

Lima, January 14, 2022

**Distinguished Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

**Reference: Questionnaire “The roles and responsibilities of non-state actors in transitional justice processes”**

The Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Fabian Salvioli, receives inputs regarding the roles and responsibilities of non-state actors in transitional justice processes. I provide information related to the questionnaire's 1, 2, 3, and 4 questions.

**Introduction**

Peru is an ongoing internal armed conflict (IAC) from 1980 and 2000 between the Government of Peru and the Partido Comunista del Perú (Sendero Luminoso), Communist Party of Peru (also known as PCP-Shining Path -PCP-SL), and Movimiento Revolucionario Túpac Amaru (MRTA), Tupac Amaru Revolutionary Movement. According to the Comisión de la Verdad y Reconciliación (CVR) del Perú, Truth and Reconciliation Commission of Peru, in its Final Report, found that 69,280 people died<sup>1</sup> and 23,969 disappeared. The CVR carried out an extensive analysis of the violations during the two decades of violence and gave many recommendations to implement at the earliest possible opportunity.

The United Nations has defined transitional justice as "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice, and achieve reconciliation."<sup>2</sup> Do we have to ask whether or not Peru is in a transition process? It's a complicated question, and it depends on multiple factors:

1. Whether the exogenous and endogenous causes present at the beginning of the conflict overcome
2. whether policies of consensus, consolidation, and the establishment of new institutions and procedures were adopted, with the participation of victims as right holders; and
3. Human rights violations should address.

**CVR's Final Report**

On August 28, 2003, CVR President Solomon Lerner Febres presented the CVR's Final Report in nine volumes. The report describes the development of violence, actors in the conflict, crimes, human rights violations, and the repercussions of violence. It also includes recommendations aimed at

---

<sup>1</sup> According to the statistical projections made by the CVR, between 61,007 and 77,552 people may have died during the conflict.

<sup>2</sup> United Nations. 2014. "Transitional Justice and Economic, Social and Cultural Rights. United Nations" ([HR/PUB/13/5](#)), p. 5.

reconciliation such as institutional reforms, an Integral Reparations Program (IRP), the National Plan for Anthropological-Forensic Intervention, mechanisms for monitoring its recommendations, and prosecuting human rights violations. It follows five obligations that the Peruvian State must follow. Among them, we have:

### **1) Recommendation: Institutional Reforms**

The government of Peru must adopt institutional reforms to prevent the repetition of tragic repressive events; this involves reorganizing the state apparatus to give effect to human rights. An example of one of these reforms was to promote an integrated system to address the issue of missing persons during the internal armed conflict. The Peruvian State ratified the International Convention for the Protection of All Persons from Enforced Disappearance and the enactment of Law No. 30470, "Law for searching for missing persons during the period of violence 1980-2000". In May 2019, the Ministry of Justice and Human Rights (MINJUSDH) and the Peruvian Forensic Anthropology Team (EPAF) signed an agreement to cross information between the National Registry of Missing Persons and Burial Sites (RENADE) and the Genetic Data Bank to streamline investigations of disappeared persons.

The CVR proposed policy to address the problem of missing persons included a National Missing Persons Commission and an Office of Missing Persons and the National Forensic Anthropological Investigation Plan that had not yet been implemented. On the other hand, non-governmental organizations promoted a dialogue table on the 'Search for Missing Persons' that, among many things, developed in October 2012 a consensus called 'Public Policy for the Searching for Missing Persons in Peru during the CAI.'

Since the Final Report of the CVR until this year, there was an ineffective response from the Peruvian State to aid the claims of thousands of victims that still have not found justice for the disappearance of approximately 24,000 missing people.

### **2) Recommendation: National Burial Plan**

The purpose of restoring the human remains to their families is to support the victims in processing their grief and contributing to the valuable evidence for investigating the facts. The CVR establishes the need to create burial sites previously known as mass graves. For this reason, it developed a National Burial Site Registry (RENADE), identifying "4,644 burial sites nationwide, having made preliminary findings in 2,200 of them."<sup>3</sup>.

There is currently no single record of burial sites – despite efforts or initiatives as RENADE – or a mechanism for cross-checking information.

### **3) Recommendation: Comprehensive Repair Program (PIR)**

The transitional justice process cannot understand without a corrective approach; this depends on a reconciliation process. There were reparation initiatives until July 5, 2006, that the State approved the regulations of Law 28592, a Comprehensive Reparation Plan created by the Reparations Council, that it is in charge of the elaboration of the Registro Unico de Víctimas (RUV), Registry of Victims, which has a list of 157,000 individual beneficiaries.

---

<sup>3</sup> Final Report, Volume IX, 'Recommendation: National Burial Plan', p. 209.

After this, the Peruvian State promulgated in 2011 the Supreme Decree D.S. No. 051-2011-PCM. This bill establishes a compensation of 10,000 Nuevos soles (approximately USD 2,500) per victim; the other aspect is that the RUV closed on December 31, 2011, to recognize the requests for economic reparations, with a considerable number of victims, have not been registered.

The inequality of distribution determines that the victims of sexual rape receive 100% of the amount each. In comparison, the relatives of the deceased will receive 50% for the spouse and the other 50% for parents and children.

The Former CVR President Solomon Lerner Febres noted that 17 years after the CVR Report, one of the reasons for dissatisfaction with the recommendations is the "repair problem, and it is that the amounts are insufficient." Not only is a regulatory framework on reparations necessary, but it is also required to implement it accompanied by institutional capacity, that it allows the victims to have access to fair and equitable reparation measures.

Another objective of the CVR was "to develop proposals for reparation and dignity for the victims and their families."<sup>4</sup> In this regard, the CVR established a policy of reparations for recovery and assistance to people psychologically affected by violence and put forward a concrete proposal for economic and social development. Likewise, it emphasized that reparations policy must include a detailed proposal of normative and legal guarantees to prevent the violation of rights and institutionalize democratic practices and permanent consultation.

