

## **“The Truth Commission in Peru: Trying to heal the open wounds”**

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**“... So bad luck! Why did you take my dad away? If he would have died at least we could go to his burial... How long are we going to suffer so much?”  
(I. U. M.)**

**“(...) I just want to know if he has died or if he is still alive. I can not forget him. He is in my heart; I can not forget him. My relatives tell me to forget him, but**  
**1**

### **1. INTRODUCTION**

During my first class of Human Rights Law at the Law School of the Pontificia Universidad Católica del Perú, I decided to organise a debate among my students concerning the Peruvian political situation, the new elections, the violence, etc. I chose a topic I was thinking about for several weeks. “Do you think”, I asked, “that Peru needs a Truth Commission for investigating human rights violations in the last 20 years?”.

My students looked around for a while and suddenly one young guy raised his hand. “I am not sure”, he said, “but I think that Peru is going through a difficult situation. The President has just left the country and we are in the worst crisis of our political history. So, I do not think that it would be right to create a Truth Commission and reopen the healed wounds”.

“I agree with you concerning the difficult situation in Peru”, I started, “but, what if the wounds are not healed? What about the people whose relatives are still missing, for instance? Do you think that they would be able to forget and to

forgive if they do not know for sure what has occurred with their relatives? Could it be possible to build a new and solid society over the pain and the suffering?"

I have been thinking about these questions for a while. Thus, I started a personal research regarding basically the following issues: Is it necessary to create a Truth Commission in Peru? Should it be established before or after the new government starts its functions? Why do not just forget and start a new era?

In this paper I will try to answer those questions –and perhaps more-- concerning this topic.

## **2. LATIN AMERICA AND THE CONTEXT OF HUMAN RIGHTS VIOLATIONS**

### **a) Overview**

If we talk about human rights violations in Latin America, we should think about the mid-70's when the crisis among political groups encouraged military coups in our countries: Brazil (1964), Perú (1968), Uruguay (1972-1973), Chile (1973), Argentina (1966 and 1976). According to Shoultz<sup>2</sup>, these regimes mixed military support and technocratic abilities of some civil sectors. Their goal was to destroy a perceived threat to the existing structure of social and economic privilege; thus, they had to eliminate the political participation of the working popular classes.

It could be said that democratic elected governments in office in some Latin American countries put in risk the privileges of the upper classes. Unfortunately, those governments lost control over economic policies mainly as a consequence of their desire of improving the standard of living of the poor in a very short time.

Thus, democracy became an obstacle for certain groups that combined authoritarianism and bureaucracy as a regime of government<sup>3</sup>. The weaknesses of those democratic governments allow the militaries to take the power through coups, starting a terrible era of dictatorships in the region<sup>4</sup> that caused a big number of human rights violations.

The main argument of the Latin American military governments at that time was that their terrible actions were directed not against citizens but terrorists, which tried to destroy the political order. In fact, at those times guerrillas were acting in some countries; however, in many occasions they were the perfect excuse for going beyond and eliminating the possibilities of political action by citizens<sup>5</sup>.

The idea behind was not only to eliminate the subversion but also to build “modern” social and economic structures, using the American capitalism as the perfect model for Latin America. Citizens were divided among those who supported the regime and those against it. The latter were named “terrorists”; unions, farmers, intellectuals and students formed this group<sup>6</sup>. Thus, it was necessary to eliminate them, to destroy their organisations and to torture them if they did not want to collaborate with the State. This could be a general explanation of the human rights violations in Latin America during the 60s and 70s.

Fortunately, a number of international treaties protecting human rights were elaborated at the international level and were signed for many of these countries.

In 1976, the two main international treaties –the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)-- entered in force, as well as the Optional Protocol of the ICCPR. This last document allows the Committee of Human Rights to receive individual complaints concerning human rights violations by the States.

In Latin America, the American Convention on Human Rights was opened for signature in 1969 and entered in force in 1978. This document created the Inter American System of Protection and Promotion of Human Rights, allowing the Inter American Commission to receive individual complaints concerning human rights abuses. Moreover, this convention created the Inter American Court of Human Rights. We should emphasised the importance of this Court, which helped to determine the responsibilities of States concerning human rights of its nationals and to define some important concepts as forced disappearances, amnesty laws, State responsibility, etc.

These documents and the international condemn to the human rights abuses, prepared the way to democracy.

b) **The “USA factor”**

An important factor in this context is the USA international policy regarding the situation of human rights violations<sup>7</sup>, which main characteristic was the prevalence of State sovereignty, thus denying the possibility of interventionism<sup>8</sup>. Such policy changed during Carter’s administration (1988-1981), when ratification of the main human rights treaties by USA was supported<sup>9</sup>. However,

the Carter Administration could not avoid being criticised due to its “double standard” in connection with human rights: any Latin America government responsible of human rights violations could be denounced as long as such denounce did not affect USA’s interests. A clear example of this attitude was El Salvador: Carter cut off the economical aid due to the critical situation concerning human rights violations; however, the aid was re-established a few days after due to the risks of political advances of Marxism movements<sup>10</sup>.

Reagan’s government distinguished between “totalitarian” and “authoritarian” governments. While the former denied all the international standards of human rights, the latter could end in democratic regimes where the rights of the individuals would be respected. Thus, the USA should support these “authoritarian” governments: for instance, Anastasio Somoza was described as a

11.

