delayed implementation and the full operability of the two institutions, the current will of the CMAN and the Human Rights and Justice Ministry creates a window of opportunity and a common conceptual framework to correct and follow up on the implementation of the reparations programs. Nevertheless, at the time of writing, it is not clear how much of these policies will continue after mid-2021, with a new administration. This uncertainty shows how dependent the policy is on political leadership, despite its strong legal framework.

## Investigation and Prosecution

An important step in the prosecution of cases of human rights violations was the decision by the Constitutional Court that the military jurisdiction is not authorized to do so, which allowed for reopening such cases in the regular justice system.<sup>109</sup> There were also initial efforts on the part of the Public Ministry to create a specialized judicial subsystem, but with several changes in funding, strategic, and political priorities over the years, it has not been possible to consolidate one that brings together the necessary specialized strategy, exclusive dedication, sufficient training, and adequate resources to deal with a problem of this magnitude.

<sup>106</sup> Guillerot, “Reparations in Peru,” 22.

<sup>107</sup> Interview with Adelina García Mendoza, Ayacucho, November 2019.

<sup>108</sup> Focus group discussion, Ica, December 2019.

<sup>109</sup> Constitutional Tribunal Sentence, exp. No. 0017-2003-AI/TC.

The Public Ministry has opened preliminary investigations in all the cases presented by the CVR, with final and condemnatory sentences in some important cases.<sup>110</sup> The most emblematic one is certainly the final sentencing in 2009 by the Special Criminal Chamber of the Supreme Court of ex-president Alberto Fujimori to 25 years in prison for human rights violations. Indeed, the National Terrorism Chamber has used the information provided by the CVR on the crimes of SL and the MRTA for the review of judicial processes (both recommendations of the CVR), and in the cases against Fujimori and Abimael Guzmán.

Various difficulties with the prosecution of human rights cases nevertheless exist. The Ministry of Defense, especially the army, has not provided the information that is needed to achieve the full identification of the alleged perpetrators or the clarification of important facts for investigations. The situation of legal defenselessness affects a large number of victims, and due to budget restrictions, the system is deficient in providing protection to witnesses, experts, judges, and prosecutors. In addition, progressive national jurisprudence is not used from one case to another, nor are the norms of international humanitarian and human rights. Further, to the detriment of victims, there is no adequate system of simultaneous interpretation or translation in judicial processes, most of which to date are carried out in Spanish. And, changes to the strategies of the Public Ministry and the judiciary oblige victims to travel, to the provincial capital when not to Lima, to give testimonies.

Thus, the limited progress that has been made in preliminary investigations and most judicial processes is notorious, especially in sexual and gender-based violations cases.<sup>111</sup> Thousands of cases have been provisionally closed and are at risk of being permanently closed. In addition, the impact of the guilty verdicts in a few emblematic cases on victims' perception of justice has not been what was expected. "Justice? There is no justice yet," said one victim, questioning the strategy itself.<sup>112</sup> It seems that the restorative sense of seeing a perpetrator sentenced in another case is not enough when it has not been done in yours.

## Search for Missing Persons

The issue of missing persons and burial sites has for years gone without the attention that its seriousness warrants. The CVR delivered a "preliminary list of missing persons" and a "national registry of burial sites," and the specialized forensic team of the Institute of Legal Medicine of the Public Ministry carried out

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110 For example, the Castillo Páez case, the Chuschi case, the Lucanamarca case, the Colina Group case, and the Hugo Bustíos case.

111 The emblematic Manta and Vilca case is an example. It is one of the files that was delivered by the CVR to the Public Ministry, confirming and exhaustively documenting a pattern of human rights violations in two areas of Huancavelica where countersubversive military bases were installed in 1984. Girls and young women were systematically raped by military personnel, and many became pregnant, facts about which they spoke for the first time 20 years later, before the CVR. In 2003, the prosecution's investigation began in Huancavelica, and only in 2015, after many struggles by the two human rights organizations defending the nine complainants, did the prosecution file the indictment. In 2016, it was finally possible to bring 14 former military officers to trial for crimes of sexual violence during the conflict. One of the many problems in opening the oral trial was that the victims only knew the then-soldiers by their nicknames, and the Ministry of Defense for years resisted giving the prosecution the identity of those who made up the military bases in those localities. Various irregularities in the process—to the detriment of the victims—determined the annulment of that first oral trial and the start of a new one in March 2019, both in the First National Temporary Superior Criminal Chamber Specialized in Organized Crime, based in Lima. In March 2019, the new oral trial began, and the legal defense won its first battle since the National Criminal Chamber decided that the trial would be public. A new hearing was scheduled in March 2020; however, it was not held due to the measures imposed by the government to contain the spread of COVID-19, which included the confinement and paralysis of activities that were considered nonessential, including those of the judicial power. The First Temporary National Superior Criminal Chamber virtually resumed the oral trial for the Manta and Vilca case in February 2021—37 years after the violations occurred.

112 Interview with Adelina García Mendoza, Ayacucho, November 2019.

almost 500 exhumations between 2002 and 2013, although it did so mainly with the objective of criminal prosecution, without prioritizing a humanitarian approach that would include psychosocial accompaniment or emotional support to family members or giving attention to the logistical and material needs for the transfer and burial of the remains.<sup>113</sup>

It was only in 2016 that a public policy to search for missing persons was adopted (through Law No. 30470), 16 years after the release of the CVR *Final Report* and roughly 35 years after the first cases of disappearance. The law established the Ministry of Justice and Human Rights as the competent entity to approve, implement, and monitor the National Plan for the Search of Disappeared Persons (Article 4) and created the National Registry of Disappeared Persons and Sites of Burial (Article 6).

Under the charge of the General Directorate for the Search for Disappeared Persons of the Ministry of Justice and Human Rights, a body that was created by Supreme Decree the following year, the policy complies with international standards, prioritizing a humanitarian approach through an independent—but complementary—mechanism of the judicial process. It articulates and arranges the measures related to the location, recovery, analysis, identification, and restitution of human remains, if applicable, and includes cross-sectional psychosocial support at the individual, family, and community levels.<sup>114</sup> These institutional processes, similar to others in Colombia, México, and El Salvador, require the coordination and articulation of different public and private actors, the political will for implementation, and an adequate budget.

So far, significant progress has been made.<sup>115</sup> The General Directorate for the Search for Disappeared Persons has four offices: the central headquarters in Lima and three decentralized offices in the three regions of the country that report the highest numbers of missing persons from the period of the conflict, Ayacucho, Huánuco, and Junín. Between 2017 and 2020, 5,735 accompaniment sessions have been provided to 2,086 relatives of missing persons. Likewise, 21 regional and local working groups have been created in which state entities, family members, and civil society participate; the groups are meant to provide space for coordination, dialogue, and a constant supply of information. As of July 2020, responses have been provided to family members about the final destination of 352 missing persons. Another important advance of the directorate has been the design and creation of the National Registry of Disappeared Persons and Sites of Burial, which centralizes, systematizes, and processes information about people who disappeared during the conflict and has allowed for the determination, for the first time, of an official figure, which in July 2020 was 21,793 missing persons with first and last names. This effort was complemented, in 2018, by the creation of the Genetic Data Bank (through Legislative Decree 1398), meant to contribute to the identification of people who disappeared during the period of violence. It is the first genetic data bank created in Peru and has 700 genetic profiles. This scientific tool constitutes a great advance in search processes with a humanitarian approach and puts Peru at the forefront in the region.

113 Defensoría del Pueblo, “A diez años de verdad, justicia y reparación,” 182–185.

114 The General Directorate has two organizational units: the Directorate of Registration and Forensic Investigation and the Directorate of Attention and Accompaniment, which “has the mission of guaranteeing and coordinating the strategies of psychosocial accompaniment, material and logistical support with a focus on differential, participatory and intercultural. Psychosocial support actions involve the participation of family members and various public and private institutions.” See Ministerio de Justicia y Derechos Humanos, “Dirección General de Búsqueda de Personas Desaparecidas.”

115 See Mónica Barriga Pérez, IDEHPUCP, “La búsqueda de personas desaparecidas con enfoque humanitario: un balance de la política pública” (2020).

