

Reparations, Responsibility

 Victimhood in Transitional Societies

REPARATIONS IN PERU:

15 Years Of Delivering Redress

September 2019

A woman wearing a wide-brimmed hat, a patterned sweater, and a dark skirt with a colorful shawl draped over her shoulders is walking away from the camera on a dirt road. The road is flanked by a high, reddish-brown earthen wall on the left and a stone wall with vegetation on the right. In the background, there are rolling green hills and mountains under a cloudy sky. The ground is littered with some trash.

Julie Guillerot

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Executive Summary

This report contains a deep overview of the reparations policy for the victims and survivors of the internal armed conflict in Peru. After a 20 years period of armed conflict combined with a dictatorship (section 1), the transitional government set up a Truth and Reconciliation Commission (TRC) that permitted to give the foundations of what will become a comprehensive reparations plan. Based on this consensual recommendation on reparations elaborated by the TRC, the State adopted the law that creates the Comprehensive Reparations Plan and its Regulations, defining the institutional architecture, the content of the programs and the definitions and restrictions to the concept of victims and beneficiaries (section 2). The outlines of the state of implementation process of the reparations policy (section 3), both in terms of the identification of the victims and beneficiaries and of the execution of the seven programs of the Comprehensive Reparations Plan (Collective Reparations Program; Individual Economic Reparations Program; Educational Reparations Program; Health Reparations Program; Program for Promotion and Facilitation of Housing Access; Symbolic Reparations Program; and Citizen Rights Restitution Program) and also in the national and international judicial spheres, allowed to review the conceptual and institutional challenges as well as the difficulties of financing, management and coordination of a huge effort to put in place a national reparations policy (section 4).

This report is produced as part of the Arts and Humanities Research Council funded 'Reparations, Responsibility and Victimhood in Transitional Societies' project AH/P006965/1. It is written by Peruvian consultant Julie Guillerot and edited by Luke Moffett and Clara Sandoval. More information can be found on the project website: <https://reparations.qub.ac.uk/>



1. Background

1.1 The internal armed conflict period (1980 - 1992)



Memorial Park and ANFASEP Museum in Ayacucho.
Photograph by Luke Moffett

Between May 1980 and November 2000, Peru experienced what would be described by the Truth and Reconciliation Commission (CVR) as the most violent period in its history as a republic.¹ In effect, May 1980 marked the first violent action of the Communist Party of Peru – Shining Path (SL - Sendero Luminoso). While the country was emerging from 12 years of military government and free elections were being organized in which illiterate people would participate for the first time, SL decided to launch – in their words – a popular war against the old State and class enemies, in their belief that armed struggle was the only means of attaining power and establishing a new political, economic and social order. Their ideology, based on Marxism-Leninism-Maoism, rapidly became fundamentalist and totalitarian and revolved around the personality of its founder, Abimael Guzmán.²

SL made rural areas the principal scenario of the conflict, where individual dissidence from SL led to selective assassinations and annihilations, and collective dissidence resulted in massacres and the destruction of whole communities.³

Starting in 1983, the violence unleashed by SL increased with the appearance of another subversive group called Tupac Amaru Revolutionary Movement (MRTA - Movimiento Revolucionario Túpac Amaru). Even though, in contrast to SL, the MRTA claimed responsibility for its actions and refrained from attacking the defenseless population, it also carried out selective assassinations, systematic abductions and hostage taking.⁴

The government rapidly showed its incapacity to understand the dimensions of the problem and to react and restrain the growth of these movements. Just two years after Shining Path's first action, the democratic government of Fernando Belaunde decided to militarize the conflict and, abandoning his privileges and prerogatives and abdicating his democratic responsibilities, delegated the counter-subversive fight to military institutions.⁵ The democratic government of Alan García, the most important opposition party during Belaunde's government, initially proposed to vary this strategy. However, 'the APRA government failed in this fight. Its constant changes meant that in the end it was unable to break with the tendency not only to militarize the conflict, but also to leave it outside democratic control!'⁶

The implementation of states of emergency and of political-military commandos led to the subordination of the police to the Armed Forces 'without taking the necessary precautions to prevent abuses of the population's fundamental rights.'⁷ They, in turn, applied a strategy that at the beginning involved indiscriminate repression against the population suspected of belonging to SL. This strategy later became more selective, although many human rights violations were still committed.⁸ Based on this, the CVR states that in certain places and at certain times of the conflict the actions of the Armed Forces not only involved excesses on the part of some individual officers or soldiers, but also generalized and systematic human rights violations. The CVR considered that these practices as well as constituting crimes against humanity violated the norms of international humanitarian law,⁹ mainly in the form of the forced disappearance of people, torture, and cruel, inhumane or degrading treatment.

1.2 The authoritarian period (1992 - 2000)

Although the capture of SL and MRTA leaders led to a significant decrease in political violence, it paradoxically coincided with the start of the political authoritarianism of Alberto Fujimori's regime dating from the self-coup of 5 April 1992. This period meant, in the words of the CVR, 'the collapse of the rule of law'.¹⁰ Important sections of all the social strata showed themselves willing to trade democracy for security and to consider human rights violations a necessary price to

1 Truth and Reconciliation Commission ed., Hatun Willakuy, Abbreviated version of the Final Report of the Truth and Reconciliation Commission. (Lima: CVR 2003). See preface by Salomon Lerner, p.9-13 and first conclusion, p.431.

2 For further details on the Communist Party of Peru – Shining Path, see Truth and Reconciliation Commission, ed., Final Report (Lima: CVR, 2003), vol. II, chapter 1, p71.

3 Hatun Willakuy, p436.

4 Ibid.

5 Truth and Reconciliation Commission ed., Final Report, vol. I, p71. For further details on the political and institutional actors, see Final Report, vol. III, chapter 2.

6 Ibid., p67.

7 Ibid., vol. I, p71.

8 Ibid., vol. VIII, conclusion p54.

9 Ibid., conclusion, p55.

10 Ibid., conclusion, p99.

pay to put an end to the subversion.¹¹ During this period an official version of the occurrences was also presented. Aimed at reaping political benefits from the supposed 'defeat of terrorism', what was known as the antisubversive legislation was created, which not only changed the national defense system, the law on the national intelligence service and the law on the military situation, but also included sentences and procedures that violated due process and guaranteed impunity: amnesties, disproportionate sentences, new crimes (such as aggravated terrorism and treason), as well as hooded tribunals and judges.¹²

1.3 The fall of authoritarianism and the transition period

In 2000 the appearance of what are known as the "vladivideos"¹³ revealed the apparatus devised by presidential advisor Vladimiro Montesinos, to corrupt the private business sector, state sectors and military commands. The public revelation of this corrupt apparatus and the questions surrounding Alberto Fujimori's second re-election came on top of a situation of crisis and political instability and in conjunction with demands for economic improvement and a return to democracy. All this put an end to Fujimori's regime, and he fled the country. Only then did the possibility arise of creating a new political and legal framework that would be more respectful of human rights and open to a new awareness of past violations. In effect, the self-denominated "transition government" of Valentín Paniagua, which followed Fujimori's abrupt departure, marked an important stage in the recovery of democratic institutions, the reconstruction of the rule of law and respect for human rights. It is important to mention, among other initiatives, the normalization of Peru's situation with respect to the contentious jurisdiction of the Inter-American Court of Human Rights (IACtHR),¹⁴ the ratification of various international treaties (such as the Inter-American Convention on the Forced Disappearance of Persons or the Rome Statute of the International Criminal Court) and the organization of new free and fair elections. The behavior of the State in the friendly resolution of other cases before the Inter-American Commission of Human Rights (IACmHR) and the designation of funds for this purpose, in response to IACmHR recommendations and IACtHR sentences, gave an important signal of political will and respect for the international obligations of the State, including reparations.¹⁵

Parallel to these initiatives and very soon after the fall of the Fujimori regime, the transition government issued a supreme resolution creating an inter-institutional working group in charge of preparing 'legislative and other types of projects considered necessary for the establishment of a truth commission'.¹⁶

11 Ibid.

12 Ibid., conclusion, p76.

13 Name given to the video recordings that Montesinos himself made of his illicit acts of corruption.

14 After Inter-American sentences against de Peruvian State in important HR cases like Castillo Petruzzi and Loayza Tamayo, on July 7, 1999, the Peruvian Congress approved by 66 votes in favor, 33 against and one abstention a project promoted by the President Fujimori that decided the retirement, with immediate effect, of the recognition of the contentious jurisdiction of the Court Inter-American on Human Rights, which was duly notified to the Secretary General of the OAS. See: DULITZKY, Ariel. The retirement of the recognition of the contentious jurisdiction of the Court Inter-American on Human Rights. Juridical Analysis, Revista PUCP, Vol. 6, Num. 6 (1999).

15 See: SANDOVAL, Clara. The Challenge of Impunity in Peru: The Significance of the Inter-American Court of Human Rights, Essex Human Rights Review Vol. 5 No. 1 July 2008.

16 Supreme resolution 304-2000-JUS, 9 December 2000, article 1.

At that time, the national justice system was still affected by the legal ravages of the Fujimori regime and national prosecutions were not the primary option for the leader class of the transition and human rights civil society. This working group had 90 days in which to present their proposal and was made up by the Minister of Justice, who presided over it, 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, the Peruvian Episcopal Conference and the National Evangelical Council of Peru, seeking in this way a certain level of representativeness. In the three months it met in session, the group also carried out consultations with civil society and State organizations, as well as with national and international experts.¹⁷

This initiative did not generate a wide national debate regarding the period of transition and how all the aspects involved should be approached; that is to say, not only with regard to the problem of corruption or the electoral problem, but also with regard to the return to democracy after an armed conflict and a dictatorship and the resolution of the violations committed during the recent past. The decision to create a truth commission was the result of an agreement between a well-articulated, but not very large sector of civil society, where human rights defenders and radical democrats acted in conjunction with the political wing of the transition government that supported the same causes. For this sector, a truth commission was a fundamental ethical demand as it had been a decade before, when APRODEH created an Initiative Group against Impunity¹⁸ and worked vigorously for the establishment of a truth commission. In 2001, however, it was not a majority demand.¹⁹

Based on the proposal of the inter-institutional working group, the transition government established the Truth Commission on 4 June 2001,²⁰ in charge of 'clarifying the process, the facts and responsibilities regarding the terrorist violence and human rights violations which occurred from May 1980 to November 2000, attributable both to terrorist organizations and State agents, as well as of proposing initiatives aimed at strengthening peace and harmony among Peruvians'.²¹ It was also expected that the Truth Commission would favor 'national reconciliation, the rule of justice and the strengthening of the constitutional democratic regime'.²²

President Alejandro Toledo, whose government took office in July 2001, ratified the creation of the commission, but considered it important to change the name from Truth Commission to Truth and Reconciliation Commission (CVR) thus clearly giving the body a new objective: to 'lay

17 Truth and Reconciliation Commission ed, Final Report vol. I, 41.

18 This group was made up by 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.

19 AMES, Rolando. Violencia, verdad... ¿reconciliación en el Perú?. in Verdad, justicia y reparación. Desafíos para la democracia y la convivencia social. Costa Rica: IIDH - IDEA, 2005.

20 Supreme decree 065-2001-PCM, 4 June 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.

21 Supreme decree 065-2001-PCM, article 1.

22 Ibid.

the foundations for a profound process of national reconciliation based on the clarification of facts, as well as the re-establishment of justice.²³

The Commission had the mandate to 'analyze the political, social and cultural conditions, as well as the conduct of society and state institutions, which contributed to the tragic situation of violence which Peru experienced; contribute, where appropriate, to the justice system's clarification of the crimes and violations of human rights committed by terrorist organizations or some State agents, seeking to determine the whereabouts and situation of the victims and identifying, to the extent possible, presumptive responsibilities; draw up proposals for reparation and dignification of the victims and their relatives; recommend institutional, legal, educational and other reforms, as preventive guarantees, so that these may be processed and attended to through legislative, political or administrative initiatives and establish mechanisms for following up on its recommendations'.²⁴

The decision of the Executive to establish a Truth and Reconciliation Commission, with the mandate to, among other things, draw up 'proposals for reparation and dignification of the victims and their relatives'²⁵ called on the State to attend to the political aspects of reparations through the creation of a program for this purpose. This program would have to fulfill its obligations toward a wide universe of victims of human rights and political violence.²⁶

1.4 The Truth of the Commission on the Victims

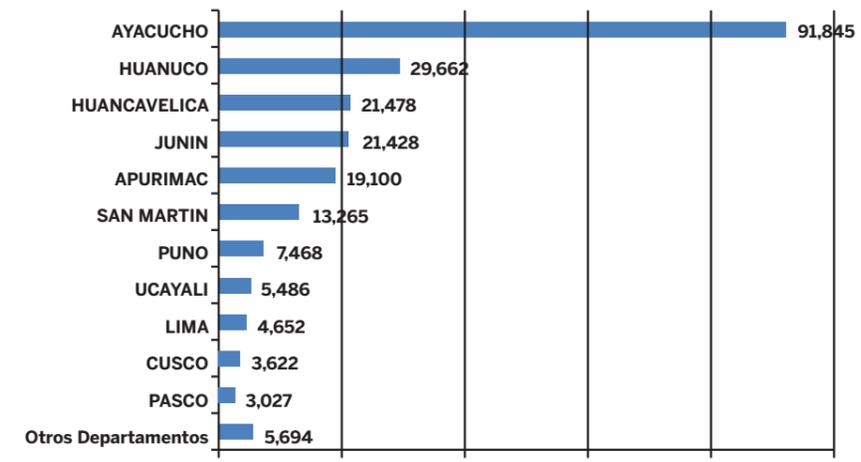
The result of the work of the Commission was presented to the country in August 2003. The CVR *Final Report* consists of nine volumes analyzing the causes and consequences of the internal armed conflict Peru experienced and demonstrating the gravity of the human rights violations that occurred during that period. Most of the CVR results were in sharp contrast to widely held views regarding this type of conflict in Latin America and to the way Peruvian society viewed itself.

One of the first of such findings of the Commission was that Shining Path was not only the immediate and fundamental cause of the armed conflict that wracked Peru,²⁷ but also the main perpetrator of the abuses committed. In contrast to other countries in Latin and Central America, in which State agents were the main perpetrators and where less than 5% of the victims were attributed to subversive groups, in Peru, the CVR attributed to Shining Path 54% of the fatal victims.²⁸

23 Supreme decree 101-2001-PCM, 4 September 2001, paragraph 2. In this norm, President Toledo also increased the membership of the Truth Commission from seven to twelve commissioners.
 24 Supreme decree 065-2001-PCM, article 2.
 25 Ibid., subparagraph c.
 26 Regarding this notion see: INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (ICTJ) and ASOCIACIÓN PRO DERECHOS HUMANOS (APRODEH) eds., *Parámetros para el diseño de un programa de reparaciones en el Perú. Informe conjunto* (Lima: ICTJ and APRODEH, 2002), p30-34.
 27 Truth and Reconciliation Commission ed., *Final Report*, vol. VIII, conclusion p12.
 28 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 collected during its work.