The main objective of the USA at that time was to promote human rights as a “war” against communism. In Central America, the USA spent almost 5 billions dollars in military and economical aid to El Salvador in order to prevent a victory of left-wing guerrillas<sup>12</sup>.

In this context, it is easy to understand why Latin America governments felt quite free to develop a tough policy of repression that involved several human rights violations. As far as they “fight against communism”, they did not have anything to worry about the USA reaction, being the USA its main provider of economical and political support.

This policy has changed recently with Bush and Clinton administrations since they emphasised the drug war, the promotion of democracy and the fight against international terrorism.

### **3. TRUTH COMMISSIONS IN LATIN AMERICA**

After the militaries left government, the new democratic regimes thought that it was necessary to decide what to do with the human rights violations of the past. Should the new governments forget everything and look forward? Would it be possible to build a new society over the pain and the death?

Usually, the militaries tried to forge a deal with the new democratic government. They tried to change democracy for forgiveness, constitutions for laws of amnesty and freedom for impunity.

Maybe nothing would had happened if the NGO's on human rights and the relatives of the victims would not have started an incredible and difficult fight in order to know the truth and obtain justice. These efforts are mainly the origin of Truth Commissions in many Latin American countries as a way to reconcile citizens and State.

However, although in many cases the civil society wanted Truth Commissions as much as the government, we should bear in mind that both not always wanted them for the same reasons.

In fact, those responsible of human rights abuses wanted reconciliation but not necessarily truth or justice: they asserted that it was necessary to start a new

era as soon as possible without any kind of obstacles. On the other hand, the survivors<sup>13</sup>, the victims and its relatives wanted to know the truth and to obtain justice as a requirement for beginning the building of a new society<sup>14</sup>.

In this regard, Mendez<sup>15</sup> define the right to the truth as an emerging principle of International Law, that could be included in a more general right to justice of the survivors and victims of crimes of lese humanity. Concerning these crimes, the State has at least four obligations:

- a) TRUTH: Obligation to investigate and to make the truth known.
- b) JUSTICE: Obligation to judge and to punish the responsible individuals.
- c) REPARATION: Obligation to repair the moral and material harm produced.
- d) NEW ARMY FORCES: Obligation to expel from the security forces the individuals that have committed, ordered or tolerated those abuses.

Truth Commissions are important tools in order to exercise this right to justice.

According to Cuya<sup>16</sup>, these Commissions might be defined as organisms of investigation, whose objective is to help societies, which have suffered grave violations of human rights or internal war, to confront their past. The idea is to go over the deep crises and traumas originated by violence and to prevent those facts happening again in the future. This mechanism helps to identify the structures of terror, its branches and organisation; to reinvigorate the victims memory, to propose a way to repair the harm and to avoid that the responsible of

the violations still form part of government institutions as if nothing has happened.

The Truth Commissions have been created mainly in two ways. Governments as a result of pressure of the civil society (NGO's, media, survivors, victims, relatives, etc.) have publicly created a Truth Commission in some countries. In others, these Commissions have been created secretly due to the important work of the human rights groups. We will review some of them in the following paragraphs<sup>17</sup>.

**a) ARGENTINA: 1983<sup>18</sup>**

Maybe if the Army have not lost the Malvinas War in 1983, militaries will still be at the government or, at least, they would not have accepted to be investigated due to the several human rights abuses occurred against their own nationals<sup>19</sup>. However, after that humiliation, the militaries had to return the power to civilians.

President Raul Alfonsín created The National Commission about the Disappearance of Persons (CONADEP) as an Official Commission in charge of investigating human rights violations occurred between 1976 and 1983. This Commission worked for nine months; it had 13 members and its chief was Ernesto Sabato, a prestigious writer.

The CONADEP had many problems during its work, especially due to the fear of the military reactions. Their members had to travel to Europe and USA to interrogate the exilated Argentineans living abroad. Nevertheless, the CONADEP received the support of international organisations for its work.



In 1984, they published the “Nunca más” report, stating that there were almost 9,000 disappeared individuals, among 21 and 35 years old<sup>20</sup>. There were thousands of persons exterminated with their bodies destroyed in order to avoid being identified later<sup>21</sup>.

In addition, there were 340 secret detention centres or 'Prisoner Assessment Centres', where the detainees were tortured, with such a cruelty that new methods of torture were “created” there.

The repression was possible due to the collaboration of different sectors of the society as, for instance, the Catholic Church; in fact, many priests gave support to the military after killing people and lend their lands as Concentration Camps.

The main proposals of the CONADEP were:

- To keep investigating the human rights violations at the judicial level.
- To give economical support to the survivors and to the relatives of the disappeared individuals.
- To give full scholarships and jobs to the relatives of the disappeared individuals.
- To recognise the forced disappearance of individuals as a crime against the humanity.

The main strength of its work was to show what had really happened, especially to those who denied or did not believe the crimes occurred as a

consequence of repression. However, its report lack of an individualised truth who permits to know the fate of each of the disappeared people.