This positive quantitative balance is largely due to the capacity and special sensitivity of the current technical teams, many of which come from the Ombudsman's Office or human rights organizations. Nevertheless, victims' families consider the process of searching for disappeared persons to be cumbersome, slow, and revictimizing.<sup>116</sup>

## Institutional Reforms

The CVR made recommendations for different types of institutional reforms, including ones designed to improve access to justice, guarantee respect for human rights in the operations of the police and defense institutions, and promote social inclusion in the education system. In the justice administration system, the independence and impartiality of the judicial function was formally strengthened (by Law No. 29277, in 2008), and the number of provisional and alternate magistrates has decreased substantially. Certain violations cited in international treaties have been incorporated into the criminal code, such as forced disappearance, torture, genocide, and the imprescriptibility of human rights violations, but the crimes defined by the Rome Statute of the International Criminal Court, which was ratified in 2001, have not yet been domesticated. In line with the difficulties that are encountered when prosecuting cases of human rights violations, the Academy of the Magistracy has not incorporated the training of judges or prosecutors on these issues, nor has the Public Ministry created an instance for specialized training in the investigation of human rights violations. Finally, with regulatory advances and setbacks, the structure and organization of military justice continues to be autonomous and does not conform to constitutional parameters.

Several normative reforms have been implemented to strengthen the respect for and promotion of human rights in institutions that are responsible for defense and internal order. Changes have been made to military and police education and curriculum, and the subordination of the military and police to the Ministries of Defense and the Interior has been formalized.<sup>117</sup> The scope of the concept of national defense has been delimited (by Law No. 27860 of 2002); civilians have been incorporated into the development of defense-sector policies; and the areas of national defense and internal order and citizen security have been defined separately, although no change has been made at the constitutional level on the point. The White Paper on National Defense, in which issues related to national security and defense are developed, was approved and published in 2006.<sup>118</sup> The National Police has been legally established as a nonmilitarized civilian institution (by DL No. 1148, in 2012), and the Military Defense Office was created (by RM No. 0562-2009-DE/SG). However, concerns remain about the level of penetration of a culture and doctrine of respecting human rights among these institutions when parts of these reforms have been neutralized by a new set of norms that regulate states of exception and allow the armed forces to intervene in any type of situation with a high degree of impunity (see the "Conflicts After the Conflict" section in this report).

Significant progress has been made in the area of improving accessibility and social inclusiveness in the educational sector, especially since the Ollanta Humala administration (2011–2016), which set a new direction in educational policy focused on improving coverage, content, and quality. This has included the expansion

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116 See IDEHPUCP and EPAF, "Informe sobre las expectativas de los familiares de víctimas respecto de la implementación de la Ley de búsqueda de personas desaparecidas en el periodo de violencia (1980–2000)" (Feb. 2019).

117 Codes of ethics and the teaching of humanitarian and human rights have been approved in the armed institutes and the police (Law No. 29075, 2007; RM No. 936-2005-DE/SG; RM No. 1452-2006-IN).

118 The White Paper is available on the Ministerio de Defensa website ([www.mindef.gob.pe/libro\\_blanco\\_mindef.php](http://www.mindef.gob.pe/libro_blanco_mindef.php)).

of bilingual education; support and training of teachers; the production of educational materials in various indigenous languages; the allocation of more resources to eliminate the gap between rural schools of the Andes and the Amazon and schools in the rest of the country; the expansion of initial education coverage; and the organization and monitoring of the teaching career. The Ministry of Education has also included CVR contents in primary and secondary school textbooks and developed a pedagogy for discussing the *Final Report*.<sup>119</sup> Despite such efforts and the positive quantitative results, however, the inequalities in educational quality, access, coverage, and infrastructure among bilingual and Spanish-speaking populations are still significant.<sup>120</sup>

Regarding the implementation of the CVR's recommendations, former commissioner Macher noted early on in the process that many of the advances that were made were "not explicitly assumed as actions that seek to comply with the recommendations even when they fully coincide with them."<sup>121</sup> Today, such advances are still not explicitly assumed, at the highest levels of the state, to be a part of a post-CVR agenda because "the *Final Report* is not a formal reference point. The advances have to do with certain groups of officials with certain interests. It is a concrete guideline for civil society but not for the centralized state apparatus, which moves forward and backward depending on who is there."<sup>122</sup> Precisely, the advances are not directly lineal but rather are sectoral and uncoordinated, depending on the government and the officials on duty; they are often the result of the penetration of the public sectors by professionals from NGOs, academia, or international cooperation, and are almost always due to the arduous and continuous struggle of NGOs and victims' organizations. Combined with the instability of cabinets and the high turnover of officials, this explains, over the 20 years, the discontinuity of views on these policies, advances, and setbacks, and the issuance of contradictory regulations that often neutralize each other as well as incomplete regulations that are inapplicable because they do not have correlates at the regulatory or budgetary levels.

Among organized civil society, a common perception is that *nothing has been done*, because any progress is dispersed and diluted, the fruit of its own struggles but not of genuine political will, at the mercy of chang-

119 For an analysis of educational policies that were implemented as a result of the CVR, see Cristián Correa, "Education Overcoming Massive Human Rights Violations," in *Transitional Justice and Education: Learning Peace*, eds. Clara Ramírez-Barat and Roger Duthie (New York: Social Science Research Council, 2017), 131–175.

120 National Institute of Statistics and Informatics, "Perú: Resultados definitivos de los censos nacionales de 2017" (Oct. 2018), Vol. 1: "The educational level of the population aged 15 and over, according to the intercensal period 2007–2017, shows a variation of 13.5%, which means that the educational level of the population has increased compared to the 2007 census. In the 2017 census, the population without education, initial and primary level represented 24.7%.... Regarding the urban area, the population aged 15 years and over had greater access to education than that of the rural area. 39.9% of this population managed to study higher education, while in rural areas only 9.3% reached this educational level. 42.4% of the urban population achieved some year of secondary education; and in rural areas, 36.4% reached this level. In the urban area the population that does not have some level of education represented 2.6% and in the rural area it was 15.2%" (43). "The intercensal variation 2007–2017 of the population aged 3 to 24 years that attends an educational institution, school, college, higher institute or university is 5.9 percentage points. Likewise, the variation in women is 6.1 percentage points, being greater than the male population, which is 5.6 percentage points. And the variation in rural areas is 9.1 percentage points, which is much higher than the variation in urban areas, which is 4.0 percentage points" (46). "According to the results of the 2017 census...5.8% of the population is illiterate.... By urban and rural area, the illiteracy rate was higher in rural areas (17.0%), while in urban areas (3.2%) was less. In the intercensal period 2007–2017, the rural area presented a reduction of the illiterate population of 1.5 percentage points and in the urban area of 0.2 percentage points.... The 2017 census reveals the departments with the highest illiteracy rates are Huancavelica (17.7%), Apurímac (16.8%), Cajamarca (14.8%), Ayacucho (13.4%), Huánuco (12.7%), Cusco (11.0%), Puno (10.5%), Amazonas (10.5%) and Áncash (10.4%), while the departments with the lowest illiteracy rates are Moquegua (3.8%), Madre de Dios (3.5%), Arequipa (3.4%), Tumbes (3.3%), Tacna (3.1%), Ica (2.4%), province of Lima (1.7%) and the Constitutional Province of Callao (1.6%)" (47).

121 Macher, *Recomendaciones vs. Realidades*, 7.

122 Interview with Narda Henríquez, Lima, September 2019. The same ideas were expressed in interviews with Carolina Trivelli, Raquel Reynoso, Víctor Caballero, Iris Jave, Alicia Abanto, Eduardo Dargent, Iván Lanegra, and Javier Torres, Lima, September 2019; with Yuber Alarcón, Ayacucho, November 2019; and with Esperanza Ramos, Ica, December 2019.

es in funding priorities and political directions and not visible in the public agenda as a comprehensive process.<sup>123</sup> From the victims' perspective, it should be added that the extremely slow pace of state responses to violations that occurred 20 to 40 years ago and the revictimizing attitudes of public institutions deplete the reparatory sense of these responses.<sup>124</sup> Still, it is undeniable that from 2003 to today, change has been taking root. It has not been a consolidated process, nor one that justifies complacency. Nevertheless, while there are still major efforts to be made, in particular toward institutionalizing a respectful culture, values, and behaviors in the practice of the officials who are in charge of these policies, certain formal advances seem now difficult to reverse.

## Beyond the CVR's Recommendations

The CVR was part of a larger process, its *Final Report* and framed within the social, political, and cultural dynamics and demands of national public debate, and within the international community's agenda on development and economic, social, and cultural rights. As a result, "the recommendations are alive in the demand for a course of social inclusion and change for our country, beyond the fact that they have been formulated in the *Final Report*."<sup>125</sup> Other public policy decisions can be linked to the CVR's call to bridge societal divides, even if they are not framed as a response to the *Final Report*.<sup>126</sup> At the same time, however, these public policy decisions are made within the broader context of global economic development and free trade.