The second finding of the Commission concerns 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 calculations, however, the number is far higher, most likely in the region of 69,280. That is to say, it was the bloodiest conflict in the country's history since independence, greater than all the civil and international conflicts that had occurred in all its history as a republic.²⁹

This takes us to what is undoubtedly the main conclusion of the Commission's analysis, which goes beyond the internal armed conflict itself and concerns the profile of the victims. On analyzing the socio-demographic profile of the conflict's victims, the Commission reminds us of the interrelationship between the five wide fissures that divide the country, fissures that SL used and manipulated in order to carry out its "popular war against the old State" and which also explain the State's responsibility in grave human rights violations. In the first place, there is a direct relationship between a person's poverty and social exclusion and the likelihood of being a victim of the violence, which shows a correlation between the socio-economic divide and the form the violence took.³⁰ As well as this, the departments most hit by the violence were the poorest in the country's interior $\frac{3}{4}$ Ayacucho, Junín, Huánuco, Huancavelica, Apurímac and San Martín (85% of the victims) $\frac{3}{4}$ which shows that socio-economic divisions are closely related to geographical divides.³¹ Added to this is the rural-urban divide, given that 79% of the victims lived in rural areas and 56% worked in agriculture.³² The fact that the mother tongue of 75% of the victims was Quechua or another native language illustrates the effects of the ethno-cultural divide.³³ Finally, the consequences of the education gap are revealed in the fact that 68% of the victims had not finished secondary school or were illiterate.³⁴



Victims by region

29 Ibid., conclusion p2.
 30 Ibid., conclusion p4.
 31 Ibid.
 32 Ibid., conclusion p5.
 33 Ibid., conclusion p6.
 34 Ibid., conclusion p7.

The CVR therefore concludes that the violence did not have the same impact on different geographical areas and different social strata in the country and draws attention to the deep-seated racism and discrimination within Peruvian society. These prejudices meant that the population's response was weak in relation to the scale of the violations committed and that it was indeed possible to conceal the violence. They also meant that 40,000 citizens could go "missing" without the reaction of most of the national population.

'The *Final Report* represents a fundamental advance in so far as it offers a new version of the social truth concerning the two decades of the conflict, in terms of both the actors in the conflict and the socio-demographic profile and the number of victims. In this sense, it can be taken as a restorative model for the construction of an alternative history of the abuses of the past and makes it difficult to reasonably deny what occurred'.³⁵



Plaque commemorating the truth commission in Ayacucho. Photograph by Luke Moffett

35 GUILLEROT, Julie. Una mirada al proceso peruano de justicia transicional. *El Portal del Derecho*. n.o 11, 2005, p21.

2. Towards A National Reparations Policy

2.1 The Inspiration: The CVR Recommendations' on Reparations, Consensual Elaboration of an Integral Proposal³⁶

Among the CVR's competences was that of preparing proposals for repairing and dignifying victims and their relatives.³⁷ The title of volume IX of the Final Report is 'CVR recommendations: Toward reconciliation' and proposes to the State ways to prevent the acts of violence from occurring again, including reparation measures in the form of a Comprehensive Reparations Plan [*Plan Integral de Reparaciones*] (PIR), made up of six programs that combine symbolic and material reparations measures with individual and collective ones. The PIR forms part of a number of recommendations that also include the judicial prosecution of a series of cases of human rights violations and extensive institutional reforms.

The Comprehensive Reparations Plan recommended by the CVR is based on the *State's legal obligation* to provide reparations to victims for not having guaranteed respect for human rights and not having fulfilled their duty to protect their citizens.³⁸ The CVR opted for the design of a national policy of reparations, considering that the judicial route is neither conceived nor configured to respond to a massive or systematic pattern of violations, but rather to individual violations. The CVR argued that a national policy of reparations contributes to the general purpose of doing justice and providing fair and equitable satisfaction to a greater universe of victims that could be addressed by judicial processes.³⁹

The Comprehensive Reparations Plan recommended by the CVR is also based in the ethical dimension. Indeed, the CVR's concept of reparation has an *ethical basis* understood as 'the moral duty to provide the victims and their relatives with tangible proof of support and help which, together with justice, give back to those who had lost all expectation of being viewed by society in a different light, the hope that the doors leading to a better understanding in the national configuration of behaviors, ethnic groups and cultures may slowly be opened'.⁴⁰

The CVR introduces one more dimension to its conceptual proposal on reparations and that of its *internal and external integrity*.⁴¹ When seeking to take into account the complexity of the

36 The CVR's proposal on reparations is in: Truth and Reconciliation Commission (ed.). *Final Report*, vol. IX, p147-209. For a detailed analysis of this proposal, see: Julie GUILLEROT & Lisa MAGARRELL. *Memorias de un proceso inacabado. Reparaciones en la transición peruana*. Lima: APRODEH-ICTJ-OXFAM, 2006.

37 Supreme Decree No. 065-2001-PCM, June 4, 2001. Art. 2c.

38 TRUTH AND RECONCILIATION COMMISSION ed., *Final Report*, vol. IX, p147-154.

39 *Ibid*, p151-153.

40 *Ibid*, p149.

41 *Ibid*, p155. On these concepts, see: ICTJ y APRODEH (eds.). *Parámetros para el diseño de un programa de reparaciones en el Perú*. Informe conjunto, pp. 6-7 y DE GREIFF, Pablo (ed). *The Handbook of Reparation*. Oxford University Press Inc. New York, 2006. USA, p10-12 and p476.

violence to which it is trying to respond, the nature and the different consequences of each type of violation that gives rise to reparations, the current context in which the victims find themselves and the feasible scope of each measure, the CVR considered important that its reparations plan had a multidimensional nature.⁴² To achieve this, the PIR-CVR is characterized 'by appropriately combining measures of symbolic reparation with measures of material reparation; and for including measures of an individual nature accompanied by measures of a collective nature'. This dimension (*internal integrity*) then seeks that the different components of the Plan are coherent with each other and support each other internally. In addition, the CVR states that the reparations 'should not be seen in any case in isolation,⁴³ but rather in relation to other mechanisms of transitional justice such as the search for truth, the reconstruction of historical memory, the sanction to perpetrators and institutional reforms. The CVR considers that 'each one of these aspects, in the absence of the others, loses an important part of its value and could even be considered as an empty gesture. Instead, if they are integrated in a coherent manner, they are more likely to contribute effectively to the process of national reconciliation and to the construction and consolidation of the democratic political community to which citizens aspire'.⁴⁴ This other dimension (*external integrity*) called on the State to address the recommendations of the CVR as a whole.

According to the CVR's conception, reparations are understood as State gestures and actions on behalf of society, which seek to acknowledge the harm done, reassert the dignity of the victims, and above all, their status as full citizens. Reparations constitute the materialization of the acknowledgement of their pain and suffering as victims of human rights violations. They also constitute an expression of everybody's efforts to establish relations of equality and respect. 'In this sense, the Comprehensive Reparations Plan should be one of the instruments that serves to strengthen the process of consolidation of an inclusive democracy and the future of national coexistence',⁴⁵ one of the instruments that leads to 'a new social pact and toward reconciliation'.⁴⁶ Therefore, the PIR-CVR has as its general objective: '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: 'Recognize the quality 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 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'.⁴⁷ 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 of which includes a justification,

42 TRUTH AND RECONCILIATION COMMISSION ed., Final Report, vol. IX, p155.

43 Ibid.

44 Ibid.

45 GUILLEROT, Julie. Hacia la reparación integral de las víctimas del conflicto». Informe sobre la situación de los DESC 2002-2003 en el Perú: Dos años de Democracia... y ¿los DESC? (Lima: APRODEH and CEDAL, 2003), p85.

46 TRUTH AND RECONCILIATION COMMISSION ed., Final Report, vol. IX, p147-148.

47 Ibid, p154.

a specific objective, the list of the beneficiaries to whom it is addressed and the details of the components and measures that comprise it.

The dynamics and strategies for the preparation of the PIR-CVR underwent changes throughout the work period of the Truth Commission. One of the fundamental lessons of the Peruvian process is connected to the very process of constructing the reparations proposal: the PIR design was based on comparative international experience and also on national experience in reparations,⁴⁸ with the participation of international and national experts, but also on the basis of the demands and needs expressed by civil society in workshops and studies of their proposals. Despite several difficulties, advances and setbacks, the CVR finally decided to organize a participatory process to prepare its recommendations on reparations, a challenge that was worth facing because it brought several advantages. All this permitted a frank discussion on the nature, scope and content of the PIR. The PIR was essentially conceived as a political process involving the organization of consensus and negotiation, with exchanges, dialogue and a sharing of positions. Important agreements were reached on these issues, contributing to the drawing up of a reparation's proposal based on consensus.⁴⁹

It is important to state that this participatory process – as the process of the CVR as a whole – involved first human rights NGOs,⁵⁰ and then also victim organizations,⁵¹ but did not include for the most part organizations concerned with the rights of the Andean peasants or the rights of indigenous peoples, nor did they include the environment and development-related organizations.⁵² Those taking part in the dialogue with the CVR were largely organizations that had taken on the fight for truth and justice since the beginning of the armed conflict, and included: organizations of families of the disappeared, displaced populations, and pardoned people, among others.⁵³

48 The CVR's PIR Team investigated mainly the experiences of Argentina, Chile, Guatemala, El Salvador, at international level, and the experiences of the legislation on reparations for victims of terrorism, the reparations programs designed by the Commission to follow up on the Recommendations of the IAComHR and the Special Commission for the Pardoned Innocents.

49 The two most important stages of this process were the International Meeting Civil Society and Truth 'Toward the comprehensive reparation of victims' organized in November 2002 in Ayacucho, where the 'Basic criteria for the design of a reparations program in Peru', were adopted and a consultation workshop organized by the CVR in April 2003, where the GPIR global reparations proposal was presented to over 150 representatives whose comments were received. As a result of this meeting and at the express request of the organizations of young orphans, a new program was added to the outline of the Comprehensive Plan: the Education reparations program.

50 The ones focused on civil and political rights and basically grouped around the National Coordination on Human Rights (Coordinadora Nacional de Derechos Humanos CNDDHH).

51 The ones focused on direct or indirect human rights violations, basically groups of victims and relatives of arbitrary detainees, disappeared, "innocents released" and internal displaced.

52 Out of the 30 institutional cooperation agreements signed by the CVR nation-wide, only two were signed with NGOs devoted to defending the rights of indigenous peoples (in this case, representatives of the Amazonian peoples). The two NGOs devoted to defending the rights of indigenous peoples to have signed agreements with the CVR were the Amazonian Center of Anthropology and Practical Application (Centro Amazónico de Antropología y Aplicación Práctica) and the Center for Amazonian Research and Promotion (Centro de Investigación y Promoción Amazónica). See <http://www.cverdad.org.pe/lacomision/cnormas/index.php>. To deepen on this: Ruth Rubio-Marín, Claudia Paz y Paz Bailey and Julie Guillerot, Indigenous Peoples and Claims for Reparation: Tentative Steps in Peru and Guatemala, *In Identities in Transition: Challenges for Transitional Justice in Divided Societies*, Paige Arthur (ed.), Cambridge University Press, December 2010.

53 By contrast, the demands of indigenous organizations have focused mostly on development, the defense of their lands and natural resources, and the protection of the environment from the negative impact of extractive industries and therefore.

It is also important to state that, although the CVR included a gender perspective in its work (as reflected in two chapters devoted to sexual violence against women and the differential impact of violence), the CVR's PIR Team [Grupo sobre el Plan Integral de Reparaciones] (GPIR) approach to gender issues was limited. It restricted itself to organizing workshops with 'a gender focus,' which meant they were aimed at women or men only.

That said, thanks to a process of gathering information through dialogue, consultation, devolution and feedback, the CVR did not offer an independent conception of reparations but adopted the conceptual framework in which most of the actors involved coincided.⁵⁴ Likewise, the dialogue, the consultation, the return and feedback with the organizations of victims contributed to that they feel recognized not only as actors and allies, but also as full citizens with the capacity to propose and contribute.⁵⁵ This participatory process meant that the victim organizations gained awareness of the importance of being united and presenting a strong front as social actors in order to achieve their task. It also led to an active group of human rights NGOs joining forces around a common objective and strengthening their coordination mechanisms and analytical skills and proposals in relation to the issue, through the *Working Group on Reparations* (GTR).⁵⁶

The participation of the NGOs and victims' organizations in the design of reparations proposals gives the proposals greater legitimacy and also facilitates the construction of political alliances that will be able to defend them in the post-CVR period. The Comprehensive Reparations Plan finally approved by the Truth and Reconciliation Commission is the result of a political process of negotiations and consensus building, with exchanges and approaching positions, which up to now has found support for both NGOs as well as victim organizations for having felt heard and reflected. To the extent that the Commission has a temporary mandate, the consensus building of the proposed reparations between it, NGOs and victim organizations allows that, once their mandate is completed, these other actors feel it as their own, demand compliance and defend it before the powers of the State.

54 Between September and October 2002, 19 workshops were organized in 6 departments, in which 846 victims or relatives of victims participated. GUILLEROT, Julie, Humberto ORTIZ and Rolando PÉREZ. *Hacia la reparación integral de las víctimas. Memoria del II Encuentro Internacional "Sociedad Civil y Comisiones de la Verdad"*. (Lima: Asociación Paz y Esperanza, 2002), p9. To deepen on this process: Julie GUILLEROT & Lisa MAGARRELL. *Memorias de un proceso inacabado. Reparaciones en la transición peruana*. Lima: APRODEH-ICTJ-OXFAM, 2006, p102-106.

55 See: Julie GUILLEROT & Lisa MAGARRELL. *Memorias de un proceso inacabado. Reparaciones en la transición peruana*. Lima: APRODEH-ICTJ-OXFAM, 2006, p93-118. Also: Cristián Correa, Julie Guillerot and Lisa Magarrell, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, in *Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making*, C. Ferstman, M. Goetz, A. Stephens (eds.), Martinus Nijhoff Publishers, 2009, The Netherlands.

56 In November 2002, the group was coordinated by the Human Rights Association (APRODEH) and made up by the Human Rights Commission (COMISEDH), the National Roundtable of People Displaced due to Political Violence (MENADES), Child and Family Network (REDINF), Oxfam – Great Britain, Project Counseling Service (PCS) and Rural Educational Services (SER). Later, the Peruvian section of Amnesty International, the Psychosocial Attention Center (CAPS), the Amazon Center of Anthropology and Practical Application (CAAAP) and the Institute for Legal Defense (IDL) had been incorporated into the GTR. The GTR defined itself as a collective made up of NGOs, cooperation agencies, people and civil society organizations, devoted to lobbying the CVR and the State in the process of comprehensive reparation for people affected by the political violence. At the same time, it sought to strengthen civil society in its role as monitors of compliance with the CVR recommendations in order to ensure the continuity of the process of truth, justice and reconciliation.

2.2 The Law that Creates the Comprehensive Reparations Plan and Its Regulations: Definitions and Delimitations

15 years after the Final Report of the CVR, the country has a well-developed legal framework for dealing with administrative reparations. Various initiatives appeared - from both the executive and legislative spheres and from the national, regional and local levels - that make the response of the State in terms of reparations a rather complex one. Without prejudice to the advances at sectorial and regional level, which the extension of this report does not allow us to examine, we will focus next on what allows us to glimpse a national policy of reparations.