**b) BOLIVIA: 1982<sup>22</sup>**

In 1982, Hernán Siles Suazo became President of Bolivia after twenty years of dictatorships. According to the “Comittee for the Trial for Garcia Meza”, there were more than 14,000 irregular detentions, forced disappearances, tortured, etc. President Siles created then the National Commission of Disappearances, which investigated 14 cases of executions of political prisoners and 22 cases of disappearances. This Commission was eliminated before finishing its work.

However, many groups of human rights, journalists, the Catholic and Methodist Church, the relatives of the victims and survivors, among other groups, formed a task force called “Responsibilities Trial”, obtaining important support from government institutions. They worked for five years, collecting important evidence and proofs concerning human rights violations during Garcia Meza regime. In 1989, the Congress accused Garcia Meza before the Supreme Court but he escaped and lived clandestinely for five years until he was caught in Brazil.

The government of Garcia Meza was held responsible for the murder of congressmen belonging to the opposition party, the closing journals and radio stations, corruption, State terrorism, etc. In 1992, the former dictatorship was condemned to 30 years of imprisonment.

It is important to state that this group acted in fact as a Truth Commission that developed an efficient work and obtained support of the population although it

was not created by the government or, perhaps, due to this fact as long as it demonstrated that they did not obey other interests than discovering the truth and getting justice for the victims.

**c) BRAZIL: Project Nunca Mais**

Between 1964 and 1985, Brazil was ruled by military governments. During said period, thousands of individuals were persecuted, forced into exile, murdered and tortured.

Under the supervision of the Catholic Church of Sao Paulo, a group of volunteers and lawyers worked secretly for almost five years. They not only proofed many cases of torture, kidnappings and murders, but also described the organisational structure developed by the government in order to control the country. They secretly photocopied more than a million pages of military records of interrogations, tortures and murder of suspects. Their final report was titled "Brazil: Nunca Mais".

The report analyses over 700 formal cases of torture occurred during trials in military courts and identifies other 1,843 prisoners who were tortured by the military regime<sup>23</sup>.

In 1995, the government of Brazil decided to give reparation to the relatives of the murdered or disappeared individuals that were admitted or accepted by the government. However, the relatives of the victims and the survivors keep looking for the truth.

#### **d) CHILE: 1990**

After the electoral defeat of Pinochet, President Patricio Alwin created the National Commission of Truth and Reconciliation with the objective of contributing to the reconciliation of Chileans. Said Commission was in charge of identifying human rights violations occurred among 1973 and 1990, their antecedents and circumstances; collecting information to identify the victims; proposing measures of reparation and reivindication of the victims and recommending measures to avoid new human rights violations<sup>24</sup>. It worked for nine months and its President was Raúl Rettig Guissen.

The Commission received more than 3,000 denounces of disappearances and murders. They elaborate a three-chapter Report, relating the facts, making recommendations and describing the biographies of more than 2,000 victims. The report highlighted the enormous power of the National Direction of Intelligence (DINA), which reported directly to the President and was not subject to any kind of control of any government institution.

The main proposals of the Commission were<sup>25</sup>:

- Measures of social welfare.
- Economical reparation.
- Specialised attention on health, education and shelters.
- Condonation of debts.
- Exception of the Forced Military Service.
- To adequate the internal law to the international human rights law.

- To ratify the international treaties on human rights.
- To reform the Judiciary and the Army.
- To keep investigating the disappearances.
- To punish individuals who keeps in secret any information about illegal inhumations.

The importance of this Commission is that it was able to identify each of the victims that they investigated. As a consequence of its report, the government created the National Corporation for the Reparation and Reconciliation in 1992 in order to execute the Commission recommendations. It must be said, however, that the Amnesty Law of 1978 was a serious obstacle for the desire of justice for the victims.

#### **e) EL SALVADOR: 1991**

The Peace Agreements negotiated from 1989 to 1992 between the government and the FMLN (Frente Farabundo Marti para la Liberación Nacional) are the antecedents of the commission in El Salvador. It was created in 1991 by the Mexico Agreement<sup>26</sup>.

Its main objective was to investigate the grave facts of violence in order to obtain a national reconciliation. The Commission should present recommendations in order to avoid the violence happening again. It worked for eight months and Belisario Betancur, Reinaldo Figueredo and Thomas Buergenthal integrated it.

The Commission investigated the violence from the State against the political opposition (American nuns, Dutch journalists, massacres of farmers, etc.) and

from the FMLN against majors, judges, farmers, American officers, etc. Since it had the support of the ONUSAL, the Commission was able to receive economical and technical support from different governments and international organisms.

The report stated that both parties in conflict should have respected the International Human Rights Law and the International Humanitarian Law and, afterwards, described the main facts of violence that occurred during the period being investigated.

Its main proposals were:

- To reform the criminal laws and the Judiciary.
- To clean up the Army, the Police and the public administration.
- To prevent individuals involved in human rights and humanitarian law violations from political activities for at least ten years.
- To keep investigating and to eliminate the groups called “Escuadrones de la Muerte” (Death Bands).
- To repair morally and economically the victims and survivors: full scholarships, distribution of lands freely, etc.

Unfortunately, the Commission did not receive enough support although the government elaborated a calendar of activities for the execution of the proposals. Thus, many of its recommendations have not been executed yet.

#### **f) GUATEMALA: 1985<sup>27</sup>**

The “Comisión de Esclarecimiento Histórico” (CEH) was created by the Oslo Agreement between the government and the guerrilla, with the objective to

identify the human rights violations and violence facts in connection with the Guatemala conflict.