The adoption of the Prior Consultation Law, for example, sends a very important political message about the Peruvian government's interest in respecting the rights of indigenous peoples.<sup>127</sup> The law gives Peru's indigenous communities the right to be consulted in regard to any activity, plan, administrative or legal measure, or development or project that would involve, affect, or take place in their ancestral territories. The indigenous community may challenge that decision before the Specialized Technical Entity on Indigenous Affairs, within the Ministry of Culture; once the administrative instance has been exhausted, the case may be taken before the courts.<sup>128</sup> What triggered the law's approval was not the CVR's message but the Bagua conflict. As the second government of Alan García (2006–2011) promoted an investment policy as part of the execution of the Free Trade Agreement with the United States, it issued several legislative decrees that allowed mining and oil projects that directly affected the collective rights of indigenous peoples on land, water, and natural resources. The government refused to negotiate, despite months of peaceful demonstrations. On June 5, 2009, agents of the National Directorate of Special Operations, with the support of the

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123 Interviews with Paula Muñoz, Raquel Reynoso, Carolina Trivelli, Francisco Soberón, and Javier Torres, Lima, September 2019; with Yuber Alarcón, Ayacucho, November 2019; and with Esperanza Ramos, Ica, December 2019.

124 Interviews with Adelina García Mendoza and Mama Lidia, Yuber Alarcon, Omar Rosel, and Janet Matta, Ayacucho, November 2019; and with a focus group with 12 representatives of grassroots organizations of displaced persons, Esperanza Ramos, and Mayra Ramirez, Ica, December 2019.

125 Interview with Sofía Macher, Lima, September 2019.

126 Indeed, the Toledo and especially the Humala administrations made the issue of inclusion one of the central rhetorical aspects of their election campaigns and governance.

127 The Prior Consultation Law is Law No. 29785, Sept. 2011, and its regulations approved by Supreme Decree 001-2012-MC. The right to prior consultation of indigenous peoples is recognized in Convention No. 169 of the International Labor Organization, ratified by Peru on February 2, 1994, and decisions of the Inter-American Court of Human Rights, both of which are mandatory for Peruvian public authorities, and the United Nations Declaration on the Rights of Indigenous Peoples.

128 Law No. 29785, Sept. 2011, Art. 9.

armed forces, confronted hundreds of native people who had been entrenched for more than 50 days in the area known as “Devil’s Curve.” The order to clear the highway resulted in the death of 33 people, including 23 police officers, and serious human rights violations.

The implementation of the Prior Consultation Law, however, has been reduced to a formalistic and checklist process, without much substance. It suffers from several deficiencies, including the determination of which cases require consultations, whereby the state eludes its obligation by claiming that affected communities are not of indigenous character; the determination of the parties to the consultation representing indigenous communities; the asymmetric power and information of the different parties; and the existence of previous arrangements between the leaders of communities and the companies that are trying to implement the projects, which can make the process moot. Pointing to the total rate of agreements reached so far, then, is misleading because it masks some of these deficiencies.<sup>129</sup> In this regard, respected observers call attention to the contradiction of a state that recognizes a right but then limits its full exercise because the state, at the same time, promotes a model of economic growth that inevitably collides with this right.<sup>130</sup>

Similarly driven by the international and national agendas, the Peruvian government created the Ministry of Development and Social Inclusion in 2011 and a set of social programs dedicated to specific problems and different vulnerable or marginalized populations. These latter programs included the following:

- the poverty alleviation policy *Juntos*, which began implementation precisely in those regions where the internal armed conflict and higher levels of poverty intersected;
- a housing subsidy policy, *Techo Propio*;
- a more recent poverty-alleviation program, *Anemia Cero*, which focuses on districts with the highest levels of extreme poverty and combining health promotion and education, food security, health care for pregnant women and toddlers, and access to water and sanitation;
- a home visiting program for supporting early childhood development, *CunaMás*;
- the provision of a guaranteed minimum pension for elders living in extreme poverty, *Pensión 65*;
- *Qali Warma*, or “strong child” in Quechua, providing primary school children and up to secondary school children in the Amazon regions with food at school; and
- a scholarship program for high-achieving high school graduates to cover the costs of university studies, *Beca 18*.<sup>131</sup>

129 A brief analysis by the former deputy minister for intercultural affairs at the Ministry of Culture is cited in Iván Lanegra, Instituto de Estudios Peruanos, “La evaluación de la política pública de la consulta previa,” *Revista Argumentos* 3, no. 11 (2017): 14–20.

130 Interviews with Iván Lanegra, Ismael Vega, Raquel Reynoso, and Iris Jave, Lima, September 2019. The Prior Consultation Law collides with the law on extractive concessions.

131 For more information on *Juntos*, see Renzo César Silva Huerta and Marco Stampini, Inter-American Development Bank, “¿Cómo funciona el Programa Juntos? Mejores Prácticas en la Implementación de Programas de Transferencias Monetarias Condicionadas en América Latina y el Caribe,” Nota Técnica No. IDB-TN-1404 (2018), 5. For an analysis of its early implementation, see Ramón Díaz, Ludwig Huber, Oscar Madalengoitia, Raphael Saldaña, Carolina Trivelli, Rosana Vargas, and Ximena Salazar, Instituto de Estudios Peruanos, “Análisis de la implementación del Programa Juntos en las regiones de Apurímac, Huancavelica y Huánuco” (2009).

The creation of the Ministry of Development and Social Inclusion, which was recommended by the World Bank and came hand in hand with a loan, has contributed to the depoliticization of social policies, making them more technical.<sup>132</sup> Most social programs that have been developed or reorganized under the ministry use the logic of conditional transfers, through the household targeting system, as with several similar experiences at the regional level that have been promoted by the World Bank, the Inter-American Development Bank, and other international institutions. The coverage of basic public services (documentation, water, health, education, access in native languages) has been expanded, but their quality and interculturality remain problematic.<sup>133</sup> Indeed, such efforts are mainly palliative and not comprehensive. As the ex-minister of development and social inclusion said: “The state has not finished its work when it put a pipe in the community, but when it has found out that children no longer get sick from diarrhea while drinking water. This last end is still missing.”<sup>134</sup>

Furthermore, the decentralization process that was initiated through the creation of regional and local governments in 2002 has been truncated: The Decentralization Council was dismantled by the Toledo government, meaning that there are no meeting spaces or institutionalized alignments between the three levels of government. Functions have been transferred, but the lack of technical expertise negatively impacts spending capacity, while at the same time centralism has been reproduced in the department capitals, where clientelism and corruption are deeply embedded and weaken the legitimacy of institutions.

Thus, while the country’s recent economic growth has had real impact—with annual gross domestic product per capita increasing from 1,960 dollars in 2000 to 6,594 in 2014 and poverty declining from 55 percent in 2000 to 20.7 percent in 2016—the structural causes of inequality have not been fully addressed through these social programs because the state’s priority is to access the Organization for Economic Co-operation and Development and reach certain quantitative growth goals.<sup>135</sup> The tension between guaranteeing inclusive social programs and pushing economic growth has been at the core of the post-transitional period of the last 20 years. The economic expansion described above has been mostly based on extractive industries, particularly mining, in areas inhabited by indigenous peoples or characterized by poverty and marginalization.<sup>136</sup> While these economic activities bring jobs, however, as concluded by one study:

the improvement in average incomes in Peru in recent years has not been accompanied by a fall in inequality across different regions of the country. The coastal region is relatively prosperous, while both the Andean highlands and the Amazon jungle have lagged. Development of a state presence in the interior has not necessarily led to higher human development.... State interventions will remain marred by inefficiency and corruption.<sup>137</sup>

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132 Interviews with Víctor Caballero and Paula Muñoz, Lima, September 2019.

133 Interviews with Carolina Trivelli, Ismael Vega, Paula Muñoz, Eduardo Dargent, Javier Torres, and Leslie Villapolo, Lima, September 2019.

134 Interview with Carolina Trivelli, Lima, September 2019.

135 OCDE, “Reforma de la Gobernanza Pública, Perú: aspectos claves” (2016), 1; Instituto Nacional de Estadística e Informática, “Evolución de la pobreza monetaria 2007–2016” (2017), 42; interviews with Raquel Reynoso, Lima, September 2019, and with José Coronel, Ayacucho, November 2019.

136 In the 1990s, the country liberated its economy as part of the World Bank’s structural adjustment program. Opening up to new markets allowed Peru to benefit from record export prices of its minerals, particularly to China, and attracted foreign investment, thereby reducing public debt and inflation and increasing its national savings.