In a surprising performance⁵⁷ and without demonstrating any coordination with the initiatives from the Executive Branch, the Congress of the Republic approved Law No. 28592, Law that creates the Comprehensive Reparations Plan, which establishes 'the Normative Framework of the Integral Plan of Reparations - PIR 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'.⁵⁸ By recognizing by means of a law the duty of the State to provide reparation to the victims of the conflict and to establish as a criterion of interpretation the conclusions and recommendations of the Final Report of the CVR, this Act constitutes an important milestone since it provides legal certainty and frames the process within of a conceptual continuity.⁵⁹ 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.

The approval of the Regulation of the Law⁶⁰ a few days before the end of Toledo's government was achieved thanks to the sustained effort of the human rights movement to demand the government that this fundamental step be fulfilled so that the Law that creates the PIR could be implemented. Being a framework law, it was up to the Regulation to decide on a series of important points. We will emphasize here that, in the same line as the Law, a clear reference is made to the Final Report of the CVR. Hence, the development of the principles, approaches and criteria that should govern the reparation process⁶¹ are related to the conceptual and technical proposal of the CVR. Likewise, we find a similarity of vocabularies and content between the recommendation of the CVR and the development made by the Regulations of each of the programs indicated by the Law.⁶²

57 The correlation of force in the Congress of that period could not leave presage the approval of a Law favorable to the implementation of the recommendations of the Truth and Reconciliation Commission.

58 Law N°28592, 29 July 2005, art. 1.

59 Ibid, art. 2 (g).

60 Supreme Decree N°015-2006-JUS, 6 July 2006. Modified by Supreme Decree N°003-2008-JUS, 21 February 2008.

61 Modified N°015-2006-JUS, Chapt. II Title II. The principles are the following: a) Respect for the dignity and rights of the human person; b) expression of the reparative purpose of the action; c) equity and proportionality; d) non-discrimination; e) simplification; f) free. The approaches are the following: a) integrality; b) sustainability; c) intergenerational; d) psychosocial; e) participatory; f) intercultural; g) gender equality and equal opportunities; h) symbolic; i) human rights; j) decentralized. The criteria are the following: a) celerity; b) correction; c) presumption of victim status; d) priority; e) confidentiality.

62 Supreme Decree N°015-2006-JUS, Title IV.

2.2.1 Reparations Benefits: Individual and Collective Measures



On the left a community hall built with support in part from collective reparations through CMAN, Ayacucho. Photograph by Luke Moffett

According to the law, the PIR is composed of six programs (citizens' rights restitution program, reparations program in education, health reparations, collective reparations, symbolic reparations and a program to promote and facilitate access to a solution of housing) whose contents are not developed. The Law does not therefore contemplate a program of economic reparations – compensation; however, it incorporates an open formula that allows adding other programs.

In making use of this open formula contained in article 2, the Regulation incorporates a program of economic reparations within the PIR. This program is addressed to the relatives of the deceased and / or disappeared victims, to the persons who – as a result of attacks, aggressions or torture – have a permanent or total physical or mental disability and to the victims of rape. Although the recognition of a program of economic reparations in a document of obligatory compliance for the State is an important advance, it is necessary to mention that its implementation – as we will see later – has been complicated and thus considerably restrict its effectiveness. In terms of benefits thus, the PIR-Law – like the PIR-CVR – is characterized by its comprehensive nature, combining individual reparation measures with collective measures, as well as symbolic and material reparation measures.

From a gender perspective, the programs failed in general to consider the stigmatizing economic effect of crimes when determining benefits and failed to consider the potential stigmatizing effect of receiving individual benefits within the contexts of communities in which collective interests often prevail. The issue is a complex one, even when dealing with collective reparation measures – which might seem to be the best alternative in these contexts, considering that women are generally the most vulnerable members of such collectivities. Certain measures, however, could have a transformative impact upon women, both at a practical level and at the level of their self-esteem. This is particularly the case with measures seeking the restoration of citizenship rights (such as normalizing the legal status of missing persons and that of undocumented individuals), but also with programs assigning social service packages (literacy plans or access to higher levels of education; physical and mental health assistance; work training enabling women to boost their abilities; employment or business opportunities). These types of reparation measures, if considering not only gender, but also ethnic origin, could significantly bridge the existing gender gaps and enable women to improve their position vis-à-vis their communities, their families, and themselves.⁶³

2.2.2 Victims and Beneficiaries

The Law defines the concept of victim, excluded cases and beneficiaries. It states that “are considered victims persons or groups of persons who have suffered acts or omissions that violate human rights norms, such as enforced disappearance, kidnapping, extrajudicial execution, murder, forced displacement, arbitrary detention, forced recruitment, torture, rape or death, as well as the relatives of the people killed and disappeared”,⁶⁴ and it divides the group of beneficiaries into two categories: on the one hand, the individual beneficiaries who are the relatives of the dead or missing persons and direct and indirect victims;⁶⁵ and, on the other hand, the collective beneficiaries.⁶⁶ The beneficiaries can be individual or collective. These qualities are not exclusive if the same benefit is not duplicated.⁶⁷

63 To deepen on this issue: Julie Guillerot, Linking Gender and Reparations in Peru: A Failed Opportunity, in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Ruth Rubio-Marín (ed.), Social Science Research Council, 2006, New York, USA.

64 Law 28592, art. 3.

65 'Are considered individual beneficiaries: a) The relatives of the disappeared or deceased victims: includes the spouse or partner, the children and the parents of the disappeared or dead victim. b) Direct victims: includes those displaced, innocent people who have suffered imprisonment, those tortured, victims of rape, kidnapped victims. Are also considered direct victims, the members of the Armed Forces, of the National Police of Peru and members of the Self-Defense Committees and civilians' authorities injured in actions that violate Human Rights during May 1980 to November 2000. c) Indirect victims: includes children resulting from sexual violations; persons who, being minors, formed a Self-Defense Committee; people wrongly convicted of terrorism and treason against the fatherland and people who resulted undocumented.' Law 28592, art. 6.

66 The Law defines as collective beneficiaries: 'a) Peasant communities, native communities and other population centers affected by violence, which presents certain characteristics such as: concentration of individual violations, devastation, forced displacement, breakdown or cracking of the communal institution, loss of infrastructure family and / or loss of communal infrastructure. b) Organized groups of displaced non-returners, coming from affected communities, in their places of insertion.' Law 28592, art. 7.

67 Ibid, art. 5.



Some of the mothers, grandmothers and sisters whose family members who had been disappeared, ANFASEP Museum Ayacucho. Photograph by Luke Moffett

In accordance with the developments of international jurisprudence and the PIR-CVR, the Law recognizes the relatives of the dead and disappeared persons (including the spouse or partner, children, and parents) the quality of *victims* and not only of individual beneficiaries from an heritage point of view, especially from a gender perspective, because it goes beyond the Peruvian law of succession.⁶⁸

From a gender perspective, the PIR-Law refers only to torture and rape. If the official acknowledgement of rape among the crimes to be repaired is a relative step forward taken by this Law. However, this wording involves the insufficient recognition of all the violations and damages suffered by women⁶⁹ and leaves the legitimate access to reparation in these cases at the expense of possible legal actions that could be taken by women victims and that in any case operate with higher standards and much more complex requirements.⁷⁰

68 Unlike the PIR-CVR, the PIR-Law does not accept the validity of various types of relationships beyond consanguinity which would have attempted to incorporate the prevailing notion of the family unit in the high Andean and jungle communities.

69 The wording fails to adequately reflect the specific characteristics of the experiences women suffered. The term 'torture' is used instead of 'torture and cruel, inhuman or degrading treatment,' although these forms of violence are described in different chapters of the TRC Report. Furthermore, the term 'rape' is used instead of 'gender violence' or even 'sexual violence,' both of which categories go beyond rape and relate to other forms of violence aimed at women or having a differential impact on women (also described in other chapters of the Report, such as forced abortion, forced cohabitation, forced contraception, forced domestic labour, sexual slavery, sexual molestation, sexual mutilation, etc.).

70 See GUILLEROT, Julie. Linking Gender and Reparations in Peru: A Failed Opportunity. In RUBIO-MARIN, Ruth (ed.), What Happened To The Women? Gender and Reparation for Human Rights Violations. SSRN, New York, 2006.

The concept of beneficiary thus covers a larger set of individuals who were affected by the conflict, which theoretically means it should cover more women. However, the Plan is largely limited by the assumption that the victim is dead or disappeared and does not reach relatives of surviving victims –although they also suffered harm. This is the case, for example, with relatives of unduly detained persons, including women, who had to provide for their families on their own. Furthermore, although children of rape are included as beneficiaries of certain reparation measures to compensate for their abandonment and vulnerability and their mothers' higher financial burden, women who were forced to have an unintended child are not acknowledged as victims themselves. This shows a gender bias.

2.2.3. Exclusions



Photograph by Luke Moffett

Under the principle that you cannot receive double benefits for the same violation and seeking to equate the situation of the different groups of victims since some - but not all - are served through decisions or State policies, the Regulation points to several assumptions of exclusion from the status of beneficiary.⁷¹ This includes have received reparations under other provisions of the state or in compliance with international decisions, from local authorities or military or police; are members of self-defense committees who are received compensation;⁷² for pardoned innocents who are eligible under separate arrangements for health, education, work and housing;⁷³ persons who have benefited from decisions on reparations or friendly settlements

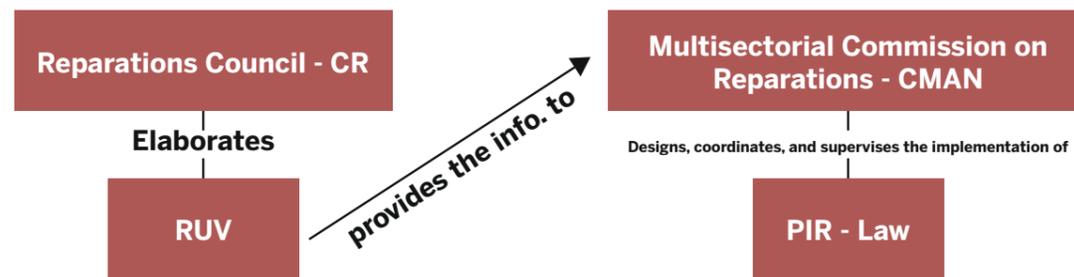
71 Supreme Decree N°015-2006-JUS, art. 52.

72 Under Article 10 of Supreme Decree No. 077-92-DE and Supreme Decree No. 068-98-DE.

73 Under Supreme Decree No. 002-2002-JUS.

under the Inter-American Human Rights System; or persons who have cases awaiting before the Inter-American System. Such individuals do have a right to appeal their exclusion. The Law also provides that 'they are not considered victims and therefore are not beneficiaries of the programs referred to in this Law, the members of subversive organizations'⁷⁴, that is: even if they have suffered a violation of their human rights. Even if the law specified that 'victims who are not included in the PIR and claim a right to reparation will always keep their right to appeal to the courts'⁷⁵, this provision is highly questionable – as we will discuss later. Finally, neither the criteria for the verification of the quality of victims, nor the criteria for the accreditation of the beneficiaries, nor the scope and criteria of these exclusions are delimited by the Regulation, leaving the Reparations Council with a wide and complex task.

2.3 The Organic Structure of the Reparations Policy



2.3.1 The High-Level Multisectorial Commission

The governing body of the entire reparations policy was created before the adoption of the Law. In 2003, a few months after the release of the Final Report of the CVR, the government announced its position by means of a special message.⁷⁶ On the occasion of this pronouncement, the then President Toledo announced the creation of a follow-up mechanism which was created on February 7, 2004 under the banner of High-Level Multisectorial Commission in Charge of the State's Actions and Policies Related to Peace, Collective Reparation and National Reconciliation [*Comisión Multisectorial de Alto Nivel encargada de las Acciones y Políticas del Estado en los Ámbitos de la Paz, la Reparación Colectiva y la Reconciliación Nacional*] (CMAN).⁷⁷

74 Law N°28592, art. 4 and Supreme Decree N°015-2006-JUS, art. 45.

75 Ibid.

76 Statement by President Alejandro Toledo on the Report of the Truth and Reconciliation Commission, Lima, 21 November 2003.

77 Supreme Decree N°011-2004-PCM, 5 February 2004.

As a collegial body, the High-Level Multisectorial Commission is composed of various sectors of the Executive Branch and representatives of civil society⁷⁸

The main objective of the CMAN is to design the actions and policies of the State in the areas of peace, collective reparation and national reconciliation and to coordinate and supervise the implementation of these policies and the fulfillment of the objectives.⁷⁹ However, the actions of the CMAN have focused mainly on the issue of reparations. In this regard, the CMAN framework for action, referring to the 'collective' reparation, was received by civil society as a refusal to accept the concept of integrality promoted by the Truth and Reconciliation Commission and, specifically, to address the individual reparations contemplated by the CVR's recommendation. Yet, the approved texts would finally adopt a holistic conception of reparations, understanding them as individual and collective, and as material and symbolic. The PIR-Law, which has the purpose to reorganize the process, instructs the CMAN to coordinate 'actions with the ministries, regional, local governments and with the state entities that will include in their budgets strategies leading to the pertinent financing for the execution of the Comprehensive Reparations Plan.'⁸⁰

The CMAN passed through different periods in its institutional life, depending of the good will and political support of the President and government in charge. It had to face periodically different kinds of serious limitations which conduced to problems of leadership and strengthening of the governing body in the implementation of the reparations policy. In its 13 years of existence, the CMAN has undergone changes in its location in the State apparatus four times. Between February 2004 and October 2005, it was attached to the Presidency of the Council of Ministers (PCM).⁸¹ In October 2005, it was suddenly transferred and attached to the Ministry of Justice.⁸² This modification hampered any kind of work properly multisectorial, given that the Ministry of Justice does not have the same powers or the same capabilities as the PCM in terms of intersectorial coordination or in terms of impact on the Ministry of Economy and Finance or Congress of the Republic for the allocation of resources. The precarious labor situation of the Executive Secretariat, the hindering of decision-making, the increase of bureaucratic obstacles led to the fact that, as of May 2006, the CMAN has simply stopped sitting.

78 Its initial composition was modified twice. In the first one (Supreme Decree No. 024-2004-PCM, March 25, 2004, article 2) the number of representatives of civil society was increased, bringing the number of Commissioners to 11 and in the second (Supreme Decree No. 062-2006-PCM, September 28, 2006) the number of representatives of ministries was increased, bringing the number of Commissioners to 14. Today it is composed of a representative of the Presidency of the Republic (who chairs it), a representative of the Ministry of the Interior, a representative of the Ministry of Economy and Finance, a representative of the Ministry of Justice, a representative of the Ministry of Women and Social Development, a representative of the Ministry of Defense, a representative of the Ministry of Education, a representative of the Ministry of Health, a representative of the Ministry of Labor and Employment Promotion, a representative of the National Decentralization Council, a representative of the National Rights Coordinator Human, a representative of the National Conference on Social Development, a representative of the National Assembly of Rectors, a representative of the Professional Association.

