



**Forced disappearance in Peru
Problems and challenges in the process of justice
Post - Truth and Reconciliation Commission**

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FORCED DISAPPEARANCE IN PERU

Problems and challenges in the process of justice Post – Truth and Reconciliation Commission

The Work Group for Forced and Involuntary Disappearance of Persons is aware that, the context of forced disappearance in Peru is characterized by a structural weakness on behalf of the State to protect fundamental guarantees; the situation is worsened with high poverty levels and social exclusion in the country. Although the phenomenon of forced disappearance in Peru is not only limited to the experience of the internal armed conflict – let us think on the disappeared persons during the called “Condor Operation” during the Morales Bermudez dictatorship-, the period between 1980 and 2000, that the phenomenon multiplied, turning into a central issue for the country’s reconciliation and the democratic consolidation. According to a report of the Work Group on Forced Disappearance of Persons of United Nations 2002, Peru was one of the countries with more cases of forced disappearances in the world.

1. TRUTH, JUSTICE AND REPARATION FOR VICTIMS.

The internal armed conflict was also marked by these conditions of having a weak State to protect fundamental rights, with a very high percentage of fatal victims, among dead and disappeared persons, citizens from the most excluded sectors, 70% belonged to rural zones, 75% only spoke Quechua or other native languages as mother tongue and 56% carried out agricultural activities. The greatest responsible of the fatal victims (54%) was the group in arms Communist Party of Peru-Shining Path (Partido Comunista del Perú-Sendero Luminoso) ¹. The insurgent violence was answered, with more violence. The Truth and Reconciliation Commission (hereafter CVR) found out that the State violated human rights systematically and extensively, at least, in determined periods of time and determined geographical zones in the country. It was responsible for 36% of the victims of the internal armed conflict.

The CVR supports that it’s understood by forced disappearance of persons *the disappearance and deprivation of liberty of one or more persons committed by State agents or by who act with their authorization, support and tolerance, as well as by private parties of members of subversive organizations. This action is followed with lack of information or the negative of recognizing deprivation of liberty or informing about a persons whereabouts...* ². For this reason forced disappearance is characterized as a complex and multi offensive crime.

¹ Only case in the world, along with the Red Khmer Revolution of Pol Pot in Cambodia.

² CVR. Final Report. Volume VI, page. 70.

Several calculations about the number of victims of forced disappearance have been worked out. Frequently, these calculations present big discrepancies for being in elaboration process. The initiative “Los Peruanos Que Faltan” (The missing Peruvians) has data which state the number of disappeared people higher than 12 thousand. However, a very valid information according to the inform of the CVR (The Commission of Truth and Reconciliation) declares, that not less than 3,355 persons were victims of forced disappearance realized under the responsibility of the State Forces or connected closely to state actions.³

It bears mentioning that since 2007, a Victim’s Register (hereafter RUV) is under elaboration, which constitutes the basic tool to implement the Plan for Integral Reparations⁴ for victims of the internal armed conflict. The Reparation Council is in charge of the RUV, state body which only has the objective of elaborating this register of both individuals (natural persons) with the right to be repaired, as well as the communities affected which will receive collective reparations (villages, small towns, peasant and native communities, etc.)⁵. The register will allow having more precise numbers regarding the size of the problem of forced disappearance. Since that besides consolidating the pre existing registers, it will have a permanent character and will to allow registering cases that have not been registered before.

There have been registers and reports on disappearances in the internal armed conflict in the country, the CVR reports the first “Truth Measure” for the victims, understood as the public acceptance of the facts, so, of the number in it (which is preliminary due to the non existence of a victim’s register).

Regarding the reparation to relatives of victims of forced disappearances, a first initiative has been to restore citizenship rights, being the People’s Ombudsman in charge of carrying the Special Register of Absence due to Forced Disappearance, created by Law N° 28413 in order to regularize the juridical situation of disappeared persons⁶.

One of the problems the victim’s relatives of forced disappearance face is the double paperwork, on one side they have to get a Record for Forced Disappearance from the People’s Ombudsman; while on the other side they have to make a new register before the Reparation Council to obtain individual

³ CVR. Final.Inform Tome VI, pág. 762.

⁴ Created by law 28592, the law of the Plan for Integral Reparation PIR Law.

⁵ By June 20th 2008, 5 285 victims had been registered in the Victim’s Register of persons affected by political violence; identifying 423 cases of forced disappearance.