137 Oxford Analytica, “Peru Regional Inequality Progress Lags Rising Income,” Expert Briefing (2020).



Peruvian experts agree: “The economic disparities between the different regions of Peru are at the base of many of the social inequalities.... Economic growth is not leading to a reduction in these sharp differences.”<sup>138</sup> Poverty in rural areas is three times higher than in urban ones. Peru remains a country of inequalities, exclusions, and deficiencies, where the human inequality coefficient in 2019 was 18.8 percent and social mobility stagnated.<sup>139</sup> In a review of 82 economies worldwide, Peru is ranked 66, below its neighboring countries, and is ranked number 72 in equity in education and 76 in working conditions.<sup>140</sup> According to the National Institute of Statistics and Informatics, between October 2018 and September 2019, the informality rate reached 66.6 percent in urban areas and 95.4 percent in rural areas, with consequences not only for inhuman work conditions but also for taxes, an essential ingredient for better quantitative and qualitative basic services.<sup>141</sup> The historical persistence of wide territorial gaps in income, access to basic services, and basic life opportunities suggests structural determinants of these integrative biases and failures beyond markets, such as political institutions.

Moreover, the formal improvements that have been made do not reflect a deeper change in attitudes or biases or in the way authority is wielded. There are no relevant cultural or attitudinal institutional transformations toward egalitarian and democratic relationships in a state that is dominated by technocrats and civil servants, without a culture of public service. In a country of more than 55 indigenous peoples, 15 linguistic families, and more than 7,000 communities, the state’s gaze continues to be paternalistic or authoritarian. From its perspective, the problem is that people “do not understand” what is good for them, which means that the solution is to make them understand that certain programs or projects will benefit them and get them out of “primitivism.”<sup>142</sup> The justification for inequalities that was once colonizing is now neoliberal.<sup>143</sup> “The state still does not represent the weakest,” said former CVR commissioner Macher. “It is still dominated by those who control the country’s economy.”<sup>144</sup> As such, “the penetration of the democratic spirit remains a dream,” and the democratic debate has not improved, which has serious social, economic, and political consequences.<sup>145</sup>

138 José Rodríguez and Pedro Francke, eds., *Exclusión e inclusión en el Perú: logros y desafíos para el desarrollo* (Lima: Pontificia Universidad Católica del Perú, Fondo Editorial, 2017), 14.

139 Interviews with Carolina Trivelli, Eduardo Vega, Rolando Luque, Alicia Abanto, and Rosa Montalvo, Lima, September 2019; and with Gerardo Arevalo, Ica, December 2019. Also, see Rodríguez and Francke, *Exclusión e inclusión en el Perú*, 340; United Nations Development Programme, “The Next Frontier: Human Development and the Anthropocene. Briefing Note for Countries on the 2020 Human Development Report: Peru” (2020), 5.

140 World Economic Forum, “The Global Social Mobility Report 2020: Equality, Opportunity and a New Economic Imperative” (Jan. 2020).

141 National Institute of Statistics and Informatics, “Producción y empleo informal en el Perú. Cuenta satélite de la economía informal 2007–2019” (Dec. 2020). Given this level of informality, the situation generated by the COVID-19 pandemic made it, for many, so that there was not a choice between generating income or staying safe. Indeed, in 2020, monetary poverty affected 30.1 percent of the country’s population, an increase of 9.9 percentage points compared to 2019. According to geographical areas, poverty affected 45.7 percent of the population in rural areas and 26.0 percent in urban areas, an increase of 4.9 percentage points and 11.4 percentage points, respectively, when compared to 2019. See Instituto Nacional de Estadística e Informática, “Pobreza monetaria alcanzó al 30,1% de la población del país durante el año 2020,” May 14, 2021. Also interviews with Cecilia Cabrera, David Huaranca, and Paulina Velasquez, Ica, December 2019.

142 “They chase us to give us a vaccine”: interview with Leslie Villapolo, Lima, September 2019. Also interviews with Ernesto Ambía and Yuber Alarcón, Ayacucho, November 2019; and with Mayra Ramírez, Ica, December 2019.

143 Interviews with Eduardo Cáceres and Javier Torres, Lima, September 2019. “With large private investments, we are returning to the time of the landowners without realizing it, and the state still supports them”: interview with Cecilia Cabrera, Ica, December 2019.

144 Interview with Sofía Macher, Lima, September 2019.

145 Interview with Carolina Trivelli, Lima, September 2019.



# Conflicts After the Conflict

As described above, the SL's insurgency began the internal armed conflict the very same day that democracy returned to Peru in May 1980. The end of the conflict in the strict sense—that is, the capture of the main SL leaders, their demand for a peace agreement, and the notable decrease of massive human rights violations—then coincided with the consolidation of the authoritarian regime of Alberto Fujimori, through the self-coup of 1992 and the approval of its political–military apparatus, socially legitimized by a very well-constructed narrative of success against terrorism. The period of 1980 to 1989 was also accompanied by an unprecedented general crisis—including the contraction of gross domestic product, fiscal deficit, inflation, and a shrinking formal employment rate—that brought the country to the verge of economic collapse and gave Fujimori the opportunity to impose the 1993 constitution, which still stands today, marking the beginning of neoliberal control of the economy.<sup>146</sup>

After the fall of the Fujimori regime, the rule of law was restored in its most general aspects, but the 20 years of formally democratic government that followed have been marked by significant public protests and social unrest and conflicts that put, in some places and times, internal order and democratic governance at risk. These are complex processes in which sectors of society, the state, and companies perceive that their positions, interests, objectives, values, beliefs, or needs are contradictory, creating a situation that could lead to violence.

For the Ombudsman's Office,

the explanation of social conflict in Peru is tied to three circumstances: (i) the expansion of the market, which has brought different actors into contact, multiplying and straining their relationships; (ii) institutional weakness, which has limited the intermediation structure of different and even contradictory interests, and the absence of reforms; (iii) the

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<sup>146</sup> “The conflict...had an indirect and more lasting impact on the ideological framing on economic policy. The fact that Sendero Luminoso presented itself as a Communist and Marxist group seeking radical social transformations severely damaged the public perception of legal left-wing leaders, parties and movements. This produced a sort of stigmatization of left-wing politics and policies, including economic policies that, among other things, emphasized the state's central role in economic and social development. This might have facilitated the rise and hegemony of the neoliberal economic thinking in Peru and the consolidation of the right-wing political spectrum that supports these policies.” Lidia Isabella Shubiger and David Sulmont, “Civil Wars and Their Consequences,” in *Politics After Violence: Legacies of the Shining Path Conflict in Peru*, eds. Hillel David Soifer and Alberto Vergara (Austin: University of Texas Press, 2019), 70.

subsistence of historical inequalities and exclusions of which populations are more aware in a world increasingly connected by new information technologies.<sup>147</sup>

Actually, the causes of these social conflicts are as multiple as the socioeconomical and political processes that have affected Peru, including and going beyond the internal armed conflict and the authoritarian regime and their legacies. Framed by the fact that there have been no major changes so far in the relationship between the state and society, these nonexclusive causes include an exceptional cycle of economic boom without redistribution and, instead, with growing inequality; an overflow of expectations that had been fed by populism and welfare for years; reactions to the political and economic arrangements that were brought about by the liberal reforms of the 1990s; and the void of representation and organization of demands resulting from the collapse of the party system that led to political destructuring, technocracy, clientelism, and corruption at the local, regional, and national levels.<sup>148</sup>

A full analysis of these causes is beyond the scope of this study, but the claims mainly express themselves in terms of access to basic rights such as resources, territories, and water, linked to national land-use planning in relation to private concessions; the socioenvironmental impact of both formal and informal extractive activities; the sowing and control of the coca leaf; and labor conflicts in the agro-industrial sector.

Whatever the cause, there tend to be relatively rapid moves from claims to violent confrontations.<sup>149</sup> Protests, riots, and violent actions such as blocking a road or taking over or burning an installation are often seen by the protesting sectors as the most effective ways to put the claims on the public agenda and achieve their objectives: “Social conflict becomes an exercise of opportunity because finally the sector has someone to complain to and can get something out of it.”<sup>150</sup> None of these social conflicts, however, have raised the level of violence or are comparable to that of the 1980s or 1990s: The Ombudsman’s Office reports that during the period from January 2006 to January 2019, in situations of social conflicts, 281 people died (246 civilians and 35 police officers) and 4,875 people were injured (3,256 civilians, 1,606 policemen, and 13 members of the armed forces).<sup>151</sup> There are multiple potential explanations for the nature and scale of the violence.