The Reparations can be different: collective reparations, economic reparations, health repairs, reparations in education, a program of promotion and facilitation of housing access, a program of restitution of citizen rights, and a program of symbolic reparations; among these, those of a symbolic nature stand out, such as acts of recognition, places of commemoration (museums, monuments, memory spaces<sup>5</sup>), workshops of local memory, accompaniment in the delivery of remains, delivery of coffins, among others.

The first Museum of Memory was the photographic exhibition "Yuyanapaq: To Remember," inaugurated on August 9, 2003, with the commissioners of the CVR in the city of Lima. The museum of victims in Peru, called Museum of Memory Para que no se repita<sup>6</sup>, So that it is not repeated, was inaugurated on October 15, 2005. ANFASEP promoted this initiative, and it is considered a valuable and complete cultural, artistic, photographic sample of the conflict. On December 17, 2015, The Peruvian State promoted the Place of Memory, Tolerance, and Social Inclusion (LUM), a museum that supports activities related to the period of violence in Peru. Despite these efforts, it is necessary to create workshops of collective memory in the places where conflict struck.

#### **4) Recommendation: Judicialization of human rights violations**

The Truth and Reconciliation Commission sent to the Attorney-General's Office 47 cases of human rights violations that were possible to document all the elements necessary to bring those responsible to justice and recommended a reform of the justice administration system.

---

<sup>4</sup> Regulations Supreme Decree D.S. No. 065/2001-PCM of 4 June 2001.

<sup>5</sup> In Ayacucho, there are 31 memory spaces in operation, which make up 37% of the memory spaces nationwide. The main areas where these spaces are located are Huanta, Huancasancos, Huamanga, and Cangallo. In 2005 the memorial *El Ojo que Lloro*, The Eye That Cries was built as a way to commemorate the victims of the violence between 1980 to 2000.

<sup>6</sup> There are other post-conflict museums, such as Yuyana Wasi Memory House in Huanta, the Chalina de la Esperanza, the Quipu de la Memoria, the Traveling Museum "Art for Memory".

The Office of the Ombudsman supervised 194 cases of human rights violations, including the 47 investigations submitted by the CVR to the Public Prosecutor's Office at the end of its mandate. In April 2013, 39% of all cases were filed (77), and only 16% has concluded with a sentence (32)<sup>7</sup>.

Among the main difficulties for the prosecution of cases, we have:

- **The first factor** is the reduced number of specialized prosecutor's offices and their centralization in Lima. For the year 2013, there were four supra-provincial prosecutor's offices in Lima, 3 in Ayacucho, 1 in Tingo Maria, 13 that deal with other crimes, in addition to 3 national superior prosecutor's offices<sup>8</sup>; this decentralized model allows to have a better approximation and collection of information of the cases. However, the number of prosecutors is insufficient. In 2004, the Judicial Power modified its jurisdiction and determined specialized courts and two members of the National Criminal Chamber in Lima who would hear human rights cases; however, the successive expansion of jurisdiction distorted their dedication to human rights violations. This situation may affect the right to secure the judicial protection of the accused and victims;
- **The second factor** is the absence of a registry of cases for human rights violations;
- **The third factor** is the lack of information gathering. The biggest problem in conducting an investigation is the denial of information by the Ministry of Defense, making it hard to identify the alleged perpetrators and learn valuable facts for the investigation;
- **The fourth factor** is the unnecessary delay in the preliminary stage investigations and the judicial processes (an example of this is the Putis Massacre case, 34 years without sentence<sup>9</sup>);
- **The fifth factor** is the absence of a protection system for victims. Despite the approval of Law No. 27378, 'law for protecting victims and witnesses, it is not effectively implemented;
- **The sixth factor** is the situation of the defenselessness of victims or groups of victims; even if human rights organizations assume the defense of many of the cases, some victims don't have legal advice;
- **The seventh factor** is the lack of specialization and training of the justice operators and the personnel of the specialized forensic team.

## 5) Recommendation: Mechanisms for monitoring your recommendations

Those recommendations have aimed at promoting the dissemination of the Final Report: a) implementing a system for the dissemination of the documentary collection through public and private institutions; b) encouraging the Public Ministry to open investigations against the alleged perpetrators in the shortest time; c) The Ombudsman's Office makes public the names of the people who deserve a criminal investigation; recommend that the National Chamber against Terrorism of the Superior Court of Justice of Lima take into account the findings established in the CVR; d) adopting administrative measures against public officials who are involved in complaints of serious human rights violations, and recommend that the necessary guarantee provided to witnesses and victims of serious crimes and violations of human rights. Many of these had *not yet implemented recommendations*.

---

<sup>7</sup> Peru's Ombudsman's Report No. 162. Ten years of truth, justice, and reparation. Advances, setbacks, and challenges of an unfinished process, August 2013.

<sup>8</sup> Ibidem, p.179.

<sup>9</sup> On 13 December 1984, 123 villagers, including babies and the elderly people were gunned down by members of the Peruvian military.

Finally, in 2009, was created the Movimiento por la Amnistía y los Derechos Fundamentales (Movadef). It has the liberation of former members of MRTA o Shining Path terrorist group as a purpose. According to Peru's Interior Min, MOVADEF isn't a political party; even some witnesses assured that it is related to the former leader of Peru's Shining Path terrorist group.

It is essential to point out that in Peru, there isn't active participation of society in the transitional process, except for some initiatives of NGOs. An example of this is that in 17 years has not been a balance about the Final Report.

The Peruvian State should open dialogue and tackle inequalities and disparities that led to an insane internal armed conflict.