The main limitations of the Commission were that it was established that the final report could not identify the individuals responsible for the violations, but only the institutions involved and, in addition, that there was not possible to pursue trials upon the Judiciary after the report.

The Commission presented their report on February 25<sup>th</sup>, 1999, stating that almost 200,000 individuals were murdered or disappeared, most of them as a consequence of State terrorism. The main victims were Mayas, who were victims of genocide acts.

One of the merits of this report is that it highlights that violence has been directed from the State against the poor and the Maya population, as a characteristic of a racist culture. Moreover, the report points out the support from the USA to military governments in order to pursue the war against the guerrilla. The report also recognises the responsibility of the guerrilla for creating the “revolutionary terror”.

The main proposals of the Commission were the following:

- The President should ask forgiveness to the population in the name of the State.
- The victims should be dignified with special ceremonies.
- A National Program of Reparation to the Victims had to be established.

Unfortunately, most of these recommendations could not be executed due to the lack of interest of the State.

**g) PARAGUAY, “Paraguay Nunca Más”<sup>28</sup>**

Alfredo Stroessner was President of Paraguay for 35 years. During this period, the country was surrounded by torture, murder, kidnapping, etc. not only against its nationals but also against individuals from neighbouring countries that arrived to Paraguay escaping from the cruel regimes at their countries.

In the middle of the 70's, the Committee of the Churches for Emergency Help (CIPAE) registered the abuses in Paraguay and in 1990 it published its report. This document showed that 360,000 people were in jail and more than a million were exiled. Although, Stroessner was defeated in 1989, nothing important has been done concerning the human rights violations. The heals are still open.

**h) URUGUAY<sup>29</sup>**

The Servicio Paz y Justicia (Serpaj) has been working in Uruguay for a long time in order to determine the truth concerning the human rights abuses occurred during the military government. In its reports, Serpaj has stated that the violence was exerted over the population, as part of a general policy of terror.

Serpaj has been working with the Organisation of the Relatives of the Disappeared and Detainees, in order to identify the dead bodies that have been appearing in the coast of Uruguay since 1976. It also has worked in order to identify the hundreds of bodies buried without being identified. Serpaj recommends the investigation of the disappearances, the publication of the results of that investigation and a declaration from the Government rejecting the



dictatorship. Serpaj still keeps working on the terrible crimes committed during the military regime in Paraguay.

We also should mention the Comisión Investigadora sobre la Situación de Personas Desaparecidas y Hechos que la Motivaron, created in 1985 by the Parliament to investigate the facts among 1973 and 1982.

After reviewing the main Truth Commissions in Latin America, there are some conclusions that we are able to mention.

It can be said that the main strengths of these mechanism is that they are an important tool to help the investigation of human rights violations at the judicial level, since they could obtain information and documentation in an easier and more direct way. However, the main failure of the Truth Commissions is that in many cases they elaborated mere recommendations that left the risk of impunity for the individuals responsible for the violations. This impunity is like a new violation of the rights of victims and survivors.

In addition, the Truth Commissions that have had the support of different organisations and movements and of the civil society have been able to develop a better work and to obtain more important results. In such cases, the Commissions have acted in an independent way without restrictions to their investigations. Although the Commissions have not been always able to get access to the needed resources to develop such investigations, the popular support and their credibility have allowed them to obtain the collaboration of the population.<sup>30</sup>.

#### 4. **SHOULD PERU HAVE A TRUTH COMMISSION?**

##### a) **The Peruvian situation**

The Peruvian history is quite different from the rest of Latin America, although there was a coup on 3<sup>d</sup> October 1968 when Juan Velasco Alvarado ousted Fernando Belaúnde Terry. However, Velasco government could not be identified with upper classes' interests, since its political actions were focused on farmers and poor people interests. Its slogan was "the Army with the people" and its main goals were to reform the education and the propriety of the land<sup>31</sup>. The military regime had two periods: from 1968 to 1975 with Velasco Alvarado and from 1975 to 1980 with Francisco Morales Bermúdez. After the Constitutional Assembly elaborated the Constitution of 1979, Fernando Belaúnde was elected President for a second period in 1980. After five years, Alan García was elected until 1990, when Alberto Fujimori –currently declared Japanese - assumed the government until the year 2000. When Fujimori escaped to Japan, Valentín Paniagua became the new President until 28<sup>th</sup> July, 2001.

##### b) **“Shining Path” and the human rights violations**

The human rights crisis in Peru started when Shining Path (SP) appeared in public in 1980, burning electoral material in Chucchi (Ayacucho). At that time, nobody could imagine that that was the origin of the most cruel and difficult period in the history of Perú<sup>32</sup>. Ironically, although SP had been preparing during the time of the dictatorship, it started acting during democracy.

Many explanations have been given in connection with the origin and development of SP. Portocarrero<sup>33</sup> showed some very interesting examples. Some

militaries as general Roberto Noel, in charge of the war against the terrorism for many years, SP was part of the international communist conspiracy that use poor and ignorant people for their own interests. Thus, it was compulsory to develop a tough strategy to eliminate the terrorists without any doubt. This is the justification for the torture, massacres, selective terror against journalists, popular leaders, etc<sup>34</sup> that Noel has been accused of.