⁶ By June 2008, there have been 818 cases of forced disappearance granted. We must specify that not all the cases managed by the People’s Ombudsman have been added to the Victim’s Register first, due to delays of paperwork between the State institutions and second, also due to the application of the exclusion clause contemplated in article 24 of the law of the Plan for Integral Reparation. However, in the medium run, all victims due to forced disappearances who pass “the exclusion filter” contemplated in the Plan for Integral Reparation will be added to the RUV.

reparation they are entitled to under the Plan for Integral Reparation. All this besides the restriction of article 4 of the PIR law where for effects of the reparation are not considered as victims, those who supposedly have been linked to subversive groups in the internal armed conflict. To be able to make this distinction, the Reparation Council has formulated an exclusion protocol.

Since the end of 2000, at the beginning of the democratic transition, the relatives of disappeared persons have denounced the existence of many burial sites, with human remains, located in all the national territory. The regions of Ayacucho and Huancavelica have been the most affected by political violence, and the greatest numbers of burial sites are located there. However, and according to a report of the National Coordinator for Human Rights 2007, five years after delivering the CVR final report there are still difficulties with the Public Ministry both to make the systematized information operational by the CVR⁷ regarding the National Register of Burial sites and the before mortem information of the victims to establish technical protocols for the exhumations. This void in part has been covered by NGOs experienced in forensic anthropology who, serving the Supra provincial prosecutors, have progressed in emblematic cases to attend serious denunciations due to extrajudicial executions and forced disappearance.

Regarding the number of exhumations and recoveries of the victims achieved by the Public Ministry, the Specialized Forensic Team of Legal Medicine in a meeting with the International Red Cross on December 2007 - pointed out that for period 2001-2007, 77 exhumations were carried out, having recovered the remains of 505 persons of which half at least have been identified.

One of the problems derived from this situation is the absence of an Integral Plan which can articulate both the humanitarian character of the forensic investigation like the imperative of the judicial and criminal investigation of the cases. In this sense, a positive sign was the conformation of the Office for Disappeared Persons in the Ayacucho region (which suffered the most during the violence) in 2007, in association between the regional government and the Peruvian Team of Forensic Anthropology (EPAF), NGO with experience and specialized staff in this field. However, beyond this initial step, the regional government has not developed the initiative, in spite of the disposition shown by EPAF. Also, we must not forget that this initiative must be framed in a policy which is monitored by a national state instance, inexistent at this time, which should have in charge the National Plan of Forensic Anthropology.

⁷ The CVR in view of the disappeared persons problem in the time of political violence, proposed “The National Plan of Forensic Anthropological Investigations”, a mechanism and political proposal that means the closure of the work initiated by CVR and annex organizations in the matter, which implied the execution of the National Register of Burial Sites. The objective of the plan was produce guidelines to drive the work of forensic investigations, related to human rights violations, specifically extra judicial executions and forced disappearances occurred during the period of political violence. In its task, CVR made a National Register of Burial Sites which documents 4 644 sites at national level, having affirmed first the existence of 2 200 of them, located in the departments of most conflict during the internal war.

It is urgent to quicken the pace to close the mourning process and the “humanitarian reparation”, understood as the return of the remains to the relatives. So, there is a recommendation to accelerate the recollection of before mortem data and the establishment of protocols which protect the data collected and to ease a monitoring of the victims in the process of truth, which will allow a quick identification of the remains found and their verification with the post mortem data, taking into account that these disappearance cases date from almost 30 years ago, and whose witnesses and relatives are very old persons.

2. FULFILLMENT OF OBLIGATORY LEGAL FRAME ON BEHALF OF THE PERUVAIN STATE.

Peru has ratified the Inter American Convention on Forced Disappearance of Persons, adopted in Belem Do Para on September 1994, while still pending the signature of the International Convention on the Protection of All Persons against Forced Disappearance of Persons, approved unanimously in the 61st General Assembly of the United Nations in 2005. So, article II of the Inter American Convention on Forced Disappearance of Persons, adopted on September 1994⁸, defines forced disappearance as follows:

(...)the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

At national level, the crime of forced disappearance affects directly other rights like physical freedom rights (Art. 9 of the International Covenant of Civil and Political Rights and Art. 7 from the American Convention), the judicial guarantees (Art. 14 from the Covenant and Art. 8 from the American Convention), of personal integrity (Art. 7 from the Covenant and Art. 5 from the American Convention) and the right to life (Art. 6 from the Covenant and Art. 4 from the American Convention).