On the one hand, the actors that generate violence in social conflicts cannot be considered as an organized and armed group seeking to confront the state, nor do they use the maximum level of violence that a noninternational armed conflict implies. Moreover, as the current minister of justice and ex-ombudsman Eduardo Vega explained, “The dynamics of social conflicts is totally different from that of the armed con-

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147 Defensoría del Pueblo, “Los costos del conflicto social. Una aproximación metodológica a las dimensiones económicas, sociales e institucionales del conflicto social en el Perú,” Serie Informes de Adjuntía—Informe No. 001-2019-DP/APCSG (2019), 9–10.

148 On that last point, see Carlos Meléndez, “Los conflictos después del conflicto. Desestructuración del sistema político y conflictos sociales después de la violencia,” in *Conflictos sociales y respuestas del Estado: del orden interno a la protección de los derechos*, Colección Documentos de Trabajo, Serie Política y Gobierno No. 1 (Lima: IDEHPUPC, 2007), 47–54.

149 Defensoría del Pueblo, “Ante todo el diálogo,” Informe Defensorial (2005), 18.

150 Interviews with Carolina Trivelli, Rosa Montalvo, and Raquel Reynoso, Lima, September 2019. In a survey carried out by the Ombudsman’s Office, 73 percent of those who responded considered that mobilizations and protests are the only way for people to be heard by the authorities, and 51 percent recognized that violent protest actions are always or almost always an effective method to draw the attention of the state to their demands. Defensoría del Pueblo, “El valor del diálogo,” Serie Documentos defensoriales, Documento No. 29 (2017), 200.

151 Defensoría del Pueblo, “Los costos del conflicto social,” 10.

flict: The ideological component is not there.”<sup>152</sup> Instead, the leading characteristic of these current conflicts is that they are not monolithic but rather highly fragmented, diverse, and locally based.<sup>153</sup> Those making the relevant claims are not able to constitute themselves into proper national social movements, as there are no unions or civil society organizations that can connect or mainstream them.<sup>154</sup>

As mentioned, these protests and conflicts revolve around basic economic, social, and cultural rights, while the CVR’s mandate was focused on violations of civil and political rights. If the transitional justice agenda played a role in catalyzing civil society, it did so basically with human rights organizations and around the National Coordination of Human Rights, but it failed to connect with economic, social, and cultural rights or socioenvironmental and indigenous organizations. The opening of the human rights organizations’ agendas to issues beyond violations of civil and political rights and the confluence between these organizations and socioenvironmental and indigenous groups has been slow.

On the other hand, over the past 20 years, the state has responded to protests and their violent expressions with different strategies, not in a linear progression but with both regulatory advances and setbacks. The first elected governments after the armed conflict lacked a comprehensive strategy and, according to the statistics of the Ombudsman’s Office, the number of conflicts went from 93 in 2004 to 362 in 2010.<sup>155</sup> The state privileged the use of the instrument of public force, often resorting to declaring states of emergency and placing the restoration of internal order in the hands of the armed forces. Furthermore, by deliberate decision or negligence, the state has maintained for quite some time, even in its legislation, exceptional action structures for countersubversive work that confer extensive powers to the armed forces.<sup>156</sup> The use of public force during the years of violence still conditioned the way force was used in social conflicts under the first democratic governments.<sup>157</sup>

States of emergency, however, have proven ineffective in both controlling riots and protecting citizens, with fatal results, at the cost of the integrity of both civilians and members of the security forces.<sup>158</sup> The Ombudsman’s Office indicates that between January 2006 and September 2011 (García’s administration), there were 195 deaths and 2,312 injuries as a result of acts of violence in social conflicts.<sup>159</sup> Beyond the critique of decisions regarding which instrument to use to intervene in the riots, Barrantes and Peña also note that, although the decreed states of emergency were based on a rights perspective, there is a considerable distance between the text and the specific intervention: “State rhetoric is denied in the exercise of the public

152 Interviews with Eduardo Vega, Paula Muñoz, and Sofía Macher, Lima, September 2019.

153 Interview with Javier Torres, Lima, September 2019.

154 Interview with Paula Muñoz, Lima, September 2019. On the disaggregation of the unions, civil society organizations, and the party system, see Hillel David Soifer and Alberto Vergara, eds., *Politics After Violence: Legacies of the Shining Path Conflict in Peru* (Austin: University of Texas Press, 2019).

155 Defensoría del Pueblo, “Los costos del conflicto social,” 75.

156 Law 24150, published on June 7, 1985, which regulates the powers of the political-military command in an area declared to be in a state of emergency, grants it powers of coordination, management of civil affairs, dissemination, police intervention, civic action, and command of the armed forces and the National Police.

157 Rafael Barrantes and Jesús Peña, “Conflictos sociales y derechos humanos: el uso de la fuerza pública durante disturbios internos en el Perú,” in *Conflictos sociales y respuestas del Estado: del orden interno a la protección de los derechos*, Colección Documentos de Trabajo, Serie Política y Gobierno No. 1 (Lima: IDEHPUPC, 2007), 32.

158 See Defensoría del Pueblo, “Ante todo el dialogo”; Barrantes and Peña, “Conflictos sociales y derechos humanos.”

159 Defensoría del Pueblo, “Violencia en los conflictos sociales,” Informe defensorial No. 156 (March 2012), 52.

force, which shows that state discourse can have a merely declarative character and that an interpretation of the state's position regarding conflicts should focus on its practical intervention."<sup>160</sup>

Since 2003, the Ombudsman's Office has highlighted the importance of prevention and the creation of conditions that are more conducive to dialogue through institutional avenues.<sup>161</sup> The progress that has been made by the institutional framework required to carry out the tasks of prevention and timely management of social conflicts, however, is slow and confusing. State offices for the prevention of social conflicts have been multiplying, at the level of the Presidency of the Council of Ministers, which, since 2009, in view of the increasing number of social conflicts, has promoted the constitution of teams specializing in conflict in all sectors of the executive power.<sup>162</sup> The changes in the name and structure of the bodies that are responsible for addressing social conflicts reflect an evolution in the state's approach, an attempt to implement mechanisms for identifying and preventing differences, controversies, and conflicts, but also the absence of a genuine integrated state policy.<sup>163</sup> State institutions have different and contradictory logics to characterize, address, and manage conflicts. Each sector has different units; employs teams with different capacities, competencies, and protocols; and uses different databases with different categories to characterize conflicts. There are also no procedures to centralize the information that is collected by each body through its early warning system or information system in a single database.<sup>164</sup> All this results in a lack of articulation between the different actors, which makes it impossible to efficiently fulfill the functions of prevention, resolution, and transformation of conflicts. Finally, the conviction with which dialogue has been used and the skill with which it is implemented vary over time.

The endless creation of dialogue spaces—roundtables, work tables, technical tables, multisectoral commissions, and so on—is more reactive than preventive.<sup>165</sup> These channels also lack legitimacy or accessibility.<sup>166</sup>

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160 Barrantes and Peña, "Conflictos sociales y derechos humanos," 32.

161 The Ombudsman's Office itself has created a Sub-Office of the Prevention of Social Conflicts and Governance and a Conflict Monitoring System.

162 The actual Secretariat of Social Management and Dialogue (2017) has antecedents, starting with the Unit for Strategic Analysis and Prevention of Social Conflicts (2004) and the Multisectoral Commission for the Prevention of Social Conflicts (2005). In 2007, it was the Coordination Secretariat of the Presidency of the Council of Ministers whose function was to coordinate and carry out actions for the prevention and resolution of conflicts. From 2009 to 2011, the Presidency of the Council of Ministers directed the Support Program for a Culture of Peace and the Strengthening of National Capacities for the Prevention and Constructive Management of Social Conflicts. At the same time, in 2010, the Social Conflict Management Office was created and the document "Guidelines and Strategies for the Management of Social Conflicts" was approved, which established the conceptual and procedural framework that contributed to standardizing the criteria and methodologies intervention, which had not been formalized until then. The National Office for Dialogue and Sustainability was created in 2012 with a "preventive transformative approach based on dialogue." In 10 ministries, a social conflict management body was created that appears in the organic structure of the ministry and has its own budget that allows it to address social conflict: the Ministry of Energy and Mines; Ministry of the Environment; Ministry of Housing, Construction and Sanitation; Ministry of Interior; Ministry of Labor; Ministry of Education; Ministry of Foreign Affairs; Ministry of Agriculture and Irrigation; Ministry of Health; and Ministry of Women and Vulnerable Populations.

163 The use of this type of alert and early response tool to anticipate and address social conflicts has become popular in Africa and Latin America and is being promoted by the United Nations Development Programme.

164 Defensoría del Pueblo, "El valor del diálogo," 204.

165 "In most of the social conflicts studied, the dialogue processes began during the crisis (31.1%) or escalation phase (34.8%), while only 18.1% began in the early phase. In addition, in 66.6% of the cases, the dialogue was established after violent outcomes, so that violence appears as a factor of pressure on the State. This reactive nature limits the organization of effective dialogue processes and exposes the relationships between the actors to deterioration." Defensoría del Pueblo, "El valor del diálogo," 198.