79 Supreme Decree N°003-2004-JUS, 6 February 2004.

80 Law N°28592, art. 11.

81 Supreme Decree N°024-2004-PCM, 25 March de 2004, art.1.

82 Supreme Decree N°082-2005-PCM, 27 October 2005, art. 1.

In October 2006, it returned to the PCM, where it stayed until December 2011 and its composition was expanded with representatives of the Defense, Education, Health and Labor sectors.⁸³ In this period, the CMAN also received resources and a new Executive Secretary, a man of confidence of the Prime Minister, was appointed. In this way and during this period, the institutional work of the CMAN was strengthened, having at hand the tools to fully assume its role and ensure some sustainability for the reparations process. However, in January 2012 and since then, it is newly attached to the Ministry of Justice and Human Rights.

In theory, the State's policy in this area must have the prior agreement of the CMAN, in order to ensure that the implementation of the activities is carried out in accordance with the PIR's approaches and orientations. But, as denounced by the Ombudsman Office, during these years, this scheme has not been duly assumed by the State. The institutional weakness of the CMAN has caused that, in some cases, its decisions have not been executed because they were not assumed by the sectors involved or not sufficiently boosted by the Executive Secretariat and the Vice Ministry of Human Rights, to which it is ascribed. It gave two clear examples, which are: 1) the lack of immediate implementation of the proposal approved by the CMAN by consensus for the amendment of Supreme Decree No. 051-2011-PCM that put a deadline to the registration to receive economic reparations; and, 2) the non-execution of the agreement to recognize compensation for each affectation suffered by the same victim, aspect that was discussed and approved unanimously in March 2013.⁸⁴

In recent years, the 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. At the end of 2017, the institution faced again a new crisis, given that its Executive Secretary resigned following the presidential decision to pardon Alberto Fujimori. Fortunately, the new Executive Secretary designed is part of the previous team and fully compromised with these commitments and the invaluable importance of the symbolic dimension of the process and the relationships in it.

2.3.2 The Reparations Council

The organic structure of the reparations policy is complemented by another collegiate body, the Reparations Council (CR), which, despite a name that lends some confusion, has the sole function of the preparation of the Unique Registry of Victims [*Registro Unico de Víctimas*] (RUV). Created through the first complementary and transitory provision of Law 28592, Law that creates the Comprehensive Reparations Plan, it is through the Regulation of the Law⁸⁵ that the

83 Supreme Decree N° 062-2006-PCM, 28 September 2006.

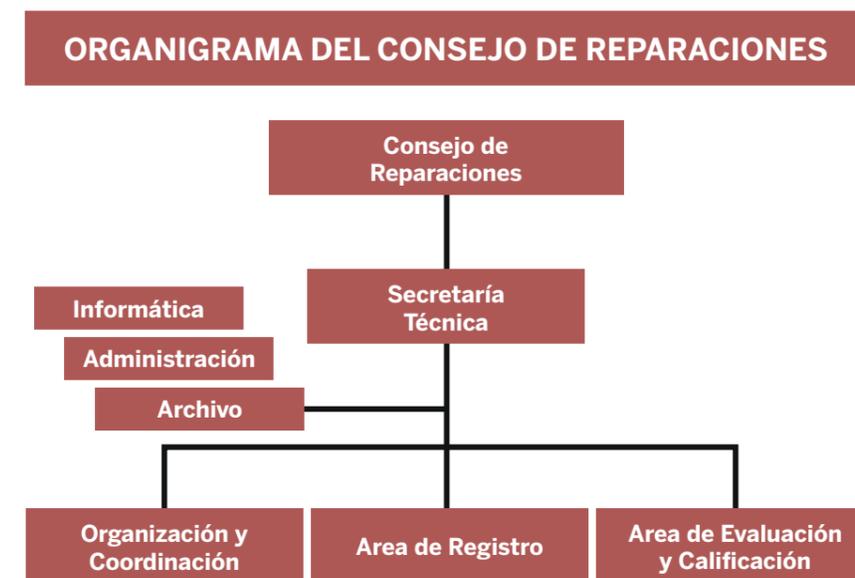
84 DEFENSORÍA DEL PUEBLO, A diez años de la verdad, justicia y reparación, Informe Defensorial 162, 2013, p. 19-20.

85 Supreme Decree N°015-2006-JUS, 6 July 2006, "Aprueban Reglamento de la Ley N°28592, Ley que crea el Plan Integral de Reparaciones".

organization and functions of the CR are regulated. This registry is undoubtedly an important milestone on the road to the full implementation of individual reparation measures. The Law orders that existing registries in the public sector should be integrated into the RUV.⁸⁶

The Reparations Council 'has the competence to qualify and accredit the files for registration in the RUV and to hear and decide as a single instance with respect to the impugnative appeals filed against its decisions'⁸⁷ and for this purpose it has, among others, the following functions: 'a) Direct the process of evaluation, qualification and accreditation of the quality of victims and individual and collective beneficiaries of the PIR and their registration in the RUV. b) Accredite the victims and beneficiaries for their registration in the RUV by means of a Council Agreement. c) Approve and conduct the organization and operation of the RUV and its various databases.'⁸⁸

Organization chart of the Reparations Council



Source: Reparations Council

86 Ibid. These registers are among others: the Record of Absence due to Forced Disappearance by the Office of the Ombudsman, the National Registry for Displaced Persons under the Ministry of Women and Social Development, the Register of Victims of Terrorism by the National Council of Qualification of Victims of Accidents, Terrorism or Drug Trafficking of the Presidency of the Council of Ministers, the list of members of Self-Defense Committees affected by violence by the Reconnaissance Commission of the Joint Command of the Armed Forces, the list of deceased personnel or Disabled of the Armed Forces and National Police in charge of each institution, etc.

87 Supreme Decree N°015-2006-JUS, art. 62.

88 Ibid, art. 64. Additionally, the CR has the following functions: to approve its internal regulations; approve the operation and operation protocols of the RUV and the Repairs Council; keep and keep the file of the documentation that supports the qualification and accreditation of the victims and beneficiaries; propose to the President of the Council of Ministers the appointment of the Technical Secretary; approve and issue periodic reports on the operation of the RUV; give the President of the Council of Ministers and the President of the CMAN the information they request, in order to present annual reports of the actions carried out in application of the Law and these Regulations to the Commission of Justice and Human Rights of the Congress of the republic; the other [functions] that are necessary for the fulfillment of its objectives.

Regarding the internal organization, the legal framework of the CR establishes that its members can be from five to seven people 'of recognized ethical trajectory, prestige and legitimacy in society and identified with the defense of democracy and human rights, respecting the principles of non-discrimination, gender equality and interculturality',⁸⁹ appointed by the Presidency of the Council of Ministers at the proposal of the CMAN. They will perform their functions *ad honorem* and will not be able to form part of the public administration.⁹⁰ The appointment of the members of the Reparations Council was made on October 19, 2006.⁹¹ By bringing together three members of the Armed Forces and Police with three members of the human rights community and an entrepreneur, the Reparations Council has a plural composition that was announced by the President of the Council of Ministers as the expression of the will of the government to bring sectors that were on their backs during the conflict and the post-conflict.⁹² Also appointing as President of the Reparations Council a former commissioner of the TRC manifests the intention to register the CR in certain continuity.⁹³

The Reparations Council was installed on October 24, 2006 and four months after, the appointment of the Technical Secretariat was formalized. Like the CMAN, the Reparations Council has to face changes in its institutional location between the Council of Minister and the Ministry of Justice. These changes in institutional location were not the only operational difficulties which presented.

The main difficulty the CR had to face at the time of its installation was that its budget was not included in the budget document of the Presidency of the Council of Ministers, sector to which the CR is ascribed.⁹⁴ This situation impacted the beginning of its functions: it forced not only the Council to readjust its operating plan, reducing results, activities and goals for the first year, but rather that the Directors themselves finance with personal funds the remunerations of part of the staff.⁹⁵ The scarce resources that are available to undertake the arduous mission of registering

89 Supreme Decree N°015-2006-JUS, art. 63.

90 Ibid.

91 Ministerial Resolution N°373-2006-PCM, 20 October 2006. The Councilors are: Sofía Margarita Isabel Macher Balanero (President), Vice Admiral (r) José Luís Noriega Loes, Pilar Coll Torrente, Division General (r) Juan Alberto Fernández Dávila Vélez, Luzmila Chiricente Mahuanca, General PNP (r) Danilo Apolunio Guevara Zegarra, Ramón José Vicente Barúa Alzadora. Since then two councilors (Vice Admiral (r) José Luís Noriega Loes and General PNP (r) Danilo Apolunio Guevara Zegarra) have been withdrawn, and the CR has been integrated by five councilors, a number that allows its operation according to the current legal framework.

92 This composition was understood by some sectors of civil society as a way to limit the margin of action of the Reparations Council and generated concern in the organizations of victims and relatives who suffered violations at the hands of the forces of order.

93 In 2014, through Ministerial Resolution No. 0036-2014-JUS, the Minister of Justice and Human Rights accepted the resignation presented by Sofía Macher Batanero (former president of the Reparations Council) and by the Minister Ramón Barúa Alzamora. Former General Juan Alberto Fernández-Dávila Vélez was those designated President of the Reparations Council.

94 The CR developed and approved an operating plan for 2007 of a budget of 5.2 million soles (approximately 1.7 million dollars). It was allocated a budget of 1.5 million soles (approximately 500 thousand dollars), funds that were authorized only at the end of June 2017. Additionally, the Reparations Council had \$ 80,000 from the Government of the Netherlands deposited in the PCM in December 2006 but made available to the CR only at the end of May 2007. SECRETARÍA TÉCNICA DEL CONSEJO DE REPARACIONES, Primer informe anual del Consejo de Reparaciones, octubre 2006 – octubre 2007, Lima, 2007, p. 16

95 Ibid, p.18.

the victims, the first year and the following,⁹⁶ have contributed to sharpen the creativity and had however some kind of positive impacts. It generated alternative strategies for the registration of victims and disinterested support by multiple entities, civil society and the State, as well as the victims themselves and their organizations, to develop in a coordinated, consensual and decentralized way the registry of victims at the national level.⁹⁷ In the initial stage, before the teams could be set up, the work had an emphasis on building a shared perspective among the members of the Council in relation to their mandate and the tasks deriving from it. The plural composition of the CR was a challenge for its own functioning, but on a basis of dialogue and open exchange, consensus was reached, little by little, on concepts, visions and methodologies where each of the sectors would find satisfaction. It was the necessary base to be able to enter to the second stage, operative this one, which we will examine in the next section.⁹⁸

Unfortunately, the last annual report published is from 2012.⁹⁹ It was the Council's agreement to not issue any more such annual reports: the members did not consider them necessary and argued that it did not respond to a legal mandate (unlike the CMAN). This decision, however, is questionable from an institutional transparency point of view. Even more worrisome, the Ministry of Justice and Human Rights accepted the resignation of José Ignacio Mantecón from the Reparations Council at the beginning of February 2018.¹⁰⁰ With this, the CR has been left with four members and could not adopt decisions, since at least five members are needed. It was not until November 2018 that two new members were incorporated, and the Reparations Council can continue to work normally.

If it is clear that the political turmoil delayed implementation and the fully operability of the two institutions, the current will of the Vice Ministry of Human Rights of the Ministry of Justice is giving an window of hope and a common conceptual framework to correct and follow the implementation of the reparations programs. Two elements should be noticed: the Reparations Council issued a Institutional Memory "All the names", compiling all its work from 2006 to 2018; and its documentary collection was incorporated into the UNESCO Memory of the World Program at national and regional level, revealing the significance that the documentation collected and processed by the RUV has as an essential source to learn about the Peruvian tragic recent history.

96 At the end of 2009, severe budget cuts forced to reduce remunerations and even to dispense -for months- of a large part of the staff of the Technical Secretariat, with which the work of qualification and registration of cases in the RUV was interrupted. When the Reparations Council was attached to the Ministry of Justice and Human Rights, in December 2011, the Technical Secretariat had only 8 professionals hired, when at its best time (2008) the number of personnel amounted to 60. DEFENSORIA DEL PUEBLO, A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso. Informe Defensorial 162, 2013, p. 25.

97 SECRETARÍA TÉCNICA DEL CONSEJO DE REPARACIONES, Segundo informe anual del Consejo de Reparaciones, octubre 2007 – octubre 2008, Lima, 2008.

98 SECRETARÍA TÉCNICA DEL CONSEJO DE REPARACIONES, Primer informe anual del Consejo de Reparaciones, octubre 2006 – octubre 2007, Lima, 2007, p. 14.

99 <http://www.ruv.gob.pe/informeanual.html>

100 Ministerial Resolution 0029-2018-JUS, 1 February 2018.

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You can even give 100,000 soles to a collective reparation, you may have given a reparation in education to your son, his health service, and a public act of apology, [but] he won't feel repaired, he won't feel repaired, because what the victim is looking for in the end is respect,

Interview with research team P06, Lima, Peru, 6 May 2019

3.1 The Identification of the Victims and Beneficiaries

It is only with the approval of the Regulations of the Law that the nature, objectives, organization and general characteristics of the Unique Victims Registry were developed.¹⁰¹ The RUV is a public instrument, of a national, inclusive and permanent nature¹⁰² whose general objective is the 'nominal identification of the victims of the process of violence that, individually, as a group or as a community, have the right to be beneficiaries or recipients of the actions of reparation contemplated in the PIR'.¹⁰³

It is clear from the reading of the articles referred to the Reparations Council (Article 64, paragraph a) and the specific objectives of the RUV (Article 70) that the Registry must deal with both the victims and the beneficiaries.¹⁰⁴ According to the Regulation, the RUV is organized in two sections:

Book I for the victims and individual beneficiaries

Book II for the collective beneficiaries.

The Regulation develops the general procedures and the different stages of the registration process. There are two ways in which the registration procedure in the RUV is initiated: *at the request of a party*, that implies the direct management of the interested party before the Council's headquarters or the decentralized attention modules or *ex officio*, meaning through

101 Supreme Decree N°015-2006-JUS, Title VIII, Chapt. II.

102 Ibid, art. 68. The Reparations Council interprets that the RUV does not have a term of existence and that it will remain permanently open, thus maintaining the right of people to request their registration at any time.

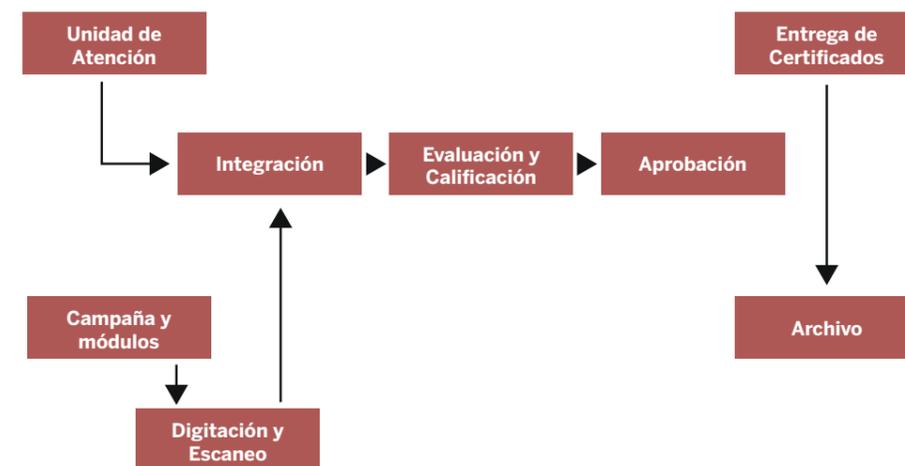
103 Ibid, art. 69.