Another explanation looks for the origin of SP in the resentment of the majority of the population, traditionally discriminated and dominated. Since there was such enormous inequality in the social structures, it was necessary to react and to change them<sup>35</sup>.

At this point, there is something that must be stated: The terrible violence of SP can not be justified in any sense. And we should bear in mind that the violence was not only a mean to attain some objectives for SP but also a fundamental piece of its doctrine (Pensamiento Gonzalo). In addition, it was not so clear that SP was fighting to eliminate the social differences among Peruvians: In 1985, armed farmers organised by SP killed another 80 farmers in Lucanamarca, a town in the countryside. Abimael Guzman, leader of SP, justified the deaths of innocent people since those killings will help the Party<sup>36</sup>.

### **c) The reaction from the State**

The different explanations about SP shows the confusion that the authorities had at that time. And this confusion was a characteristic of the answer and reaction of the State against the terrorist acts.

In general, the State started a general repression against SP, justifying it on its desire of controlling the situation. But there were not limits.

The answer of the State to the terrorist was neither organised nor harmonised. The massacres in the countryside, the main area of action of SP, were scarcely known. The distances from the countryside to the city and the secret information concerning the real dimensions of the problem and the acts of the Army and Navy, were factors to contribute to this confusion. Moreover, the majority of the people killed or disappeared during the years of violence were Andean people, farmers who speak Quechua and, therefore, illiterates: a “second category” of citizens<sup>37</sup>. In this sense, many people started taking the problem seriously when SP exploited a “bomb car” in Tarata, Miraflores, a neighbourhood traditionally identified with the upper classes, killing civilian people.

There was no strategy to confront SP and the judges showed that they were not able to ignore the threats of SP, releasing terrorist for fear to be killed. As it has been said, the human rights abuses in Peru happened in a context of democracy and not during a military regime<sup>38</sup>. One explanation is that the democratic government left the fight against the terrorism to the Army.

As a result, after more than ten years of internal war the results were 27,000 people death, almost 500 communities of farmers destroyed, thousands of orphan children y more than 4,000 disappeared people due to terrorists acts and the State response. There was not an open investigation or trials looking for the direct responsible of these facts. And nobody knows for sure who was the responsible of so much pain<sup>39</sup>.

One example of this situation is the massacre of Cayara<sup>40</sup>. During Alan García's government, on May 13<sup>th</sup> 1988 an armed group of the SP ambushed a Peruvian Army military convoy in Erusco, an annex of the District of Cayara in the Province of Víctor Fajardo, Department of Ayacucho. The day after Army troops entered the village of Cayara and murdered the first person they came across; later came to the village church, where they found five more men who were taking down a platform; they shot them point-blank. The soldiers then buried the dead bodies in a neighbouring site

That day in Cayara between 28 and 31 persons were murdered, although it was difficult to be more specific concerning the number and identity because the bodies had disappeared. Weeks later, more people, among them an important witness, were killed. We never had an explanation about these facts.

d) Alberto Fujimori or the end of the circle

When Alberto Fujimori assumed the government, the situation seemed to have changed. Although he had closed the Congress, the majority of the population agreed with this measure, since the image of the previous governments was, in general, of inefficiency or corruption. For many people, including some representatives of USA, Fujimori was a leader of the democracy and the human rights.

In 1991, for instance, the USA Administration stated that to deny assistance to Peru, not only would mean to allow the entrance of cocaine to USA but also to loose the chance to collaborate with a democratic leader that was working for

improving the respect of human rights and for consolidating a democracy that was under the attack of a brutal guerrilla<sup>41</sup>.

The drug war was the main issue in the relations between Peru and the USA. In 1991 many ONGs claimed that Peru was violating the human rights of its nationals<sup>42</sup>. However, the USA was asking for economical aid for Peru, since our country was developing an important policy of control of the drugs market<sup>43</sup>. This aid should have been not only economical but also military in order to combat also the terrorism.

In 1992, Abimael Guzmán was caught, reinforcing the image of Alberto Fujimori as a leader that was able to put an end to terrorism, although part of his strategy comprised an antiterrorist legislation that was widely criticised because it incurred in clear violations of the due process of law. However, everything was justified with the capture of Guzmán and the disarticulation of SP. MRTA was still a problem, as they showed at the Japanese Embassy, but the main enemy was practically defeated.

Recent events have shown that the strategy of Fujimori and Montesinos went beyond than only eliminating the terrorism. There was a complex mafia of corruption that mainly needed that the President must perpetuate himself in the government. This is the context of many human rights abuses that implied restrictions of freedom of expression, violations to the due process of law, the elimination of the Constitutional Tribunal, the control of the Judiciary and the Congress, etc.

Among these facts, we should refer to the Amnesty Laws of 1991, which were declared by the Inter American Court of Human Rights on March, 1991 as not compatible with the American Convention on Human Rights.

The antecedent of these laws is the Barrios Altos massacre, carried out in November 1991 by the Colina Elimination Team, sponsored by the government of Alberto Fujimori and his assessor Vladimiro Montesinos. The Colina Group killed 15 people with submachine guns fitted with silencers in a tenement building in Lima's Barrios Altos district, during a party. Among the victims there was an eight-year-old boy. They said that they believed that there were at a meeting of SP.