166 Interviews with Rolando Luque, Alicia Abanto, and Raquel Reynoso, Lima, September 2019; and with José Coronel, Ayacucho, November 2019. It is worth mentioning that, according to the 2018 report of the Latinobarómetro Corporation on trust in institutions, Peruvian trust in the main institutions in charge of confronting violence and social conflicts is less than the average of the other countries in the region. The highest numbers show no confidence or little confidence, as followed: for government, 44.7 percent no confidence in Peru, 43.2 percent in the region; for police, 44.2 percent little confidence in Peru, 35.1 percent

Dialogue processes have a cultural dimension that is not always taken into account.<sup>167</sup> Although most of the dialogue processes were well or partially structured, the percentage whose creation is supported by a legal device is low, and in 26.4 percent, stakeholders negotiated directly between themselves.<sup>168</sup> Even if most of the dialogue processes allowed for reaching agreements, however, their compliance was neither punctual nor systematic because in most cases the responsibility for ensuring the monitoring of the agreements was not entrusted to any institution or commission.<sup>169</sup> Thus, it is not guaranteeing that social conflict does not return. Indeed, the Ombudsman's Office found that, month by month, there are more new conflicts than those that are resolved, which highlights elements of weakness in political mediation, public management capacity, and dialogue practices.<sup>170</sup>

Moreover, the creation of dialogue spaces seems oblivious to the broad range of factors that give conflicts the potential to become violent. The transformation of social conflict implies generating changes in the medium and long term by acting on its deepest causes. At a technical level, this requires linking the work of the conflict-management bodies with that of the entities that produce public policies. However, the "conflict perspective" and the evaluation of its costs in the planning of public policies and their implementation as well as in the debate on the budget and government decisions is not incorporated.<sup>171</sup> At a political level, this requires addressing the same historical inequities that have been reinforced by the economic model based on extractive industries and megaprojects with broad support from the central government since the 1990s. Private interest considers social conflict as a threat, a risk for investment and productive activity, which affects the country's and the region's income and generates losses. According to Víctor Caballero and Teresa Cabrera Espinoza:

The way in which this conception has gained consensus among opinion leaders and pressure groups has determined that government authorities take predominantly coercive measures over and above the value of dialogue or negotiation. Faced with an increase in the number of conflicts, this vision has been gaining strength within the state, with the consequent tightening of control policies and a media campaign that moves in the same register, that of subjecting politics to a conception of internal security.<sup>172</sup>

It is not surprising, then, that contrary to the rhetoric of dialogue and prevention, the normative framework evolved in the opposite direction. Although Law No. 24090, which gave all powers to the armed forces to

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in the region; for the armed forces, 36.4 percent little confidence in Peru, 26.5 percent in the region; for the judiciary, 41.1 percent no confidence in Peru, 37.3 percent in the region; for Congress, 60.2 percent no confidence in Peru, 40.8 percent in the region; for political parties, 57.1 percent no confidence in Peru, 54.3 percent in the region. See the Latinobarómetro website, "Latinobarómetro Análisis de datos" ([www.latinobarometro.org/latOnline.jsp](http://www.latinobarometro.org/latOnline.jsp)).

167 In 40.5 percent of the 299 dialogue processes that were studied, actors whose mother tongue is different from Spanish participated. Very few (5.9 percent between 2013 and 2015) had the support of interpreters. Defensoría del Pueblo, "El valor del diálogo," 198.

168 Ibid.

169 Ibid., 199.

170 Defensoría del Pueblo, "Violencia en los conflictos sociales," 125.

171 The Ombudsman's Office recommends the adoption of the Multidimensional Index of Costs of Social Conflicts as a methodological approach for measuring the costs of social conflicts in the country, so that its regular estimation serves as a way to contribute to a better budget allocation in the prevention, management, and transformation of social conflicts. Defensoría del Pueblo, "Los costos del conflicto social," 76.

172 Víctor Caballero and Teresa Cabrera Espinoza, "Conflictos sociales en el Perú, 2006–2008," in *Perú Hoy. Por aquí compañeros. Aprismo y neoliberalismo*, ed. Eduardo Toche Medrano (Lima: DESCO, 2008), 104.

make decisions in matters of national security, was repealed—as recommended by the CVR—a set of new rules, officially announced as part of the fight against organized crime, was promulgated. From Law No. 27686, Law No. 28222, and Law No. 288290, to the package of 11 legislative decrees adopted between 2006 and 2011, the types of crimes and penalties related to the disruption of public services and disturbances have been increased, while the military and police officers who cause injuries or death “in the line of duty” are declared unimpeachable. Along these lines, democratic control of the armed forces is undermined by DL No. 1095 (of 2010), which, contravening the CVR’s recommendations and international regulations, establishes the rules for the employment and use of force by the armed forces throughout the national territory, allowing their intervention in areas that are not even declared a state of emergency. In addition, the definition of “hostile group,” a term that justifies the use of force by the military, is applied without distinction to whether the context is an armed conflict or a social protest. In the same way, Law No. 30151 (of 2014), known as “Law License to kill,” modified the grounds of penal code exemption of responsibility for the police and the armed forces.

These new rules are creating the structure for a progressive criminalization of social protest, similar to what is observed at the regional level, through undemocratic methods such as violent repression based on legal norms that authorize the disproportionate use of force and the participation of the armed forces and anti-subversive police squads in social conflicts.<sup>173</sup> Further, there has been a normalization of the use of states of emergency as well as an excessive application of criminal sanctions that are conducive to the judicial persecution of human rights defenders and social indigenous leaders and to the impunity of attacks on these defenders.<sup>174</sup> Additionally, Legislative Decree 1267 (of 2016) allows for the signing of agreements for the provision of security services between the National Police and natural and legal persons, whether private or public (in practice, mainly mining companies), to the detriment of their autonomy and the principle of impartiality in the exercise of their functions.<sup>175</sup>

This normative apparatus is complemented with (or responding to) a discourse, supported by leaders of opinion and the national media, that disqualifies and delegitimizes protesters—which is to say, anyone who is against the development model—as criminals, antiestablishment, and, in the most radical case, terrorists.<sup>176</sup> “The disqualification of the other as a terrorist is the breaking point in the discourse that legitimizes

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173 See Comisión Interamericana de Derechos Humanos, *Informe sobre la situación de las defensoras y defensores de los derechos humanos en las Américas* (OEA/Ser.L/V/II.124, 2006), doc. 5, rev. 1; Comisión Interamericana de Derechos Humanos, *Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas* (OEA/Ser.L/V/II, 2011), doc. 66; Comisión Interamericana de Derechos Humanos *Criminalización de defensoras y defensores de derechos humanos* (OEA/Ser.L/V/II, 2015), doc. 49/15. “In the presidential terms of Presidents García (2006–2011) and Humala (2011–2016), we have identified 15 interventions by the Armed Forces that originate from some social conflict. Of these 15 interventions, at least 10 were ordered without a declaration of a state of emergency.” José Saldaña and Jorge Portocarrero, “La violencia de las leyes: el uso de la fuerza y la criminalización de protestas socioambientales en el Perú” *Derecho PUCP* 79 (2017), 311–352.

174 During the Toledo government (2001–2006), there were five; during the García government (2006–2011), there were 12; during the Humala government (2011–2016), there were seven. Saldaña and Portocarrero, “La violencia de las leyes”; Coordinadora Nacional de Derechos Humanos, “Criminalización de la protesta social y la situación de los defensores y defensoras de los derechos humanos,” *Informe anual 2015/2016* (2017).

175 Saldaña and Portocarrero, “La violencia de las leyes.”

176 “The global discourse is that economic development is being put at risk, not that the population is running out of water or working in subhuman conditions”: interview with Mayra Ramírez, Ica, December 2019. See also Rocio Silva Santisteban, “Perros y antimineros: discursos extractivistas y prácticas represivas en el Perú,” *Tábula Rasa* 24 (January–June 2016): 79–104. “Through the media, the idea is spread that progress or development is necessarily linked to the extraction of non-renewable resources, which means that nations that do not use their resources as raw materials would allow poverty to be maintained out of ignorance or laziness” (86).



their extermination,” write José Saldaña and Jorge Portocarrero, “as occurred during the internal armed conflict.”<sup>177</sup>

Therefore, over the years, the Peruvian state has faced social protests with a fragile balance between criminal-repressive responses and dialogue and prevention management. Nevertheless, whether due to international doctrine, commitments, and surveillance; whether through gradual learning due to changes in the curricula mentioned above; whether through the joint work of capacitation of the International Committee of the Red Cross and the Ombudsman’s Office; whether through the impact of civil society campaigning—the coercive arm of the state restrains itself and the number of wounded and dead as a result of social conflicts has substantially decreased, replaced by rising numbers of detainees.<sup>178</sup>

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<sup>177</sup> Saldaña and Portocarrero, “La violencia de las leyes.”