104 According to the Ombudsman's Office, "registering the beneficiaries would prevent the victims or their family members from subsequently having to request their registration before other registries or instances". DEFENSORÍA DEL PUEBLO (ed.). El difícil camino de la reconciliación. Justicia y reparación para las víctimas de la violencia, Serie Informes Defensoriales, Informe Defensorial N.o 112, Lima, 2007, p.273.

the integration of pre-existing registers,¹⁰⁵ verification or information gathering or registration campaigns undertaken at the initiative of the Reparations Council, and campaigns to collect information and register victims carried out by regional or local governments, prior signature of agreement that guarantees the use of registration cards approved by the CR.

From there comes the stage of evaluation and qualification of the file that consists of the analysis of the information and the application of the cause of exclusion.¹⁰⁶ Once the evaluation and qualification stage has been completed, the CR proceeds to the accreditation.¹⁰⁷ The process finally culminates with registration, which corresponds to the incorporation into the RUV of the persons or groups of persons considered victims and / or beneficiaries, as the case may be, and the certification that is the issuance of the official document supporting the registration.¹⁰⁸

Functional Dynamics of the Reparations Council



105 Supreme Decree N°015-2006-JUS, art. 72. It includes: a) The database of the Truth and Reconciliation Commission; b) The list "The missing Peruvians: preliminary list of persons disappeared by political violence (1980-2000)" from the Ombudsman's Office; c) The record of absence due to forced disappearance of the Ombudsman's Office; d) The MIMDES records, including the Registry of Displaced Persons and the data from the Census for Peace; e) The Supreme Resolutions and other documentation of the respective file, necessary for the registration in the RUV of the beneficiaries of the pardon and right of grace, granted under the protection of Laws N°s. 26655 and 27234, without this implying a new evaluation of your case; f) Points c) and d) of the joint press release signed by the Peruvian State and the IACHR, on February 22, 2001; g) The information of the National Council of Qualification of victims of accidents, acts of terrorism or drug trafficking of the Public Administration; h) The lists of the Ministry of Defense, including the Self-Defense Committees; i) The lists of the Ministry of the Interior; j) The information of the Committees and specialized bodies of international organizations; k) The lists and registers of the affected organizations; l) Information from non-governmental organizations; m) The other sources that the Reparations Council considers pertinent.

106 This stage includes the verification of the correct filling of the files and the formation of the file, as well as the verification of the correct identification of the victim. It also includes the evaluation of exclusion, the gathering of information or complementary documentation, the analysis of all the information and finally, the qualification. Ibid.

107 This stage is the process by which the Reparations Council, as established in paragraph b) of Article 64 of these regulations, approves by means of a Council Agreement the registration of each case in the Unique Victims Registry. Ibid.

108 Ibid, d) y e).

Source: Reparations Council

Regarding the criteria for registration of victims and beneficiaries, the Council approved a document called the 'Regulation of registration to the RUV' that contains the operative definitions, the criteria and general guidelines necessary for the evaluation and qualification of the victims. For each type of victim, a specific definition has been drawn up and the evidentiary elements for each of them have been listed,¹⁰⁹ including the criteria for the cause of exclusion.¹¹⁰ For the collective beneficiaries, the CR had to develop a methodology for measuring the level of impact of the population centers and communities affected by the conflict, as entrusted to it by article 70(c) of the Regulations. To do this, and disaggregating the variables contained in the Regulation (the concentration of individual violations, the razing, forced displacement, institutional breakdown, the destruction of infrastructure and family assets and the destruction of infrastructure and community goods¹¹¹) an indicator has been constructed that allows to order the collective beneficiaries according to their greater or lesser concentration of affectation: very high, high, medium, low, very low. The approval of the incorporation protocols of pre-existing records¹¹² and the approval of operational instruments were also necessary.

In terms of intervention strategies, the CR prioritized its intervention in the areas that are most affected because the conflict did not affect the entire national territory equally and its financial, human and logistical resources will not allow it to be deployed concomitantly at the national level. To do this, and taking as reference up to 10 pre-existing databases, it produced a national map of violence concentration that highlights 10 departments and 212 districts. Aware that these localities not only suffered the ravages of the conflict but also concentrate strong rates

109 'The CR has tried to design a simple procedure, devoid of legal or bureaucratic complexities, which favors the registration of those who have the right to be considered victims or beneficiaries. In this sense, the free procedure is established, the need for a lawyer is dispensed with for the presentation of an application or for the completion of any procedure, representation is allowed by simple authorization, a standard registration form is established and mechanisms are established that facilitate the Council to have a national action through institutional collaboration agreements with the purpose of bringing registration in the RUV to people affected by violence.' SECRETARÍA TÉCNICA DEL CONSEJO DE REPARACIONES, Primer informe anual del Consejo de Reparaciones, octubre 2006 – octubre 2007, Lima, 2007, p22.

110 'In order to carry out this evaluation, information has been gathered from different sources and databases of official entities that have information on the subject in order to cross-check information and rule out that the person for whom the registration to the RUV is requested is incur the cause of exclusion.' That is to say that the Reparations Council has not chosen to be guided solely by a judicial criterion, which however would have been the most respectful of the principle of presumption of innocence and due process in general. The exclusion assessment is applied in all the cases of individual victims who enter the system, whether they come from pre-existing records - since they did not contemplate such exclusion - or from new applications. Ibid, p26.

111 Supreme Decree N°015-2006-JUS, art. 50.

112 All records and lists of pre-existing victims are recorded as a source of information, attributing the character of an affidavit. Likewise, the Regulations (art 76) state that the pre-existing records are integrated into the RUV upon verification, according to the protocols it established, evaluating in each case the purposes for which the registry was created or prepared, the procedures with which it operates, the quality of the information on which the documentary heritage is based and the information in general on which it is based. This verification is carried out even in the cases of the registries created by law (already the Law N°28223 - National Registry for the Displaced People in charge of the Ministry of the Woman and Social Development - or the Law N°28413 - Registry of Absence by Disappearance Forced by the Ombudsman's Office) as well as the testimonies and databases registered by the CVR. Although, in the opinion of civil society, the integration of these last registries and lists should be done automatically, the cause of exclusion indicated by the Law prevents it since no previous registration to the RUV contemplated it. However, the Reparations Council tries to limit this verification process of pre-existing records to the maximum.

of poverty and illiteracy that hinder access to information and the exercise of rights, the CR designed what it calls an 'inclusive strategy of territorial deployment' that allows a differentiated intervention. Thus, for the most affected districts, the collection of information will be done through a census sweep where all the houses will be visited; for rural areas with less impact and more articulated to the cities, it will be done through itinerant registration groups established in key points of various districts; and for the urban areas of the regions and the entire capital will be made through modules of attention to the public.¹¹³

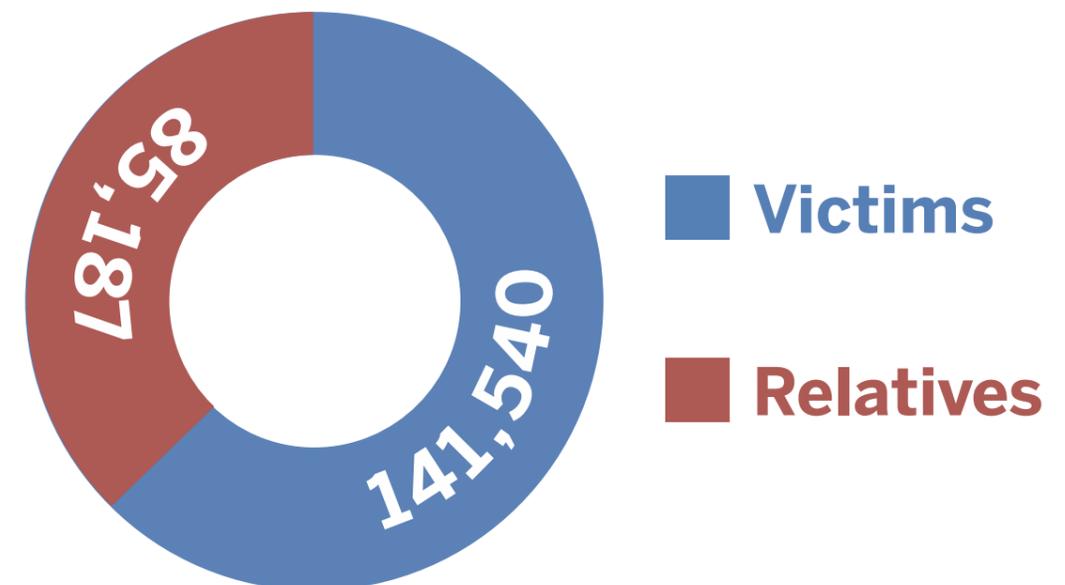
Updated Information about Registered Victims

Source: Reparations Council

Status	Book 1	Book 2
Pre.existing records	90,676	4,976
Requests	133,660	3,529
Total	224,336	8,505
Qualified records (*)	221,113	7,678
%	98.6%	90.3%

(*) Qualified as of 26 de April 2018.

In terms of Book I (individual victims), as of April 26, 2018, the Council registered 226,727 persons in the RUV, including 141,540 victims and 85,187 family members.



113 SECRETARÍA TÉCNICA DEL CONSEJO DE REPARACIONES, Primer informe anual del Consejo de Reparaciones, octubre 2006 – octubre 2007, Lima, 2007, p. 21.

Violations	Victims	Relatives	Total
Forced displacement	58,518	0	58,518
Torture	35,305	0	35,305
Death *	24,284	65,957	90,241
Enforced disappearance *	9,117	19,040	28,157
Rape **	4,639	190	4,829
Kidnapping	3,174	0	3,174
Injuries	2,229	0	2,229
Arbitrary detention	1,260	0	1,260
Victims with disabilities	1,178	0	1,178
Prison being innocent	723	0	723
Forced recruitment	617	0	617
Minor member of the Self Defense Committee	371	0	371
Sexual Violence	83	0	83
Undocumented	29	0	29
Unduly requisitioned	13	0	13
No information	0	0	0
Total	141,540	85,187	226,727

* In the column of family members are considered parents, spouse or partner and children.

** In the column of relatives only children born as a result of the violation are considered.

According to the following table, 53% of the victims were male and 47% were female. However, in the case of the beneficiary relatives, the proportion is reversed, with the majority of women (57%) versus men (43%).

SEX	VICTIMS	%	RELATIVES	%	TOTAL	%
Male	84,063	59.39%	36,287	42.60%	120,350	53.08%
Female	57,477	40.61%	48,900	57.40%	106,377	46.92%
TOTAL	141,540	100.00%	85,187	100.00%	226,727	100.00%

Rape cases predominantly affected women (97%). For the other forms of sexual violence, the majority of victims were also women (67%), but the percentage of men affected reaches 37%.

SEX	RAPE	SEXUAL VIOLENCE	TOTAL
Female	5,051	1,015	6,066
Male	155	599	754
TOTAL	5,206	1,614	6,820

Finally, the information about the ages of the victims as of April 26, 2018, indicates that the largest age group is the group of victims between 51 and 64 years of age (35%), followed by

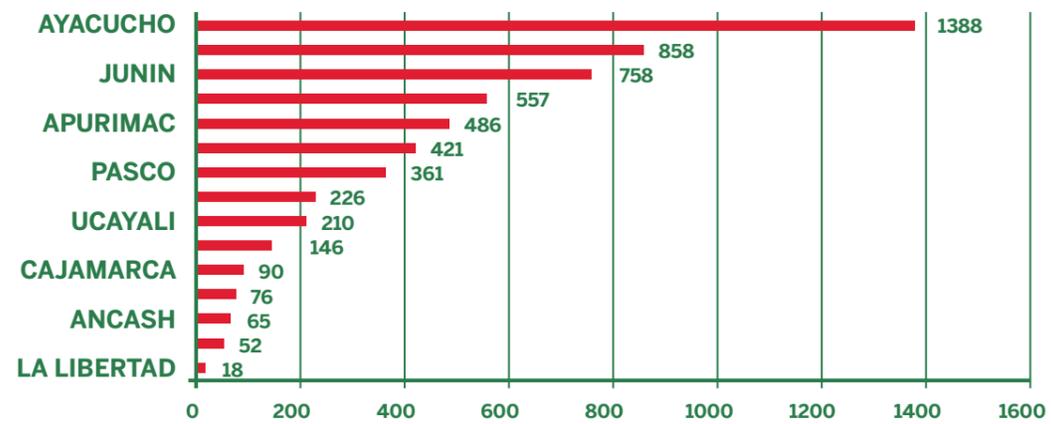
those who have between 41 to 50 years (33%). Smaller proportions are among the victims older than 65 years (13%), and those who are between 31 and 40 years (10%).

AGE	RAPE	SEXUAL VIOLENCE	TOTAL
20-30	37	7	44
31-40	608	75	683
41-50	1,874	410	2,284
51-64	1,734	645	2,379
65+	575	324	899
Dead	360	153	513
No Information	18	0	18
TOTAL	5,206	1,614	6,820

In terms of Book II (collective beneficiaries), as of April 26, 2018, the Council registered 5,712 communities and populated centers, and 127 organized groups of displaced (non-returnees).

Region	Communities and populated centers	Organized groups of displaced
AYACUCHO	1,388	62
HUANUCO	858	5
JUNIN	758	16
SAN MARTIN	557	0
APURIMAC	486	3
HUANCAVELICA	421	2
PASCO	361	0
PUNO	226	5
UCAYALI	210	1
CUSCO	146	3
CAJAMARCA	90	0
PIURA	76	0
ANCASH	65	0
LIMA	52	13
LA LIBERTAD	18	0
ICA	0	17
TOTAL	5,712	127

Population Centres and Communities before the RUV



Level of affectation	Communities and populated centers	%
A	1,284	22.48%
B	1,269	22.22%
C	1,310	22.93%
D	1,127	19.73%
E	722	12.64%
Total	5,712	100.00%

3.2 Implementation of the programs of the PIR

3.2.1 Collective Reparations Program

This program is the most ambitious and the one that received the greatest support from the State. It began in June 2007 and consists of financing of small infrastructure projects and / or productive activities, which are related to the purpose indicated above, up to an amount of S/.100,000 (around USD \$33,000). Although the PRC contemplates four modalities,¹¹⁴ in practice the projects are essentially linked to infrastructure and technical-productive activities,

114 These modalities are: i) Institutional consolidation, which includes the incorporation of actions to support the legal sanitation of communities, the establishment of local authorities and powers, training in human rights, prevention and resolution of internal and intercommunal conflicts, starting from a participatory community diagnosis that helps identify the necessary actions, within a rights-based approach that prioritizes education for peace and building a culture of peace. ii) Recovery and reconstruction of the economic, productive and trade infrastructure, and the development of human capabilities and access to economic opportunities. iii) Support for return, resettlement and repopulation, as well as displaced populations as a consequence of the violence process. iv) The recovery and expansion of infrastructure of basic services of education, health, sanitation, rural electrification, recovery of the communal heritage and others that the group can identify

being the most common construction or implementation of communal premises, medical posts, educational classrooms, truck paths, irrigation systems, livestock activities, fish farming, amongst others.