Although these facts happened in 1991, the investigation started only on April 1995. However, on June 14<sup>th</sup>, 1995 and without previous discussion, the Congress enacted the Law 26479 (Amnesty Law). This law gave amnesty to any military, police or civil denounced, judged or condemned for any act related with the fight against the terrorism occurred from May 1980 to June 14<sup>th</sup>, 1995.

On June 16<sup>th</sup>, 1995 the judge Antonia Saquicuray, in charge of the Barrios Altos massacre investigation, decided no to apply the law to this case since it was already on trial. As a response, the Congress promulgated a second Amnesty Law, Law 26492, that stated that the amnesty could not be revisable by the judges and that it was of compulsory application. Moreover, this second law modified the Law 26479, giving a general amnesty to all the military, policemen or civil people that could be subject to trial due to human rights violations occurred from 1980 to 1995, although these violations have not been denounced

yet. As a consequence, the judges could not act before denounces on human rights violations occurred during such period. On July 1995, the Superior Court closed the Barrios Altos case. The sentence said that the Amnesty Laws were compatible with international treaties of human rights signed by Peru and that the Judge Saquicuray should be investigated<sup>44</sup>.

As it happened in many countries, the Amnesty Laws in Peru were designed in order to grant impunity for individuals responsible of human rights violations.

e) **Yes, Perú should have a Truth Commission**

The most important basis for the establishment of a Truth Commission in Peru is the need of reconciliation between State and society, taking into account the current moral and political crisis and the need to prevent such crisis repeating in the future. This reconciliation is really important if we want to establish the basis for a different society, with a policy of respect to human rights and democracy.

In this regard, it is compulsory **to clarify** what has really happened regarding human rights violations occurred during the last twenty years, **to determine responsibilities**, to propose ways of **reparation to the victims**, and to assure that these situations **will not happen again in the future**.

If the State does not recognise its mistakes, it will not be legitimated to expect anything from its citizens. Establishing a communication channel between State and citizens requires to assume that it is the State obligation to investigate and determine the truth, to ask for forgiveness, and to promise not to fail again.



Peru is a divided country, where racism and poverty determine different groups within society. Rural and poor farmers were the main victims of terrorism and, also, of State violence. Thus, it is necessary to give these individuals a space in the public agenda and to recognise their importance as individuals. It is time to stop talking about “the others” and start talking about “us”.

It is also compulsory to make visible the reality of thousands of families that have lost their relatives in a war where they were just victims and to make known their situation to the rest of the population as a basis for a general respect of human rights in Perú<sup>45</sup>. These Peruvians still live in unfairness and sadness.

This is the opportunity to make that many Peruvians consider themselves as citizens, condition that they never should have lost. It is also the chance for forgiveness and for reparation.

## **5. SOME COMMENTS CONCERNING THE TRUTH COMMISSION IN PERU**

On December 9<sup>th</sup>, 2000<sup>46</sup>, the government of Valentín Paniagua created a working group with the objective of evaluating the issues and regulations needed for the creation of a Truth Commission. The Ombudsman and the Ministries of Justice, Defence, Interior, Women and Human Development integrated this group. It also had representatives from the National Coordinator of Human Rights<sup>47</sup>, the Peruvian Episcopal Conference and the National Evangelical Concilium. The Working Group was in charge of elaborating a proposal concerning the Truth Commission, its mandate, objectives and organisation. It had 90 days for this work.

It is important to notice that the arguments for creating this group were the importance of justice and truth as the basis of any process of national reconciliation. Moreover, the government stated that from 1980 to year 2000, there were many violations of human rights and humanitarian law, that did not get enough attention and have harmed thousands of Peruvians, including torture, forced disappearance, forced displaced people and the use of terrorist methods. It is important to bear in mind that the government recognised that such abuses came from both sides (the State and the terrorist groups). The government highlighted also the need to confront the past without revenge and to look to the future with a solid conviction of democracy and reconciliation.

Another important issue is that the Truth Commission should propose ways of getting the truth, elaborate mechanisms of justice and reparation and try to establish that those facts never happen again. For that reason, the Commission should coordinate with government institutions and civil society groups, looking for a strong consensus in its conclusions.

On June 2001, the Peruvian Government finally created the Truth Commission<sup>48</sup>. There are some issues that must be considered in the work of the Truth Commission, created by a Supreme Decree:

**a) Objectives of the Commission**

In general, the objectives of the Truth Commission in Perú are:

a) To analyse the political, social and cultural conditions, as well as the behaviours developed from the society and State institutions that contribute to the tragic situation of violence in Perú.

b) To contribute with the juridical organs to the clarification of the crimes and human rights violations from terrorists or State agents, looking for the victims.

c) To elaborate proposals concerning the reparation of the survivors, victims and their relatives.

d) To recommend institutional, educational and legal reforms as a way of preventing that the past situation occurred again.

e) To create mechanisms in order to follow up its recommendations.

b) **The facts investigated**

The decree that creates the Truth Commission only refers to human rights violations; it did not mention violations of humanitarian law although they were referred in the norm that creates the working group.