Likewise, in the International Humanitarian Law, it is comprised in Article 3 Common to Four Geneva Conventions in 1949 and Article 4.2 of the II Additional Protocol of 1977.

⁸ Approved through the Legislative Resolution N° 27622 dated December 21st 2001 and ratified by Supreme Decree N° 10-2002-RE dated January 22nd 2002. In legal effect since March 15th 2002.

Sub section i) of the second paragraph of article 7 of the Rome Statute of the International Criminal Court ⁹ broadens the definition of this crime when understanding forced disappearance as *“Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”*

In the ambit of internal law, article 6 of Law N° 26926¹⁰, which modifies diverse articles of the Criminal Code and adds Title XIV-A, referred to Crimes against Humanity, introduced forced disappearance as a crime against humanity, placing it in article 320 of the Criminal Code according to which *“...the officer or public servant that deprives a person from its freedom, ordering or executing actions that will have as result their disappearance, **duly proven**, will be repressed with jail no less than fifteen years and disqualified, according to Article 36 subsection 1 and 2...”*

From the analysis of the Peruvian norm, we observe it demands, for the configuration of the type of crime, the proper verification of the occurrence, which constitutes a real obstacle for the judicialization process of violations to human rights, besides proving an incorrect definition of the type of crime since it is demanded to be “proven”, when this is the purpose of the criminal proceedings.

According to the Inter American ¹¹ and national ¹², doctrine and jurisprudence, the crime of forced disappearance besides violating the right of free movement, it violates the right to defense which impedes giving notice of appeal of the legal resources that allow to protect the violated right. The fact that the victims generally suffer torture and/or extra judicial executions to later conceal the body, affects the right to personal integrity and the right to life. So it is about, a multi offensive crime that has a permanent character, given that the criminal figure is maintained while the victim’s corps remains unfound ¹³.

In this sense, and with a more recent date, we find the ruling of the Peruvian Constitutional Tribunal in the Habeas Corpus presented by former Lieutenant EP Collins Collantes against the sentence filed by the Judicial Power for the forced disappearance of the authorities in Chuschi, occurred in 1991.

The sentence in the Chuschi case makes a important contribution to regarding the actus reus of the crime of forced disappearance as crime against humanity,

⁹ Approved through Legislative Resolution N° 27517 dated September 13th 2001 and ratified by Supreme Decree N° 079-2001-RE dated October 5th 2001. In legal effect since July 1st 2002.

¹⁰ Law promulgated on January 30th 1998 and published on February 21st 1998. Annulling the DL N° 25592.

¹¹ Velásquez Rodríguez Case, Judgment on the Merits, dated July 29th 1989.

¹² EXP. N.° 2488-2002-HC/TC. Villegas Namuche Case. Sentenced March 18th 2004

¹³ Op. Cit.

irrespective of the moment in which the crime has been committed, so that it can be persecuted by justice: “The crime of forced disappearance, like all crimes against humanity, before being considered a positive norm in criminal law, always has been part of the *jus cogens*, which means that it was part of the Common Law ... and the possibility to persecute and sanction it were a obligation of every state, even if the national norms did not accord with the ones stated by the CIDH (The Interamerican Commission of Human Rights) in established case law” 14

Furthermore, it states that “in the crimes committed permanently, the applicable law is not necessarily the one that was valid when the crime was executed, every time the conduct subsists while the location of the victim is still not known; therefore, if a case of penalty of mayor graveness appears, it is applicable to the persons which initiated the action and continue with it ... Another consequence of permanent crimes is that the infringement of the juridical welfare persists even after its consummation. In its structure, the typical conduct persists in repeated consummation after having it initiated once.” 15.

Likewise, the adjudication establishes that the so called “Due Obedience” can not be considered as the exclusion of responsibility. Furthermore, it states the State as the third responsible civilian; therefore the amends should be solidary, yet that the state is obliged to compensate the victims.

In the ambit of reparations it is important to stress that the sentence determines to continue the search of the rests of the victims and that it contributes to their mere identification. That responds to the appeal of the civilian part in terms that the criminal process must not only have a penal role, but also a dignifying one for the victims. The Truth and Reconciliation Commission presented in their Final Report as one of the main recommendations was the need to investigate, judge and sanction the violations against human rights occurred during the period of political violence through the creation of a specialized sub system for these crimes.

However, another problem in our internal norm is that it’s a special crime, and it can only be committed by State agents and the authorship of those who acted with consent of the state officials has not yet been established, like the case of the members of the Peasant Self Defense Committee, that in the frame of the internal armed conflict committed these kind of crimes¹⁶.