As of April 26, 2018, the Council had enrolled 5,712 communities and populated centers in the RUV, and 127 organized groups of non-returnees. Of this total, CMAN has repaired 1,852 (32.5%) populated centers and communities in 15 departments, pending to repair 3,845 (67.5%) of them.¹¹⁵



A collective reparations programme in Ayacucho that provided a cow to each community family. Photograph by Julie Guillerot



A collective reparations programme in Ayacucho that provided a cow to each community family. Photograph by Luke Moffett

115 CONSEJO DE REPARACIONES, Memoria Institucional. Todos los nombres 2006/2018, 2da edición, Nov. 2018.

According to the Executive Secretariat of the CMAN, the main difficulties are the deficiency and/or delay in the execution of collective reparation projects and the lack of responsibility of the executing agencies to present the technical and financial settlements. Thus, it must design and carry out a strong strategy of monitoring and verification of projects, to know the impact of each project in the intervened community, as well as to correct the deficiencies. In that sense, more than 600 monitoring visits were carried out in 2016.

I convince myself more and more that collective reparations should be rethought in another way, I do not think it is enough to give you an amount of money, and a repair is made ... a work, which could be a communal house, which could be an irrigation system, it is not enough to consult you that you want, that all that has also been struggles. I believe that looking at the communities affected by violence in an integral way implies that you consider different aspects of communal life - their culture, all the deficiencies that they have - is a community is really repaired when they don't have electricity or when they don't have water and drainage? ... When we talk about communities, they live in extreme poverty, very little is useful... they don't even understand it.

Interview with research team P23, civil society actor, Peru, 9 May 2019



**Weaving collective in Ayacucho supported by CMAN collective reparations.
Photograph by Luke Moffett**

3.2.2 Individual Economic Reparations Program (PREI)

Until mid-2011, this program had not been implemented. It is only because of the permanent demands of the victims, their organizations and NGOs, as well as the recommendations of the Ombudsman's Office, that the Executive created a Multisector Commission responsible for developing guidelines for the determination of amounts, procedures and methods of payment in favor of victims of violence.¹¹⁶ Without any type of consultation or participatory process, the Supreme Decree No. 051-2011-PCM, of June 16, 2011, was approved. It established the amount of individual financial compensation (S/.10,000 – around USD \$3,300), the terms for the determination of beneficiaries (until December 31, 2011), and the prioritization criteria for granting them. The rule has been severely criticized by civil society.

Only in the case of direct victims (the ones with disabilities or the victims of rape), the victims received 100% of the amount. In the other cases (death or disappearance of the victims), the amount is divided between the family (spouse, parents and children) and thus the amount they actually received can be tiny. In any cases, these amounts are negligible compared to other economic measures delivered to members of Self-Defense Committees (S/. 39,000) or recognized in special regulations to some officials and public servants, who reach up to USD \$30,000.

The Supreme Decree rules that the process for the determination and identification of the beneficiaries of the PREI ends on December 31, 2011, which contradicts the inclusive and permanent nature of the RUV. This provision also affects the principle of non-discrimination 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 PREI they were not identified within the established deadline. Newly and, because of the sustained pressure of victims, their organizations, national and international NGOs, the Ombudsman's Office, an important advance was achieved: the issuance of the Supreme Decree N°012-2016-JUS, which allowed the reestablishment of the determination of beneficiaries of the PREI and the reopening of the RUV for this program. Based on this measure, lists 19, 20 and 21 of beneficiaries of said program have been approved in 2016.¹¹⁷ The implementation continued its course.

116 Supreme Resolution 171-2010-PCM, of July 17, 2010. This commission was integrated by representatives of the Presidency of the Council of Ministers and the Ministries of Economy and Finance, and Women and Social Development.

117 SECRETARÍA TÉCNICA DE LA CMAN, Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016, Lima, 2017, p.4.

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The following table contains information on the number of beneficiaries that have been repaired by this program until April 26, 2018.

YEAR	LIST N°	BENEFICIARIES	AMOUNT IN S/.	TOTAL BENEFICIARIES (ACCUMULATED)
2011	1	514	3,130,000.00	514
2011	2	507	2,995,000.00	1,021
2011	3	433	2,607,500.00	1,454
2011	4	193	1,082,761.91	1,647
2011	5	276	1,567,583.33	1,923
2012	6	5,870	30,372,792.79	7,793
2012	7	5,104	30,095,000.02	12,897
2012	8	5,545	39,290,063.91	18,442
2013	9	11,740	28,999,420.35	30,182
2013	10	12,226	29,999,884.15	42,408
2014	11	13,238	28,999,972.79	55,646
2014	12	17,625	35,148,543.13	73,271
2014	13	7,638	7,810,571.75	80,909
2014	14	3,292	12,142,663.70	84,201
2014	15	452	1,644,880.86	84,653
2014	16	408	1,736,458.25	85,061
2015	17	1,021	3,954,948.25	86,082
2015	18	515	3,007,761.80	86,597
2016	19	1,013	4,381,591.29	87,610
2016	20	3,450	20,836,273.97	91,060
2016	21	232	1,815,833.29	91,292
2017	22	725	2,987,034.32	92,017
2017	23	233	1,017,585.64	92,250
2017	24	797	5,888,472.31	93,047
2017	25	5,085	18,103,553.56	98,132
TOTAL		98,132	96,088,029.00	

Source: Reparations Council, 2018 Report

Also, according to the RUV, there are beneficiaries who, as direct victims, also have a relative (parents, spouse, children) who have suffered an affectation (have died and/or disappeared), and/or beneficiaries who have more than one family member affected. The CMAN, interpreting the final part of article 44 of the Regulation of the PIR-Law that states "it is prohibited to receive double benefits for the same concept", decided that in case of registering more than one affectation, the beneficiary should opt for the one that is more advantageous. This restrictive

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interpretation has been rebutted in a sustained manner mainly by the Ombudsman Office¹¹⁸ and by the International Center for Transitional Justice (ICTJ) in a report delivered to the Ministry of Justice.¹¹⁹ Even if the CMAN in its 2012 Annual Report recognizes that the payment must be done for each affectation, it is only in 2016, that a case of multiple affectations has been paid by the CMAN in compliance with a judgment issued by the Fifth Constitutional Court of Lima¹²⁰, which, in addition, has ordered that economic reparations be granted to all cases of multiple affectations qualified by the CR.¹²¹ Thus, there is a window of hope that the restrictive interpretation of the article 44 is closed to its end. As one civil society actor commented on the economic reparation, it is intended,

"in some way to mitigate the pain that these families have had in 20, 30 years looking for their loved one and in that compensation we also try to reconnect the community ties that may have been broken."

Interview with research team P19, Lima, Peru, 8 May 2019



Los Cabitos – Photograph by Luke Moffett

118 See: DEFENSORÍA DEL PUEBLO. Informe de Adjuntía N° 002-2013-DP/ADHPD. Análisis de la normatividad vigente sobre reparaciones económicas a beneficiarios con más de una afectación. Lima, 2013.

119 CENTRO INTERNACIONAL PARA LA JUSTICIA TRANSICIONAL. Reparación a víctimas de varias violaciones de derechos humanos. Nueva York, 2013.

120 This situation highlights, once again, the need to reevaluate and reinforce the CMAN, which was created as a coordinating body and supervisor of this process, but whose decisions in the end do not are assumed by the relevant authorities, despite the consensus reached in the sessions.

121 SECRETARÍA TÉCNICA DE LA CMAN, Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016, Lima, 2017, p.23.

For other civil society actors and victims the experience has been more mixed.

"the economic reparations for the amount that they repair that is 10,000 soles little less than 3000 dollars in the case of a disappeared person. For a dead person that does not repair anything, if that amount is divided among the relatives they end up receiving 300 soles, 200 soles, 600 when they are not big families...I know a case in Abancay that this money has been destined to buy food, rice, potatoes, oil, you say that repair is not that? ... In Ayacucho, if I remember well a mother from ANFACEP that the amount they gave her was less than the value of a cow. We have to insist that the amount be implemented or give them an additional amount, which is extremely difficult. I remember well that we opposed that amount, but there were people who were willing to receive it."

Interview with research team P23, Peru, 9 May 2019

3.2.3 Educational Reparations Program (PRED)

Although the program was created in 2005, it is in 2012, that the CMAN approved a document with guidelines for educational reparations measures: scholarships called *Repared*, reservation of vacancies and exemption of payments of academic rights. Also, the Ministry of Education drafted the 2016-2020 Multiannual Plan for Reparations in Education (*Repaeduca*).¹²² Both initiatives gave rise to the effective implementation and the principle of attention to the beneficiaries from the basic educational level to higher technical or university education.

Initially, the PIR-Regulation contemplated as program holders of reparations in education not only the victims that due to the process of violence had to interrupt their studies, but also their children. However, in 2011, without any technical or legal justification, a modification of the PIR-Regulation excluded as beneficiaries the children of some direct victims, maintaining this right only for the children of the deceased or disappeared victim, and the persons who they suffered rape.¹²³ The number of beneficiaries of this program identified until April 26, 2018, amounts to 141, 448.¹²⁴

'Although the norm allows direct victims to resume their studies or culminate them, reality points out that many of them, that exceed 40, 50 or 60 years, would prefer that their right be

122 Ministerial Resolution N° 351-2016-MINEDU. This Multiannual Plan includes all the modalities and components of the PRED indicated in the Regulation of Law 28592 and aims to create conditions that guarantee access, permanence and completion of basic, technical, productive and superior education of potential beneficiaries of the Reparations in Education Program

123 Supreme Decree 047-2011-PCM, 24 May 2011.

124 Only alive beneficiaries have been considered as of April 26, 2018. CONSEJO DE REPARACIONES, Memoria Institucional. Todos los nombres 2006/2018, 2da edición, Nov. 2018.

transferred in favor of their children.¹²⁵ In the end, by means of Supreme Decree 001-2016-JU, the holder of the right to Reparation in Education with registration in the RUV, is authorized to transfer that right, only once and only to a relative in a straight line down to the second degree of consanguinity (son, daughter, grandchild or granddaughter. According to the information of the Reparations Council, until April 2018, a total of 12,082 people have been registered in the Special Registry of Beneficiaries of Reparations in Education REBRED¹²⁶. 'This shows the interest of victims of violence to be able to transfer their right to a younger family member with higher expectations and opportunities for higher education.'¹²⁷

So they transfer the right to education, but it is going to grow, and we say here in Ayacucho, in two years at least we are going to have 15,000 to 20,000 potential beneficiaries in education, but the offer, which is given in these modalities is minimal, not even 3% has been advanced in education repair. ... The law obliges public universities and public education institutes to incorporate a vacant position for victims of violence, so that, of course, after a contest among the victims, they can access those positions and enter the university. In this process there is an exemption, so they do not pay the admission exam that applies to victims. The universities and institutes like the law [as it does] not oblige them numbers or percentages, they do it according to their autonomy and their criteria. For example the San Cristóbal de Huamanga, in Ayacucho the university has incorporated one place per school, [but] there are 28 places for victims in each admission exam.

Interview with research team P05, Ayacucho, Peru, 6 May 2019

3.2.4 Health Reparations Program

In the field of health, attention to victims of violence began in the year 2006, by extending the benefits of the Comprehensive Insurance of Health (SIS) to this population group.¹²⁸ Although, the inclusion of victims in a social program is highly critical and to some point cannot be considered a form of reparation, the PIR-Regulation ratified the permanent incorporation of the victims or their relatives to the SIS and the free delivery of medicines for the treatment of complex diseases derived from violence. In 2013, it managed the collective affiliation of the universe of beneficiaries of health reparations to the SIS, managing to affiliate 139,296 people, a figure that represents 95% of the total beneficiaries of the Health Reparations Program registered in the RUV to October 2013.¹²⁹

125 DEFENSORIA DEL PUEBLO, A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso. Informe Defensorial 162, 2013, p.50.

126 CONSEJO DE REPARACIONES, Memoria Institucional. Todos los nombres 2006/2018, 2da edición, Nov. 2018.

127 SECRETARÍA TÉCNICA DE LA CMAN, Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016, Lima, 2017, p.9.

128 Ministerial Resolution N° 591-2006-Minsa, 29 June 2006.

129 SECRETARÍA TÉCNICA DE LA CMAN, Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016, Lima, 2017, p.63.

Likewise, it considered a program of training and qualification of the professionals of the health institutions of the State (Ministry of Health, Social Security of Health and the health institutions of the Armed Forces and of the National Police), with the purpose of offering a specialized health care. The Ministry of Health approved the Technical Document 'Guidelines for mental health care for people affected by violence during the period 1980-2000',¹³⁰ which aims to implement, at all levels of care in the Health Sector, adequate and efficient mental health care for people affected by violence during the period from 1980 to 2000. After the approval of the Technical Document, the implementation of the guidelines in the regions prioritized by the PIR was initiated in coordination between Regional Health Offices and the Regional Offices of CMAN.¹³¹ Finally, the implementation at national level of thirty Community Mental Health Centers, in which attention is given to the population with different mental health problems from the perspective of a community model of care, should be highlighted.¹³²

According to the last CR Report, the number of beneficiaries of this program identified until April 26, 2018, amounts to 141,420, considering only the beneficiaries alive.

"for the capacity of the service we have to prioritize, and we can't prioritize for a role, my prioritization goes from a health logic."

Interview with research team P06, Lima, Peru, 6 May 2019

3.2.5 Program for Promotion and Facilitation of Housing Access (PRAH)

According to articles 33 and 34 of the PIR-Regulation, the objective of this program is to grant facilities for access to housing to the victims and/or their relatives who, as a result of the process of violence, lost their homes or were displaced from the place where they lived, and those who face housing problems as a sequel direct from the process of violence. Unfortunately, according to the Ombudsman's Office, this is one of the least developed programs by the State, since there is no specific regulation for the implementation of it.¹³³ Some measures were enacted that granted a bonus of ten points to the head of family or their dependents who have been victims of terrorism to facilitate their access to the family housing bonus of the Own Roof Program, this measure was inserted more into the logic of a social program.¹³⁴ Indeed, at some point of the implementation of this measure, victims could access these bonds only if they met certain conditions socio-economic. Therefore, this measure, did not respect the reparatory approach and the requirements demanded are difficult to fulfill for this sector.

130 Ministerial Resolution, N° 250-2016/MINSA, abril 2016.

131 SECRETARÍA TÉCNICA DE LA CMAN, Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016, Lima, 2017, p.29.

132 Ibid.

133 DEFENSORIA DEL PUEBLO, A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso. Informe Defensorial 162, 2013, p.66.