<sup>178</sup> Interviews with Eduardo Vega, Rolando Luque, Eduardo Dargent, and Iván Lanegra, Lima, September 2019. The Ombudsman’s Office reports 195 dead and 2,312 injured in social conflicts between 2006 and 2011, while between 2013 and 2019, it reports 62 dead and 1,894 injured.



# Conclusion: Outcomes and Pathways

In considering the impact of transitional justice processes over the past 20 years on the way the Peruvian state and society deal with violence today, it is important to highlight that the CVR, its *Final Report*, and the attention that has been paid to its recommendations are immersed in broader national social, cultural, political, and economic dynamics. The system of caudillismo, historical hierarchical relations, discrimination, and inequalities in Peru has outlived the armed conflict, influencing the way that it is remembered and the way the CVR and its *Final Report* were received in a neoliberal economic model. These same dynamics are also influenced themselves by the wider international community's agenda not only on human rights but also on economic development and free trade.

The limitations of the CVR's birth certificate marked its future. The atypical transition—in which none of the actors in the 20-year armed conflict and dictatorship participated and negotiated—gave space to a relatively small sector of human rights defenders and progressive democratic academic elite from Lima to create a powerful truth commission, but one without broad support beyond these convinced sectors. During its period of operation (2001–2003), the CVR increased to some extent the visibility of the victims and shook the hegemonic history of the conflict through its public audiences. The remarkable work done by an academic multidisciplinary team is reflected in the voluminous *Final Report* that nevertheless lacked popular dissemination and outreach and was perceived as an instrument of the literate city.<sup>179</sup>

Added to this perception of a left-academic and centralist commission, the *Final Report's* revelations and conclusions—radically different from the predominant discourse promoted by the Fujimori government and its allies—signaled the ethical or legal responsibility, complicity, or silence of almost all national sociopolitical actors and institutions, and society as a whole. In doing so, the report provoked at minimum a communication blockade, if not resistance and outright rejection, from the very actors and institutions that were tasked with implementing its recommendations on criminal justice, reparation measures, and guarantees of nonrepetition in the form of institutional reforms.

With little political and institutional backing, the post-CVR agenda therefore returned to the hands of civil society. The truth-telling process certainly allowed a rapprochement between traditional human rights and victims' defenders, feminist organizations, and the artistic sectors around transitional justice issues, and,

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179 As Eduardo Cáceres noted in an interview in Lima, September 2019: “[It] is the last great holistic text on Peru, as the texts of Basadre, Flores Galindo, or Degregori were at the time.”

thus, some enlargement of the “alliance of the convinced” that use the *Final Report* as a banner.<sup>180</sup> But any confluence with other civil society organizations that focus on economic, social, and cultural rights or socio-environmental and indigenous issues has been slow to develop, and where it has developed, it rarely looks to the *Final Report* as a guide.

The fact that the *Final Report* has not become a formal reference document for the centralized state apparatus does not mean the transitional justice process has been irrelevant to the public agenda and public policy. In the sense that a set of potentially mutually reinforcing public policies and actions respond, strictly speaking, to the CVR’s recommendations and others seek to move in the direction of overcoming socio-economic and ethnic–cultural fractures, it appears that there is a *before* and *after* the *Final Report*. That is, there are policies and actions that would not have been possible without the existence of the CVR:

- convictions for human rights violations using concepts and arguments from the *Final Report*;
- judiciary and humanitarian exhumations;
- the identification and registration of victims of the conflict;
- the design of a normative and institutional framework for reparations programs and their implementation;
- inaugurations of places of memory around the country and the national Place of Memory, Tolerance and Social Inclusion, with a consensual museum script;<sup>181</sup>
- the expansion of academic research and literary, film, theater, and art production in general, addressing the violence that was experienced and memory from different approaches;
- the progressive penetration of a culture and doctrine of respect for human rights among the institutions that are responsible for defense and internal order;
- the improvement of accessibility and social inclusiveness in the educational sector;
- massive registration campaigns for those who are undocumented, focused in the most affected and marginalized areas.

There are undoubtedly important quantitative results of these advances, but they depend on the benevolence and will of certain groups of officials of diverse ranks, in a context of cabinet instability and high turnover of officers, and on the persistent pressure of victims’ groups and human rights organizations. There are also huge gaps between these quantitative results and qualitative results, and between the state’s rhetoric of inclusion and respect for human rights and its practice, which demonstrates no relevant cultural or attitudinal institutional transformations toward inclusive, egalitarian, and democratic relationships in the way authority is wielded, in contradiction to the CVR’s core understanding of reconciliation. Thus, the process remains unfinished, with progress being neither lineal nor integral but rather sectoral, dispersed, and diluted.

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<sup>180</sup> The term was coined by the UN Special Rapporteur on Transitional Justice, Pablo de Greiff.

<sup>181</sup> The consensual museum script was developed through a participative process that involved affected civilians, members of the military and police force, journalists, artists, representatives of the human rights movement, members of the armed forces and the National Police, and authorities, in 14 meetings held in the cities of Ayacucho, Lima, and Satipo.

Certainly, the set of institutional reforms, recommended as prevention guarantees, to address the root factors that caused or facilitated the conflict has been the less attended. There have been no radical structural transformations either in institutions such as the armed forces, the police forces, or the judiciary or in labor rights, the quality of health and educational systems, or even access to basic services such as roads, drinking water, and lighting. Inequalities between native/bilingual and Spanish-speaking populations and between urban and rural areas are still large. Consequently, despite some positive changes, and despite an economic model that has been presented as “miraculous,” the big picture—the fundamental conditions of historical marginalization of the processes of cultural, social, economic, or political democratization, the centralization of power, and the absence of the state and its basic services, affecting the people of the Andes and the Amazon basin—has persisted.

To carry out major reforms, to build a state with regulatory and redistributive force, to implement a sustainable development model, certain classes of leaders, institutions, and wills are needed that Peru currently does not have. The weak and short-lived democratic transition in 2000 and the widespread institutional weakness at the time thwarted the possibility of major state reform. It was not possible to configure a democratic relationship, wrote Carlos Iván Degregori:

on the one hand, because according to hegemonic conceptions, except for economic development, everything is an illusion; and except for the political power necessary to maintain the economic model, everything is illusion, or lack of communication. On the other hand, if it is not essential for them to modify their discourse and their practice, it is because of the weakness of a consistent liberalism and a democratic left in the country, which leads to the lack of sustained and sufficient pressure from society for democratic, inclusive and supportive alternatives.<sup>182</sup>

Again, the big picture has been reinforced, reflected in the recurrent outbreaks of violence; the results of the last three presidential elections, in which the second rounds opposed reiterative representatives of the economic establishment against representatives of the so-called minorities of the interior of the country; and the recent results of an IPSOS America survey showing that 86 percent of respondents want changes in the economic model.<sup>183</sup>

If the hegemonic discourse giving Fujimori victory against terrorism and pushing economic growth based on free private initiative is still the most visible, because of the alliances between political and business pressure groups and the mass media, there are still signals, if anecdotal ones, that the CVR’s narrative has, to a certain extent, penetrated a broader stratum of the population and political class. For example, in September 2010, President Alan García promulgated a legislative decree that established the dismissal due to excess of the term of investigation or preliminary investigation and allowed any criminal who had served more than 14 months in prison without being tried to be declared innocent due to excessive imprisonment.<sup>184</sup> In response, citizens, congressmen, and the minister of justice himself (who resigned as a result)

<sup>182</sup> Carlos Iván Degregori, “Espacios de memoria, batallas por la memoria,” *Argumentos, Revista de análisis y crítica* 4 (Sept. 2009).

<sup>183</sup> According to the survey, 32 percent want radical changes and 54 percent want moderate changes. IPSOS América, “Informe de Resultados: Estudio de opinión América—Ipsos, Perú, 30 de abril de 2021” (April 30, 2021), 9.

<sup>184</sup> Immediately, the defendants in the “Grupo Colina” case and Vladimiro Montesinos requested the archiving of their proceedings.

objected, and quickly the Constitutional Court declared this disguised amnesty law unconstitutional, ratifying the dominant position in the country against the amnesty laws.