¹⁴ Sentence of the “Sala Penal Nacional” (National Criminal Court) pp 88

¹⁵ Cited Sentence 102

¹⁶ We can quote for example the forced disappearance of the mayor of Acocro district, Huamanga province, Ayacucho department on July 21st 1991 and the community members Eliseo Tineo Yupanqui, Marcelo Enciso García and Lázaro Paquiyauri Canchari, by members of the Self Defense Committee of the zone, leaded by the commando “Sasca”, “Gavilán”, “Salvador”. The civilian party managed to extend the judicial investigation for the forced disappearance crime, in a direct application of the Convention, however, when reaching the oral trial, the Superior Prosecutor, when issuing his accusation did not do it for that crime, but for kidnap. The National Criminal Court (File 605-07) coincided with the Prosecutor

3. PROGRESS AND DIFFICULTIES OF JUDICIALIZATION

On September 1994 a specialized criminal structure was implemented to judge and prosecute crimes against humanity and common offenses which had constituted into human rights violations¹⁷. Which has during time acknowledged human rights violation cases with some difficulties but also with significant progress if we consider that in a short period of time it has been implemented and has managed to process and sentence cases of great complexity (trial and condemn of the leadership of Shining Path, cases of forced disappearance, etc.) establishing important juridical precedents that favor the right to truth and justice.

Towards 2006, of the cases presented by the Truth and Reconciliation Commission before the Public Ministry and Judicial Power, 40 cases had started criminal proceedings, from which four have received sentence¹⁸, the most important thing regarding the subject of this report, is the sentence issued in the case of the disappearance of a young university student Ernesto Castillo Paez. Recently, there has been another sentence for forced disappearance of several authorities of Chuschi Community, in Ayacucho department.

However, since mid 2006 to this date a concerning weakening process has started in this instance through the issue of a series of administrative resolutions from the Public Ministry and the Judicial Power expanding their competence and the subsequent increase of the obligations of these jurisdictional bodies¹⁹.

In past visits from the Work Group certain concerns were pointed out regarding the seriousness of these kind of international crimes and it was urged to apply sanctions and the withdrawal of the officers responsible of the massacres, the

and filed the proceeding in the grounds of the crime of forced disappearance, among his arguments we can point out the following: “5. *that, in strict observance of the mentioned principle [of legality] the definition contained in a Treaty or International Convention is not fit to be judicially introduced, its direct application, and the repression with jail of the mentioned conduct according with our Criminal Code while it has not been made positive in our juridical ordering (...)*”

¹⁷ The National Criminal Court was created and four Supra Provincial Criminal Courts were implemented in Lima and one in Ayacucho (later one more would be created); like the National Prosecuting Superior Criminal Court and four Criminal Prosecuting Supra Provincial Courts in Lima and one in Ayacucho. Later a fifth would be created in Lima but it was deactivated later.

¹⁸ This way we have the sentence of the murder of Rafael Salgado Castillo (July 12th 2005), sentence in the case of the settlers in Pichanaki, in the central jungle (December 16th 2005), sentence for the case of forced disappearance of student Castillo Páez (March 20 2006), sentence for Lucanamarca Killings in Ayacucho (October 13th 2006).

¹⁹ Initially, through the Administrative Resolution N° 122-2006-CE-PJ the competence to acknowledge tributary, custom and against intellectual property crimes were expanded. Later, through the Administrative Resolution N° 045-2008- CE-PJ, dated February 14th 2008, extended the competence of the National Criminal Court to acknowledge the proceedings for crimes of Drug trafficking in their aggravated modalities, crimes such as Money Laundering, Kidnapping and Extortion in offense of State officers and others.

cooperation with the armed forces and the strengthening of the judicial power and the civilian authorities. Unfortunately, more than 20 years later from their first visit to Peru the progress on this subject has been limited.

It is important to highlight a positive change in the legislation on the called military justice, by which civilians can not be judged by the military jurisdiction and human rights crimes will not be considered as an offenses when performing their duty (*Delito de Funcion*)²⁰. However, Military Justice has resisted acknowledging cases of human rights violations, generating confusion and distorting the judicialization process. Currently, there are open and parallel investigations in the Ordinary Jurisdiction or Common Jurisdiction²¹, being an obstacle and intromission in the process of justice and truth and a rejection towards the resolutions from the Constitutional Tribunal and the Supreme Court have clearly pointed out that the Military Jurisdiction is not competent to know the human rights violation cases besides defining its special character and strictly directed to the offense when performing their duty and facts that violate military juridical goods²².