134 Ibid.

In 2014, the CMAN approved the guidelines that regulate the following two modalities of this program: i) Special program of construction and allocation of housing, and ii) Projects to support the reconstruction and rehabilitation of rural housing. Among the aspects to be highlighted of the proposal, we have that the beneficiaries will not be classified in the General Household Register, which implies a socioeconomic classification; likewise, they will not be required to demonstrate a monthly family income. Both elements are important in order to guarantee programs, although not exclusively aimed at victims, that take into consideration the restorative purpose for those beneficiaries affected by the process of violence. The number of individual beneficiaries of this program identified until April 26, 2018, amounts to 37,862.¹³⁵

3.2.6 Symbolic Reparations Program

The objective of this program is to contribute to the restoration of the social bond broken by the process of violence, between the State and the people, and between the people themselves, through public recognition of the damage that inflicted the action of the subversive groups and the action or omission of the State. There have been some efforts at the central, regional and local government levels; these have been referred mainly to establishing commemorative dates or creating memorial spaces.



LUGAR de MEMORIA

In 2009, the State created a High-Level Commission¹³⁶ with the objective to coordinate, promote and manage the implementation of the project "Museum of Memory" with the support of the Federal Government of Germany. This space was renamed twice, being called currently "Place of Memory, Tolerance and Social Inclusion" (LUM).¹³⁷ It defines itself as a space of commemoration, pedagogical and cultural, which presents the history of the events that occurred during the period of violence in Peru, initiated by terrorist groups, between 1980 and 2000.¹³⁸ The LUM was inaugurated on December 17, 2015. It states that it 'does not seek to be a place of certainties, because it is not possible to match the past of violence in a single memory. One of the premises of the LUM is to verify that the divergences in the ways of seeing and giving meaning to the past of violence are part of reality. The uniformity of all the memories is not pretended or to generate

135 Only alive beneficiaries have been considered as of April 26, 2018. CONSEJO DE REPARACIONES, Memoria Institucional. Todos los nombres 2006/2018, 2da edición, Nov. 2018.

136 Supreme Resolution N° 059-2009-PCM, 31 March 2009.

137 Supreme Resolution N° 405-2011-PCM, 26 December 2011.

138 See: <https://lum.cultura.pe/el-lum/quienes-somos>

a univocal one. What is sought from the LUM is to promote and learn from these memories, from their disputes and conflicts, to create new forms of coexistence in the present. The challenge of tensing the difference is assumed, taking its confrontation in the dialogue as a starting point.¹³⁹

These tensions of remembering and memorializing the past remain contentious as one civil society actor framed these perceptions of the past,

“... there are two versions of what we live in the country, a version that says : The blame for everything lies only with Sendero and that there were some excesses of the Armed Forces and Military; [on the other side] what happened was that there were some human rights violations, both by the Armed Forces and the Police as well as by Sendero, but that the state has a double responsibility there, the current violating human rights and not protecting the civilian population... then there is a denialism in each process..., a history of the military and of the Armed Forces are the heroes. We have to recognize that there were military and members of the Armed Forces who had an action, let’s say, according to their function, but there is an enormous amount that did not act in that way and is not recognized.”

Interview with research team P23, , Peru, 9 May 2019



‘Eye that Cries’ memorial, Lima, Peru – Photograph by Luke Moffett

A space recognized as a measure of reparation by the State,¹⁴⁰ is the Monument “El Ojo que Llora”, located in the district of Jesus María, in Lima, even though the initiative for its construction was impelled by civil society and its construction financed by private enterprise and international cooperation resources. At present, this monument receives little state support in its maintenance and safety.

139 Ibid.

140 Interamerican Court. Case La Cantuta vs. Peru. Judgment of November 29, 2006, paragraph 197.e.

In general, the little attention that these spaces receive from the authorities local is sharpened in the interior of the country. While many are appreciated monuments, memorial spaces, murals, among others, promoted mostly by civil society, many are abandoned or deteriorated due to the negligence of the authorities for its preservation and promotion.¹⁴¹



The remains of the crematorium on the former army base Los Cabitos, where thousands of Peruvians were disappeared. – Photograph by Julie Guillerot

The CMAN is now developing symbolic measures such as the accompaniment in the delivery of remains of victims of forced disappearance or extrajudicial execution, facilitating coffins and coordinating funeral rituals; acts of public recognition in diverse communities, where it has also proceeded to unveil commemorative plaques; the holding of public forums on the process of violence and the challenge of reconciliation in order to sensitize the population; actions to ensure recognition, implementation, maintenance, access and dissemination of places of local memory, through coordination with regional and local governments.¹⁴²

141 DEFENSORIA DEL PUEBLO, A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso. Informe Defensorial 162, 2013, p.69.

142 SECRETARÍA TÉCNICA DE LA CMAN, Informe anual sobre la implementación del Plan Integral de Reparaciones, enero-diciembre 2016, Lima, 2017, p.23-28.

3.2.7 Citizen Rights Restitution Program

This program aims to establish or reset in the exercise full and effective rights of citizens, civil and political, to the population affected by the violence process, seeking rehabilitation legal. The restitution of civil rights and documentation has undergone significant advances. These measures have not necessarily been defined or coordinated by the CMAN but have been adopted by different institutions.

The Ombudsman's Office, which is the body responsible for the registration of victims of forced disappearance, has registered around 2,000 victims, allowing their families to enjoy certain rights, including obtaining a judicial declaration of absence due to forced disappearance, allowing them to exercise their civil rights, to receive Social security benefits and claim inheritances. Also, the National Registry of Identification and Civil Status (or RENIEC) has implemented various programs to help victims obtain their civil documentation. The documentation campaigns were implemented in the most affected areas, even before the PIR-Law was approved, and continue to this day. These programs are not directed only to victims of serious human rights violations, nor contemplating a reparatory approach necessarily, but that equally it was extremely valuable to get a large number of undocumented victims could access the National Identity Document.

3.3 The Situation of the Beneficiaries of the Special Assistance Commission to the Innocent Indult and the Interinstitutional Work Commission to Follow up on the Recommendations of the CIDH

Previous to the Truth Commission, there have been attempts to resolve the reparations issue with an administrative approach. In the process of recovery of democratic institutions, Valentín Paniagua's government presented a broad proposal to the IAComHR aimed at solving a significant number of cases under the jurisdiction of the IAComHR.¹⁴³ On a national level, it was agreed to establish an Inter-institutional Commission to follow up on the IAComHR recommendations, whose mandate consisted of the design of "a comprehensive program of non-monetary reparations" in 159 of the cases included in the IACHR-government joint press release.¹⁴⁴ This apparent political will regarding reparations to victims was reinforced by other initiative of the government which, at the beginning of 2002, decided to attend to the 'indulted innocent prisoners' creating the Special Commission to Assist Innocent Persons who were Indulted (CEAI). This body was in charge of designing and implementing a "comprehensive program of non-monetary reparations" for this limited group of victims.¹⁴⁵

In the Ombudsman Report 139 (2008), it was already pointed out that an aspect that generated special concern was the situation regarding those two reparations plans. Although in 2005

143 INTER-AMERICAN HUMAN RIGHTS COMMISSION. Joint press release of the Commission and the then Minister of Justice, Diego García-Sayán, unnumbered document, 22 February 2001, <<http://www.cidh.oas.org/Comunicados/English/2001/PERU.htm>>.

144 Supreme Decree 005-2002-JUS, 25 February 2002.

145 Supreme Decree 002-2002-JUS, 15 January 2002.

the responsibility of the CMAN regarding the necessary actions to coordinate and monitor the implementation of the recommendations made by both committees was established,¹⁴⁶ the obligations assumed by the State have not been fully met. In the 2012 to 2016 annual reports submitted by the CMAN, little is detailed in relation to the attention to these groups of beneficiaries.

3.4 National Judicial Sphere and Civil Reparations

3.4.1 Legal framework

In the Peruvian legal system, various rules regulate the issue of civil reparation within the criminal process. The Criminal Code establishes that civil compensation is determined jointly with the penalty (article 92) and includes the restitution of the property (or, if this is not possible, the payment of its value) and the compensation for damages (article 93). In its article 101, the Criminal Code states that the determination of civil compensation is also governed by the relevant provisions of the Civil Code.¹⁴⁷ For its part, the Code of Criminal Procedures requires that the prosecution should include, among other elements, 'the amount of civil compensation, the way to make it effective and the person to whom it belongs'¹⁴⁸ and establishes that the activity of the civil party 'shall include (...) evidence of civil compensation',¹⁴⁹ meaning contribute with elements that allow to determine the amount of loss of profit, the damage to the person and the moral damage.

In this sense, in accordance with article 227 of the Code of Criminal Procedures, the civil party can present an appeal in which it exposes the damages not considered by the Prosecutor in the accusation or his disagreement with the amount set by the Prosecutor. Similarly, this rule states that, in the appeal filed by the civil party, the amount in which the damages caused by the crime are appreciated must be recorded.¹⁵⁰

146 Supreme Decree 031-2005-PCM.

147 Civil Code, Art.1984, "The moral damage is compensated considering its magnitude and the impairment caused to the victim or his family". Civil Code, Art. 1985, "Compensation includes the consequences that derive from the action or omission that generates the damage, including lost profits, damage to the person and moral damage, and there must be an adequate causal relationship between the act and the damage caused. The amount of compensation accrues legal interest from the date on which the damage occurred".

148 Article 225.4.

149 Code of Criminal Procedures, Art. 57.2: " Powers and activity of the civil party: (...) The activity of the civil party will include the collaboration with the clarification of the criminal act and the intervention in it of its author or participant, as well as proving civil compensation. You are not allowed to request or refer to the criminal sanction".

150 Code of Criminal Procedures, Art. 227: " When the civil party claims damages that are not appreciated in the indictment or when it does not comply with the amounts set by the Prosecutor, it may file up to three days before the hearing, an appeal in which it shall state the amount in which he appreciates the damages caused by the crime, or the thing that should be restored or paid in his case, and the name of the witnesses or experts who can be questioned about the truth of these assessments. These witnesses cannot exceed three, nor the experts of two".

Finally, article 285 of the Code of Criminal Procedures specifies that the condemnatory sentence must contain, among other aspects, the amount of civil compensation.¹⁵¹ The condemnatory sentence may not exceed the fact and the circumstances set in the accusation, regarding the constituent elements of the crime. Thus, the fundamental work of the civil party must be with the Prosecutor, since he is the one who must demand a compensatory amount in accordance with the damages caused, which allows the Court to fix, when accepting the fiscal request, a correct sum of reimbursement. The civil reparation can be reviewed in the appeal, but this occurs when there is action by the lawyers of the civil party. If there are no lawyers, the Judge / Chamber usually adopts the criterion of the Prosecutor.

3.4.2 In practice

Reparation has a limited scope – Although the jurisprudence of the Inter-American Court has broadened the scope and concept of reparations, establishing various measures complementary to monetary ones, in the national courts the issue has had little progress. In fact, Peruvian judges, in cases where they have issued condemnatory sentence, circumscribe the reparation as regulated by the criminal procedural law that is to economic reparation (compensation).¹⁵² Despite the fact that in the case against Alberto Fujimori (*Barrios Altos* and *La Cantuta*), the civil party requested that forms of non-pecuniary reparation be decreed, such as rehabilitation measures (medical, psychological and social care for the victims and their relatives), measures of satisfaction (request for forgiveness), and measures of non-repetition, the court did not agree.¹⁵³ It only made an important symbolic statement about the non-existence of evidence linking the victims to subversion.

This is not a legal limitation but a matter of interpretation of the judges. In fact, there are cases where they have ordered more than only compensation. For example, the National Criminal Chamber (File No. 243-2010) in the sentence for the forced disappearance of Mr. Teófilo Rímac Capcha, considered necessary 'to continue searching for the remains of the victim until they are fully identified and buried according to the customs of the family and the community'. In the same way, it ordered 'a public acknowledgment of redress (...) and the publication in a newspaper (...) that Teófilo Rímac Capcha was a victim of the internal violence the country experienced with no connection with a subversive organization, and that he was a defender of union and labor rights of peasant and student communities in the Cerro de Pasco area'.

151 Code of Criminal Procedures, Art.285: "Content of the Condemnatory Sentence. The conviction must contain the precise designation of the offender, the exposition of the criminal act, the assessment of the statements of the witnesses or of the other evidence on which the guilt is based, the circumstances of the crime, and the principal penalty that the person must suffer, the date on which it begins to be counted, the day of its expiration, the place where it must be complied with and the accessory penalties, or the security measure that it is of the case to dictate in substitution of the penalty; the amount of civil compensation, the person who must receive it and those who are obliged to satisfy it, citing the articles of the Penal Code that have been applied".

152 Ex. Castillo Paéz Case and Chuschi Case.

153 The Chamber indicated that these elements had already been contemplated and dealt with in the framework of judgments before the IACtHR. However, it could have been established that several of these measures are not only a responsibility of the State (as logically pointed out by the IACtHR) but also of the condemned.

Inequities in the amount of the compensation – The decision on the amount of compensation is made by the judge based on his or her criteria of conscience. This, in many cases, generates that they quantify similar damages in diverse proportions, and that the adequate proportion between the damage caused and the compensation set is questionable. For example, María Monteza Benavides was arrested at the National University La Cantuta on October 30, 1992, tortured and sexually raped by two soldiers of the Special Forces Division of the Army; as a result of these violations, she became pregnant and gave birth to a girl. She demanded a compensation of one million soles. The Court in 1st instance ordered 250 thousand soles and in 2nd instance 500 thousand soles.¹⁵⁴ In another case, file No. 37-2008, the National Criminal Chamber set at 50 thousand soles civil compensation in favor of I.L.A., accredited victim of rape by two members of the military patrol "La Raya".

Lack of motivation to calculate the compensation – Articles 139.5 of the Constitution and 12 of the Organic Law of the Judiciary establish that all resolutions, excluding those of mere formality, are motivated by an expression of the grounds on which they are based. However, it can be seen that criminal judges fundamentally obviate this obligation when fixing compensations. For example, the Permanent Criminal Chamber (R.N 1598-2007) in the *Chuschi* case indicated that 'the sentencing court did not set an amount of civil compensation proportional to the damage caused to the relatives of the victims.' However, this Chamber - without giving further explanation either - changed from 40 thousand soles to 80 thousand soles that Juárez Aspiro must pay and from 100 thousand soles to 400 thousand soles what Collantes Guerra must pay.¹⁵⁵ Likewise, in the case of *Castillo Paéz*, the National Criminal Chamber (Exp. 111-04) only indicated that is taken into account 'the damage caused to the victim and the illness caused to his family up to the present day', and without specifying how it arrived at the amount, it set at 30 thousand soles what each of the sentenced persons had to pay to the relatives.¹⁵⁶

Non-compliance without consequences – Compensation is an accessory consequence of the sentence; it is not part of it. In this sense, under the current regulations, there is no sanction for those sentenced who do not pay the civil compensation that was imposed. Peruvian constitution establishes that there is no prison for debts. Debts for civil damages prescribe 10 years after the sentenced person completes his prison sentence. The only way to demand payment is through attachments to the debtor's income or assets. The problem is that, if it is proven that the person does not have them, it cannot be demanded. The only alternative that would remain is to request a declaration of insolvency from National Institute for the Defense of Competition and the Protection of Intellectual Property (Indecopi). Upon being declared in insolvency, any income will be destined to the creditor regardless of whether more than 10 years have elapsed after the completion of the sentence.