It is possible that they feared that the terrorists could claim the status of “war prisoners” as well as special conditions and treatment. However, this is not possible since this qualification is used only for international conflicts<sup>49</sup>. Moreover, the objective of humanitarian law is to guarantee a minimum of human treatment in a conflict, at anytime or place. In general, the humanitarian law seeks to protect persons who are not or are no longer taking part in the hostilities, and to restrict the methods and means of warfare employed<sup>50</sup>. We think that not including violations of humanitarian law in the Truth Commission

work poses a risk of not considering some important violations, especially those ones coming from terrorist groups. We should bear in mind that the violations of humanitarian law were the basis for the establishment of the Tribunals ad hoc of Rwanda and Yugoslavia and the International Criminal Court.

**c) The role of the civil society**

The participation of the civil society in the Commission is extremely important. Without the civil society, the Commission would lose legitimacy and support from the population.

In this sense, the people who work in the Commission must be representatives of all sectors of the society that were involved in the process of violence, peace and reconciliation, as has happened in the rest of Latin American countries where a Truth Commission has been created. As we have seen, four of eight Truth Commissions in Latin America were established as an initiative of the local human rights organisations.

It will be necessary to incorporate also representatives of the victims and survivors, and people from all regions of the country. Moreover, it would be compulsory to include people who spoke Quechua and Aymara, other Peruvian languages that in some cases are the only ones spoken by the victims or their relatives.

**d) Area of action**

Concerning the facts to be investigated, the Truth Commission will focus its work on:

- a) Murders and kidnappings.
- b) Forced disappearances.
- c) Tortures and other gross lesions.
- d) Violations of the collective rights of the native and Andean communities of Peru.
- e) Other crimes and graves violations against human rights.

It has been stated that the Commission will replace neither the Judicial Power nor the General Attorney Office.

It is important to determine which facts are going to be investigated by the Commission. The Commission must investigate almost 4,000 cases of disappearances detected by the Peruvian Ombudsman Office. In addition, the innocent in prisons and the indulto cases must also be included in the Commission agenda. Massacres as those occurred in Cayara, Soccos, Uchuraccay, La Cantuta and Barrios Altos have never been totally clarified; however as long as there are evidences of State responsibility, we consider that the Commission must also investigate these events.

It must be emphasised that the decree that created the Truth Commission has omitted to include a specific mention concerning sexual abuses against women. Sexual crimes are common during the armed conflict and women belonging to minorities or indigenous peoples are especially vulnerable to violence<sup>51</sup>.

Mass rape and other forms of sexual violence have become part of a concerted effort to displace minority populations. These activities have now been declared war crimes and are subject to criminal prosecution under the International Criminal Tribunals for the former Yugoslavia and Rwanda<sup>52</sup>.

We would like to highlight the cases of women who were sterilised against their will during Fujimori's government, although it always refused that forced sterilisation was part of its policy of fighting poverty through birth control. I was part of the team at the Ombudsman Office that investigated these cases of violation of reproductive rights of Peruvian women, most of them belonging to the poorest areas and indigenous communities. These women were severely harmed and some of them died after the surgery. The Truth Commission should also investigate these facts as they are gross violations of human rights.

**e) Period subject to investigation**

The Truth Commission will try to clarify the process, facts and responsibilities of the terrorist violence and the human rights violations occurred from May 1980 to November 2000. The Commission should determine the responsibility of the terrorist groups and the State agents. They will work for a period of eighteen months; however, this period could be extended for five additional months. Taking into consideration the length of time to be covered, we consider that the Commission work would take at least two years. After this period, the Commission will elaborate a final report, with its conclusions and recommendations.

## **f) Functions**

In general, the Truth Commission will be able to:

- a) Interview and collect information from any person, authority, and public server.
- b) Accede to State information and documentation.
- c) Make visits and inspections with the support of experts.
- d) Act in secret and to keep secret the names of the people who give information.
- e) Obtain security protection for people whose life or personal integrity is in risk.
- f) Establish channels of communication with the population and the people affected by violence.

Moreover, the Commission will have an important role concerning the situation of the victims. Thus, they should look for adequate reparation for the victims not only giving them money but also –and perhaps more importantly-- through public acts of recognition, scholarships for the victims' children, job programs, etc. The main idea is to recognise that the society has a right to know what has happened as a way to repair and to clarify the facts and to prevent new human rights violations.

We should bear in mind that the Final Report of the Truth Commission will close an era, “showing” the truth and looking at the future. For this reason, this report should be massively divulged, including public acts with the participation of the victims and their relatives, who should be reinvindicated.

Finally, the Commission should not only cover violations of human rights but also its general causes, looking for a real transformation of the country. The Commission should consider situations as pluriculturalism, discrimination, lack of education, among others.

**g) Resources**

In addition to national resources, the Commission will have the right to ask for cooperation from all public institutions and officers, as the United Nations, the OAS, etc., as has happened for instance in El Salvador, Haití and Guatemala. Such support will be important in particular in order to contact individuals currently living abroad.

**h) Members**

It will have seven member, all Peruvians, distinguished because of their prestige and legitimacy in society and their previous work concerning the defence of democracy and the constitutional regime. They will count with special protection and the collaboration of the government, the Army, the Police and any other institution o public server.