Similarly, President Kuczynski's attempt to pardon Fujimori in December 2017 generated immediate and spontaneous mobilizations; prompted the resignation of the ministers of culture, defense, and interior and of the executive secretary of CMAN, among other officials; and ultimately cost him the presidency. The recent discursive attacks and assimilation attempts with the Shining Path in the press against the disseminators of the emblematic song "Flor de retama" were strongly responded to by the regional government of Ayacucho and the municipality of Huamanga with official communiqués and symbolic actions.<sup>185</sup> Finally, the attempts by Keiko Fujimori, Alberto's daughter, to become president were, the first two times, largely impeded by the massive reaction of part of the population against her father's legacy, through citizen movements like "No a Keiko" and "Fujimori nunca más." Her third and current attempt is generating a very strong anti- vote based on her legacy, from which she does not demarcate but rather claims via her technical team and campaign strategies.

Today, a degree of citizen control exists, and certain limits cannot be passed without generating reactions and demonstrations. Thus, even if it is difficult to establish a cause-and-effect relationship, the transitional justice process is having a positive impact on society's internal and external control of the actions of public and private institutions. The fragility of the equilibrium was revealed, however, by the recent heavy-handed repression against protesters in Lima in November 2020 after Congress declared the vacancy of President Vizcarra and the president of Congress, Manuel Merino, was sworn in as interim president, in a highly contested interpretation of the constitution led by the Fujimori bench.<sup>186</sup> The division of the country over the current presidential elections opens up a future of deep uncertainties, instability, and risk of setbacks.

In the end, addressing a legacy of internal conflict and authoritarianism and, particularly, of historical racism is not something that can be expected to be accomplished in a 20-year period, nor is it something that a transitional justice process can do on its own. There is a tendency to have overly ambitious expectations for what truth-telling and other transitional justice processes can do, especially in regard to the modifications of structural problems of divided societies, such as exclusion, racism, patriarchy, the economic model, and so on. However, truth commissions and transitional justice processes can identify the problems, provide evidence about them and their manifestations, and serve as a wake-up call to the country about the need to establish priorities for public policies and to improve checks and balances, vehicles that serve to promote processes that will take much longer, because facing them many times means questioning the system. This is the case in Peru.

<sup>185</sup> See "Milagros Leiva: exigen que se disculpe por afirmaciones sobre 'Flor de Retama,'" *La República*, May 4, 2021, Espectáculos.

<sup>186</sup> Excessive force by police was reported by the Office of the United Nations High Commissioner for Human Rights (OHCHR) after a two-day visit following the protest of November 9 to 15, 2020. Two protesters were killed, one of them from a pellet gun shot fired by police at close proximity, and the other from a gunshot. Over 200 were injured, many of them from similar pellet gun shots, used by police to disperse protesters. OHCHR, "Report of the Mission to Peru, 17–22 November 2020" (2020).

# Appendix

## List of Interviews

### Lima (September 2019)

Alicia Abanto, Environment, Public Services and Indigenous Peoples Department of the Ombudsman Office

Martín Benavides, sociologist, Principal Investigator of Grupo de Análisis para el Desarrollo (GRADE), Professor at the Pontifical Catholic University of Peru (PUCP), specialized in education, stratification and social classes, inequality, Current Director of the National Superintendence of Higher Education of the Ministry of Education

Víctor Caballero, Dialogue Office of the Ministry of Education, ex-Head of the Office of Social Conflict Management, under the Presidency of the Council of Ministers (PCM), during the government of Ollanta Humala

Eduardo Caceres, philosopher, consultant for OXFAM Great Britain, ex-director of the Association for Human Rights (APRODEH), specialist in economic, social, and cultural rights issues and Peruvian political and social movements

Mariano Castro, Deputy Minister of Environmental Management at the Ministry of Environment, researcher and advisor on development and management of public environmental and social policies

Eduardo Dargent, Director of the Master's Program in Political Science and Government and Coordinator of the Research Group on Capacity of the Peruvian State of the PUCP, specialized in studies of political regimes, state, political parties, and public policy politics

Narda Henríquez, sociologist, Professor at PUCP, gender specialist

Iris Jave, Professor of Political Communication at PUCP and at the University of Lima, Member of the Memory and Democracy Research Group of the PUCP and of the Latin American Transitional Justice Network, director of the Area of Institutional Relations and Projects, Member of the steering committee of the Institute of Democracy and Human Rights of the PUCP

Iván Lanegra, Professor at PUCP, specialist in social and public policies, interculturality, environmental regulation, Ex-Vice Minister of Interculturality

Rolando Luque, lawyer and philosopher, specialized in management and transformation of social conflicts, Social Peace and Prevention Department of the Ombudsman Office, ex-Head of the National Office of Dialogue and Sustainability at the PCM

Sofía Macher, UNDP Consultant for Transitional Justice in Libya and Yemen, Ex-President of the National Reparations Council of Peru, Ex-member of the Truth and Reconciliation Commission in Peru and Vice President of the Truth and Reconciliation Commission of the Solomon Islands, Representative of civil society in the Organization of American States Dialogue Table (2000), Executive Secretary of the National Human Rights Coordinator, member of the International Executive Committee of Amnesty International

Rosa Montalvo, specialist in rural development, focusing on indigenous and peasant women

Paula Muñoz, Professor of the Academic Department of Social and Political Sciences and researcher at the Research Center of the Universidad del Pacífico

Raquel Reynoso, President of the Rural Educational Services Association (SER), previous Coordinator of SER's Democratic Governance Program, Democratic Governance and Decentralization Program, the Mining and Rights Concessions Project in Peru and the Youth Project on Discrimination and Racism

Eduardo Rubio, Executive Director at Mine Anglo American

Elizabeth Salmon, Executive Director of the Institute of Democracy and Human Rights of the PUCP, Consultant with the Ministries of Justice and Defense of Peru, the Peruvian Truth and Reconciliation Commissions, the United Nations, and the International Committee of the Red Cross

Francisco Soberón, human rights, leftist activist, Founder of APRODEH, the nongovernmental organization of which he is honorary director, led the National Human Rights Coordinator's Office and was a member of the steering committee of the Coalition for the International Criminal Court, Vice President for South America of the International Federation of Human Rights (1997-2001)

Javier Torres, anthropologist, political analyst focused on regional conflicts, funder and ex-director of SER

Carolina Trivelli, Peruvian economist, specialist in poverty, social policies, and rural development, Ex-Minister of Development and Social Inclusion of Peru

Eduardo Vega, ex-Ombudsman, Director Ethics and Development Institute of the Antonio Ruiz de Montoya University, current Minister of Justice

Ismael Vega, anthropologist, director of the Amazon Center for Anthropology and Practical Application (CAAAP), Professor at the National University of San Marcos

Leslie Villalopo, researcher at the CAAAP

### **Ayacucho (November 25-28, 2019)**

Yuber Alarcon, Regional Coordinator, High-Level Multisectorial Commission in Charge of the State's Actions and Policies Related to Peace, Collective Reparation and National Reconciliation



Ernesto Ambía, Regional Coordinador, APRODEH

Dr. Casallo, Public Ministry

Rodrigo Cervantes, Office of Prevention and Gestion of Conflicts, Regional Government

José Coronel, ex-Regional Coordinator of the Truth and Reconciliation Commission

Jeffrey Gamarra Carrillo, sociologist, Professor at the University of Huamanga

Adelina García Mendoza and Mama Lidia, Board of Directors, Asociación Nacional de Familiares de Secuestrados, Detenidos y Desaparecido del Perú

Lorena Hermoza, Office of Social Development, Regional Government

Janet Matta, Regional Coordinador, Comisión de Derechos Humanos

Carmen de los Ríos, Director, Centro Loyola

Omar Rosel, Regional Coordinador, SER

**Ica (December 16-20, 2019)**

Gerardo Arevalo, Coordinator, Consultation Table for the Fight against Poverty

Cecilia Cabrera, General Secretary of the Trade Union of Domestic Workers of the Province of Ica

Sr. Girao, Office of Social Development, Provincial Municipality of Ica

David Huarancca, Federation of Agro-export Workers

Mayra Ramirez, lawyer, Comisión de Derechos Humanos de Ica (CODEH-Ica)

Esperanza Ramos, President, CODEH-Ica

Luz Elena Roja, Ministry of Women and Vulnerable Population

Paulina Velasquez, General Secretary of the Trade Union of Workers of CHAPI

Carlos Zapata, Office of Social Development, Regional Government and focal point for the Reparations Council

Focus Group with twelve representatives of grassroots organizations of displaced persons

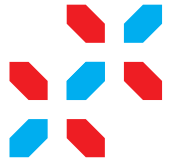




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