On the other hand, the implementation of a specialized system to protect victims, relatives, witnesses, lawyers and human rights defenders is still a pending issue, this situation has deteriorated in the last months there have been threats and hostilities very frequently²³. Regarding the normative aspect, the ongoing applicable law for these cases is Law N°27378, of effective collaboration, norm basically directed to perpetrators that wish to have the recourse of determined benefits in exchange of information, that includes some assimilable protection measures (police protection, conceal whereabouts, identity reserve), but does not constitute, in anyway, the proper normative

²⁰ However, Peruvian Congress has during four years unfulfilled the Constitutional Tribunal's sentences. Since August 2004 the Constitutional Tribunal (CT) ordered to adjust the organic law and the military-police code both to the international standards as to the Peruvian Constitution, but Congress has ignored this judicial mandate. On the contrary, three opportunities later on, it has evaded the essence of the pronouncements by the CT, adopting laws that neglect the CT indications (Laws N° 28665 and Law N° 29182) and to prorogate indefinitely a legislation that had been declared unconstitutional (Law N° 28934).

²¹ The Instructing Magistrate (*Judge who explains the case to the court before it starts deliberations*) of the Military Supreme Council knows about the cases of "Los Molinos", the "Killings of peasants in Putis", "Destruction of the left margin of Huallaga River", the "Murder and disappearances of students and teachers from the Universidad Nacional del Centro", the "Arbitrary executions in Accomarca", the "Chumbivilcas killings", the "Arbitrary executions in Pucará", and the "Forced disappearance of Ángel Escobar Jurado", and the "Murder of Falconieri Zaravia", while the Prosecuting Office of the Instructing Magistrate of the Supreme Council is in charge of the "Violations to human rights in the Cabbitos Base", in "Pucayacu II" and the "Arbitrary executions of inhabitants of Cayara".

²² Sentence of the Constitutional Tribunal N° 17-2003-AI, dated March 16th 2004, relapsed in the Unconstitutionality action presented by the People's Ombudsman against diverse articles of Law N° 24150; and Area of Competence N° 18-2004, Permanent Criminal Court of the Supreme Court, November 17th 2004, in the case for the murder of Idalecio Pomatanta.

²³ CNDDHH has registered 53 incidents in 2007 (threats, harassment, defamation, text messages to cellular telephones with threats) to the families of victims, witnesses, lawyers and human rights defenders. Fifteen of these incidents are directly linked to the extradition process of former President Alberto Fujimori and his trial for the crimes of Barrios Altos and La Cantuta. The amount of incidents could be larger, but due to different factors (far away location of victim's residences, fear of some kind of retaliation, lack of resources of the affected persons) an important number of cases are not denounced.

frame to confront the problems of lack of protection for victims, relatives, witnesses and other persons affected. Also, equally, the protection mechanisms in this legal mechanism respond to an urban or city logic that is very difficult to apply in rural zones, where most of the persons that need protection live²⁴.

Whether the establishment of a specialized sub system in the investigation and judging of human rights violations in the past, was great progress; however, this sub system, has progressively, increased its competence, first it was the tributary crimes, then customs; after it has been put in charge of organized crime (drugs trafficking, organized bands), denaturalizing its real essence.

Resolutions to emphasize

Case of disappearance of Chuschi authorities

On March 14th 1991, a patrol from the Pampa Gallo (Ayacucho) Peruvian Army Military Quarters directed by Lieutenant EP Colins Collantes, entered Chuschi locality, which along with police agents from Chuschi's General Police Station, faked a Shining Path incursion to cover up the search of their houses in the locality as well as the detention of three authorities from the community and a minor.

The detention of the authorities was carried out as retaliation due to the community's negative of forming a peasant patrol (*ronda campesina*) to confront Shining Path, and that they already were organized in a Vigilance Committee against Terrorism, for which they were victims of harassment and pressures on behalf of the police agents.