Representatives of the NGOs should be convoked, since they have been working in this topic permanently and will be willing to give important information. Survivors and relatives of the victims should be also part of the Commission. Representatives of the universities should be convoked as well. Finally, the work team should be integrated not only by lawyers but also by anthropologists, archaeologists and journalists, as a way to understand the phenomena behind



human rights violations. It could be interesting to invite foreign experts, with previous experiences in Truth Commissions.

## **6. CONCLUSION**

We think that the Truth Commission in Perú should be a professional and effective mechanism for the reestablishment of the peace in our country. As the National Coordinator of Human Rights says, “one minute of silence is respect, 20 years is indifference”. It is urgent to know the truth, to recognise the mistakes and to ask forgiveness. If not, the new government will not have the instruments to attain a real change in our country and the terrible past that Peru is trying to forget, will become our near future.

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- <sup>1</sup> Testimonies collected in Ayacucho, the city most affected by the violence. Peruvian Ombudsman Office (2001), "Las voces de los desaparecidos: Testimonio de familiares".
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- <sup>9</sup> Basically, the International Covenant on Civil and Political Rights, the International Convention for the Elimination of all forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the American Convention of Human Rights.
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- <sup>12</sup> Dent, D. (1995), US-Latin American Policymaking: A reference handbook, Westport, C.T.: Greenwood Press, p. 266.
- <sup>13</sup> As a former teacher used to say that it is better to call them survivors and not victims: The survivor won the battle; the victim is still suffering.
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- <sup>16</sup> Cuya, E., Op. Cit., p. 5.
- <sup>17</sup> For a complete review of the Truth Commissions in the world, see: Hayner, P. (2001), "Verdades Nunca Reveladas", Paper in at the Conference Truth Commission: Historical Experiences and lessons to Perú, organised by APRODEH, on 2<sup>nd</sup> February 2001, <http://www.aprodeh.org.pe>
- <sup>18</sup> Cuya, E., Op. Cit.
- <sup>19</sup> Green, E. (1996) "Comisiones de la Verdad en América Latina", Issues of Democracy, USIS, 1, 3.
- <sup>20</sup> However, after the CONADEP finished its work there were between 2,000 and 3,000 more disappearances denounced at the ministry of the interior. Moreover, it has to be said that there are many people who did not denounce nor give information. In this sense, some groups of human rights estimate that the number of victims during the 1976-1983 era to be between 20,000 and 30,000 persons. <http://www.yendor.com/vanished/how-many.html>
- <sup>21</sup> In the book "The Flight" by Horacio Verbitsky, Adolfo Scilingo, a former Argentinean Navy Captain, described how were disappeared almost 2000 people in his base: "They were unconscious. We stripped them, and when the flight commander gave the order, we opened the door and threw them out, naked, one by one. That is the story, and nobody can deny it". TIME Domestic, March 27, 1995 Volume 145, No. 13. <http://pages.prodigy.com/steiner/scilingo.htm>
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- <sup>28</sup> Cuya, E., Op. Cit.
- <sup>29</sup> <http://www.serpaj.org.uy/>
- <sup>30</sup> Cuya, E. Op. Cit., 36.
- <sup>31</sup> The slogan here was: "Farmer, the owner do not eat from your poverty anymore". Concerning education, Velasco gave importance to the use of Quechua and traditional elements in education.
- <sup>32</sup> Although the MRTA (Movimiento Revolucionario Túpac Amaru) was another group responsible of violence acts, it can not be compared with the cruelty of SP. However, the Truth Commission will investigate all of these acts.
- <sup>33</sup> Portocarrero, G. (1998), Razones de Sangre. Aproximaciones a la Violencia Política. Lima: PUCP, 69-83.
- <sup>34</sup> As an example of this attitude we should mention the Gral. Luis Vizquerra: "The Army should have to start killing terrorist and not terrorist, this is the only way of succeed. They kill 60 people and maybe there were only 3 terrorist, and the police will say that there were 60 terrorists". Cited by Portocarrero, G., Op. Cit., p. 73.
- <sup>35</sup> One basis of these opinions was that SP started its actions in Ayacucho, traditionally one of the poorest cities of Peru.
- <sup>36</sup> Portocarrero, G., Op. Cit., p. 33.
- <sup>37</sup> Interview to Pablo Rojas, President of the Human Rights Commission of Peru, by Miguel Jiménez and Marta Caravantes, July 21th 2000, <http://www.ucm.es/info/solidarios/ccs/entrevistas/panlo%rojas.htm>
- <sup>38</sup> There were some guerrillas's actions during the middle 60's but there were soon controlled by the government and did not have the dimensions of SP.
- <sup>39</sup> See note 37.
- <sup>40</sup> Cayara Case, Preliminary Objections, Judgement of February 3, 1993, Inter-Am.Ct.H.R. (Ser. C) No.14 (1994).
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- <sup>43</sup> The recent process in Peru shows us that it was not only the efficient work of the Peruvian militaries that control the drug dealers. It was also the corruption and the bribes that those dealers paid to Vladimiro Montesinos, the main assessor of Alberto Fujimori, recently captured in Venezuela thanks, among others, to the FBI.
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- <sup>45</sup> Peruvian Ombudsman Office, Op. Cit., 4.
- <sup>46</sup> RS N° 304-2000-JUS of 9<sup>th</sup> December 2000.
- <sup>47</sup> This NGO reunites more than 60 groups of human rights. <http://www.cnddhh.org.pe>
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