154 <https://www.efe.com/efe/cono-sur/sociedad/el-supremo-de-peru-condena-a-un-militar-por-violacion-como-delito-lesa-humanidad/50000760-3522942>

155 Full sentence available at: <https://www.pj.gob.pe/wps/wcm/connect/2d10978040753aef8fd3cf99ab657107/2.+R.N.+1598-2007+Caso+Chuschi.pdf?MOD=AJPERES&CACHEID=2d10978040753aef8fd3cf99ab657107>

156 Full sentence available at: http://derechoshumanos.pe/wp-content/uploads/2010/05/CASTILLO-PAEZ.Sentencia.SPN_.doc

To this general context, it has to be added the early mentioned anti-subversive legislation – which not only changed the national defense system, the law on the national intelligence service and the law on the military situation, but also included sentences and procedures that violated due process and guaranteed impunity: two amnesty laws, disproportionate sentences, new crimes (such as aggravated terrorism and treason), as well as hooded tribunals and judges. In consequences, the national courts to obtain justice and reparation for human rights violations occurred during the conflict were almost not used, until the *Barrios Altos* case that declared the incompatibility of the two amnesty laws with the American Convention on Human Rights.

According to the Ombudsman Office, the initial efforts of the Public Ministry and the Judicial Power to form a specialized subsystem, were translated into a measure that sought to contribute to the development of the process of judicialization of these crimes. However, it has not been possible to consolidate a system that meets the necessary characteristics of specialization, exclusive dedication, sufficient personnel and adequate resources. There was a disjointed development between the Public Ministry and the Judicial Power to face this complex task. The Public Ministry created the first specialized authority in 2002 and established a decentralized system. The decentralized model allows prosecutors to have greater approximation with the parties' allegations and evidence, however, this design was not exempt from difficulties, among others, there is: i) a high procedural burden of prosecutors; ii) limitations on logistical and budgetary resources; and iii) a lack of permanent training and specialization. Currently, in addition to terrorism and human rights violations, these prosecutors have jurisdiction to hear five other crimes.

The Judicial Power opted for a centralized system, establishing the obligation of criminal and mixed courts located in the different judicial districts of the country, to refer the ongoing investigations on human rights cases to the supraprovincial criminal courts of Lima that, from that moment, had competition throughout the national territory. This model has involved delays and failure to meet deadlines in investigations. A significant number of cases have faced various difficulties, basically derived from the lack of budget to transfer the witnesses and relatives of the victims, as well as delays in the scheduling and execution of proceedings in places so distant from the headquarters where they are processed.

Thus procedures progress slowly. Some of the main difficulties are:

- ▶ the lack of a database of human rights violations cases;
- ▶ the limited resources offered to investigate cases;
- ▶ the delay in the progress of preliminary investigations and some judicial proceedings;
- ▶ the lack of information of the Ministry of Defence, and of some military agencies, especially the Army, that do not provide the information requested to achieve the identification of the alleged perpetrators or clarify some important facts for the investigations (operational plans, location of bases military, among others)
- ▶ the resistance of the military justice to stay on cases of human rights violations, leading to conflicts of jurisdiction that should no longer be take place;

- ▶ the lack of compliance with personal coercion measures;
- ▶ the non-existence or deficiencies of legal defence mechanisms for victims, investigated or prosecuted; and
- ▶ the deficiencies in the protection system for victims, relatives of victims, witnesses and lawyers or human rights defenders.
- ▶ It demonstrates the little commitment to comply with the State's obligation to fight impunity. It also sends a message to the victims that their rights are not taken seriously, which undermines the effect of the reparation efforts.

3.5 International Judicial Sphere

This situation explains why Peru is one of the States with more cases in the Inter-American System of Human Rights. Up to date, the IACtHR has issued 29 judgments against the Peruvian State related to the internal armed conflict. The table attached offered an overview of the stage of implementation of the reparations sentences.¹⁵⁷

In summary, it could be said that:

- ▶ Of the cases identified, only two have been filed (*Castillo Petruzzi* and *Lori Berenson*), while all the other cases are still under compliance supervision.
- ▶ The mandate to 'investigate, prosecute and punish those responsible for the human rights violations' as a remedy, is the one with the lowest degree of compliance. It has been fulfilled according only in the landmark '*Castillo Páez*' case. On the other cases, the Court has stated it cannot even adequately comply with its work of monitoring compliance with sentences, because the Peruvian State would not be providing information sufficient, due, detailed, complete, timely and updated on the supervisory matters.
- ▶ Most of the time the Peruvian State has been able to comply with the payment of compensation, but it has been failing to comply with the medical care due to physical and psychological damage ordered by the Court, and the obligation to determine the whereabouts of the disappeared person, identify him and deliver it to their relatives.
- ▶ The Peruvian State does not have systematized and updated official information regarding the progress of compliance.

157 <https://www.dropbox.com/s/oyubnsusbpx9or/Cuadro%20compendio%20Casos%20CorteIDH.xlsx?dl=0>

4. Concludings Remarks

As a final assessment and with the proviso that the Comprehensive Reparations Plan is being partially implemented, from the analysis of the Peruvian experience in reparations, some challenges are glimpsed and some lessons are derived that are worth contributing to the comparative experience.

4.1 An Ethic of Exclusion?¹⁵⁸

As mentioned before, the PIR-Law indicates in its Article 4 that 'are not considered victims and therefore are not beneficiaries of the programs referred to in this law, members of subversive organizations.' Although the design of a reparations plan based on a list of human rights violations that lead to reparations inevitably leads to inclusions and exclusions – who will be repaired and who will not be repaired – it is worth asking about the legitimacy of such exclusion. It does not simply exclude access to reparation, but it does not recognize the quality of victim to a certain category of persons.

In accordance with the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, approved by the United Nations General Assembly in March 2006, 'victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law'.¹⁵⁹ A bit further, it states that 'the application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception'.¹⁶⁰ Thus, according to international law, the quality of victim does not depend on the legality or morality of the previous conduct of the injured party and the principle of non-discrimination obliges us to avoid different treatment for reasons such as political opinion. The jurisprudence of the inter-American system regarding reparations is of the same position. There is no known case where, establishing a violation of the American Convention and the concomitant duty of reparation, the Court would have decided to suspend or modify its determination in light of the victim's quality or conduct. When defining whether a victim has the right to be repaired or not, the Inter-American Court of Human Rights limits itself to describe the conduct of the State and its consequences for the persons affected. From a strictly legal point of view, by breaking with the principles of non-discrimination and equality before the law, of those who have suffered a violation of human rights, this provision then violates not only various treaties on human rights of which Peru is part, but also the Peruvian

158 Taken from: JULIE GUILLEROT, Reparaciones en la transición peruana: ¿Dónde estamos y hacia dónde vamos?, en Serie Justicia Transicional – Reparaciones para las víctimas de la violencia política. Estudios de caso y análisis de comparado, ICTJ, 2008, pp.273-277.

159 UNITED NATIONS A/RES/60/147, March 2006, para.8.

160 Ibid, para.25.

Constitution. However, the design of a reparations plan is not limited to legal considerations: the political dimension but also the ethical-moral dimension counts as much, if not more, when deciding on the viability of the plan.

The argument then to support the exclusion of the victim's quality is based on the ethical-moral and political sphere and on the horrendous crimes committed by the subversive groups: because by their actions they generated victims, they cannot be recognized as victims themselves.¹⁶¹ However, if the real concern behind the exclusion of the victim's quality was participation in human rights violations, the recognition of the victim's status to some members of the Armed Forces and the National Police should have been questioned as well, given that, according to the figures of the CVR, they are responsible for 37% of the deaths and disappearances. But this was not the case, reflecting the reluctance of a sector of the political class to support the recognition of state abuses.

What actually supports the exclusion of the Law is not whether the person has "clean hands" or not, but an assessment of the role of each actor in the conflict: the struggle of the subversive groups is not considered fair while the Armed Forces and the National Police did nothing more than make legitimate and legal use of force in defense of the country.¹⁶² Article 4 of the Law then establishes differential treatment between certain categories of victims, drawing the line on the basis of an assessment - necessarily subjective - about the role of the two parties to the conflict and not on the basis of their participation in serious violations of human rights.

The problem with such exclusion is that the violations suffered according to this ideological criterion are relativized instead of the objective principle of the violation or not of human rights, which belong to every human being as such, regardless of their behavior or their choices past. The classification of some people - in this case the members of the subversive groups - as individuals who do not deserve to enjoy rights, deprives the excluded person of their recognition as a human being and validates the gaps that served to justify amounts of abuse.

In addition to greatly complicating the task of the Reparations Council, this provision could have delicate consequences for the Peruvian State - such as actions of unconstitutionality or demands before the Inter-American Human Rights system, whose social, financial and political costs could be much higher than simply include members of subversive groups victims of human rights violations.¹⁶³

Although it would not be based on the law, the most acceptable would have been a political determination that the members of the subversive groups would not be considered beneficiaries

161 See MOFFETT, Luke, Reparations for 'Guilty Victims': Navigating complex identities of victim– perpetrators in reparation mechanisms, *International Journal of Transitional Justice*, 10(1) (2016), 146–167.

162 See LAPLANTE, Lisa, The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition, *American University International Law Review* 23(1) (2007): 51–90.

163 As evidenced by the reactions to the judgment of the Inter-American Court of Human Rights of November 25, 2006 in the Miguel Castro Castro case, that recognizes the international responsibility of the Peruvian State for the use of force against persons deprived of liberty - persons who were sentenced for belonging to the ranks of the Shining Path or detained for being alleged members of the Shining Path - and condemns it to pay reparations to the deceased inmates, the surviving inmates and their relatives.

of the PIR, but without fully removing the status of victims. Another option would have been to establish objective criteria that would put them at the end of the queue in the priority of the implementation of the reparations measures. A third possibility would have been to exclude from the PIR the members of subversive organizations who were injured, injured or killed as a direct result of armed confrontations, unless the affectation was committed in violation of their human rights, that is, to exclude the members of the subversive groups that fell into legitimate State actions.

Despite the legitimate moral rejection that the actions of the subversive groups may generate, the generic exclusion of Article 4 of the Law merely institutionalizes the moral rejection of a sector of victims and leaves behind an opportunity for a more nuanced reflection on the future of national coexistence and respect for human rights. It shows that the road to national reconciliation is long and arduous.

4.2 Institutionalize a National Policy of Reparations: The Difficulties of Financing, Management and Coordination.

The main advances in the reparations process are related to the design of a regulatory framework: Law 28,592 that creates the PIR; the creation of entities in charge of its monitoring; the elaboration of the Unique Victims Registry; as well as the partial implementation of the seven reparations programs. Without diminishing the relevance of these advances, difficulties persist. The existence of multiple provisions on benefits and differentiated registries of victims and the confusion of some reparations programs with social programs are among them. Even if the last five years, important efforts were made, a lack of leadership of the entity rector in matters of reparations (CMAN) to which is added a lack of goals, qualitative indicators, timelines and adequate monitoring and evaluation mechanisms still show the need to strengthen the reparations process as a national public policy. One of the main problems remains the budgetary monitoring of state actions and finding out whether it is a reparation when there is no official item on reparations.

The Peruvian experience shows the enormous difficulties that exist in practice to finance not only programs and reparations measures, but also the bodies that support them. There is no doubt that the process of mobilizing public resources is essentially political in nature and, in this case, depends to a large extent on the existence of correlations of forces favorable to reparations. In Peru, reparations to a sector of the population are often seen as a diversion of resources that could be spent on housing development programs, education and public health, etc. which are areas that benefit a broader segment of society. The correlation of forces is therefore fragile so that on several occasions the financing of reparations has become a tortuous and slow process, endangering the very viability of the reparations policy.

This lack of political will has been expressed in various ways, the main ones arguing the scarcity of resources, associating traditional social programs with reparations, reducing the scope of the PIR (either by excluding individuals from economic reparations or by implementing exclusively collective reparations), leave the bodies in charge without human, logistical or financial resources and, of course, assign a limited and timely amount of state resources to reparations without the possibility of medium-term projection.

Finally, from the examination of the Peruvian experience it is observed that another important inconvenience for the reparations process to be developed in an effective and timely manner is the lack of coordination between the different entities that are in charge of the organization and execution of the PIR. According to the regulatory framework, it is the task of the CMAN to assume this role as the governing body for ongoing monitoring and supervision and to work hand in hand with the Reparations Council and with the sectors and regional and local governments. These entities, however, are managing their reparation programs or their work identifying victims and beneficiaries in isolation. This not only makes it difficult for victims to handle complete information about the procedures and benefits to which they can access, but also makes it impossible to manage the resources dedicated to the reparations policy in a timely manner and prevents the reparations process from being carried out in a timely, faster and orderly manner; it leads in the end to further delay the right of the victims to a just and timely reparation. Therefore, it is necessary to insist on the need for the various institutions of the Executive Power and decentralized organizations, as well as regional, provincial and district governments, to make the effort to coordinate and plan joint actions to comply with the obligations indicated in the Law that creates the PIR.

4.3 Conclusion

15 years after the beginning of the process, it appears clearly the importance of the comprehensiveness of the transitional justice process in Peru : the most important contribution of the TRC on reparation has been the truth, the understanding of what the conflict was, and having taken it to the public sphere. Without the TRC there would have been no displaced law, no absence for disappearance law, no reparations law. Also, the PIR has focused the debate on the victims and slowly permitted to recognize that there are victims from all sides (civil, police, military). Even if the society as a whole is still polarized, as the frequent political turmoil shown, the victim's organizations has shown their ability to nuance their polarized speeches which is, in somehow, the path to reconciliation.

Juana [ex-president of ANFASEP] told us in a meeting: "I thought that the widows of the militaries were above us, in the logic of the mind of the state," but "they have suffered as much or worse than us, because when they killed our husbands, we were able to bury them, but when Sendero killed their husbands or disappeared them, the police sometimes put a drawer with a brick inside. Juana reflected: "at least I could go out and criticize, they couldn't even do that".

Interview with research team P06, Lima, Peru, 6 May 2019

However, one of the main failures of the process it is not having confronted the root causes of the conflict. Much more than economic and material reparations, what victims want and need is feeling full rights citizen in everyday life. The victim subject is poor, and exclusion, discrimination, lack of basic services is still the bread of every day even in the deliverance of reparations measures. The 1st conclusion of the TRC stated: 'The armed conflict that Peru lived between 1980 and 2000 was a conflict that revealed deep and painful gaps and disagreements in Peruvian society,'

Concludings Remarks

showing that the causes of the conflict originated in exclusive social, political and economic structures that must be reversed. The main conclusion of the TRC on the existence of social fractures is indeed difficult to accept in all its magnitude and consequences for most of society and more particularly for the political, economic and social elite of the country, insofar as it calls into question a political, institutional, economic and social system that benefits it. However, if the Commission's Final Report was indeed taken into consideration, the country should not continue to be administered as it has been so far. In still having a weak inclusive republic, the social, corruption and political crisis indicate that the past is not far from the surface.

Reparations, Responsibility

 Victimhood in Transitional Societies

REPARATIONS IN PERU:

15 Years Of Delivering Redress

September 2019

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Image: Cover Photo – Photograph by Luke Moffett