Chuschi authorities that were detained: Pacotaype Chaupin, Cayllahua Galindo, Cabana Tucno and the minor Huaman Vilca were hooded, tied and transferred to the Military Quarters of Pampa Cangallo. Since then and in spite

²⁴ Regarding the protection system, there has been some attempts to modify the process of benefits for the effective collaboration and protection mechanisms for collaborators, aggravates persons, witnesses and experts that seeked, mainly, to improve the ongoing law system and overcome the deficiencies (which are many: unfulfillment of benefit grants, absence of effective guarantees for the protected persons, information leak, among others). We must warn that the initiatives presented (bill of law N° 175/2006-CR) does not include special regulations for human rights cases, and even less, protection measure for human rights defenders in general. Two bills of law were presented about the "Process of effective collaboration and about the protection system" (Bill N°13398/2004-PE and Bill N°75/2006-CR) which proposes to put into legal effect and modify the dispositions contained in the Criminal Proceedings Code refereeing the benefits for efficient collaboration and about the protection of collaborators, aggravated persons, witnesses and experts. Also insist in the legal treatment of the "award" benefits when dealing with efficient collaboration. The legislative initiative 13398/2004 was filed when the corresponding legislature to period 2001-2006 concluded without its approval. In the case of Bill N° 175/2006, it was decreed before the Justice and Human Rights Commission on September 18th 2006 and is pending for debate and approval of the mentioned commission.

of the pressure by the community and human rights organizations they still don't know the victims whereabouts.

On May 4th 2003, the Criminal Court of Cangallo opened criminal proceedings against Collins Collantes Guerra, Mario Caldas Dueñas, Luis Juárez Aspiro, Domingo Morales Ampudia, Luis Bobadilla Cuba, Stalin Rivera Herrera and José Leiva Casaverde for kidnapping and forced disappearance crimes. On May 3rd 2006, the National Criminal Court initiated oral trial against the accused and, after on February 5th 2007 ruled sentence, two of the accused were condemned: Juarez Aspiro and Collantes Guerra sentenced to six and fourteen years in prison.

The sentenced Collins Collantes presented a Habeas Corpus against the decision of the Special Criminal Court. According to the plaintiff, the facts subject of the trial had been committed before the legal effect of the criminal offense subject of the trial, so the *lex praevia* principle had been violated. However, the Supreme Tribunal determined that if the facts occurred before the legal effect of the criminal offense, the effect would remain in time, even after the entrance of the legal effect of a sanctioning specific law, so there was not any violation to the legality principle²⁵.

Subsequently, on September 24th 2007, the Permanent Criminal Court of the Supreme Court declared that there was no nullity regarding the sentence imposed against the two condemned and reformed the sentence regarding the civil reparation, increasing the amount to pay due to civil reparation. Likewise, regarding the accused Domingo Morales Ampudia, who was acquitted, a new oral trial was ordered.

Case of forced disappearance of Ernesto Castillo Páez

Ernesto Rafael Castillo Paez left his home on October 21st 1990. That day, the subversive movement Shining Path carried out some explosions in the zone "Monumento a la Mujer" in Villa El Salvador, Lima. Little after the explosions, security forces organized an operation to detain the persons responsible for the explosions. During this action a group of police agents detained Ernesto, put him in the trunk of a police car and set off with unknown destination.

In spite of the denunciations made by the relatives before national judicial instances, these chose to definitely close the file on the investigations. Including that in 1991, the Supreme Court of Justice decided to illegally revoke the sentence of Habeas Corpus through which police authorities were ordered to release the detainee.

²⁵ EXP N° 0442-2007-HC/TC. Case Collis Collantes. Sentence March 30th 2007.

Thanks to the sentence issued by the Inter American Court of Human Rights, on September 2001 a criminal proceeding was opened against 16 police agents for kidnapping.

On March 20th 2006, five years later, the National Criminal Court passed sentence, condemning for forced disappearance crime to 16 years in prison Colonel PNP (r) Juan Carlos Mejia Leon and the other three police agents to 15 years in prison for committing crimes against humanity - Forced Disappearance.

Given the appeal for annulment raised by the accused, the Supreme Court of Justice declared, on December 18th 2007, that “Regarding sub officers Arotuma, De Paz and Aragon, it was unanimous to declare there shall not be nullity en el grounds of the sentence and the civil redress”, while in the Mejia Leon case, the decision was divided.

Forced disappearances of the students and teacher from “La Cantuta” University and Vladimiro Montesinos Torres responsibility.

The dawn of July 18th 1992, members of the called “Grupo Colina” hooded and armed burst into the housing for students and teachers in the National University Enrique Guzman y Valle, “La Cantuta”. Then, they detained the students Bertila Lozano Torres, Dora Oyague Fierro, Luis Enrique Ortiz Perea, Armando Richard Amaro Cónдор, Robert Edgar Teodoro Espinoza, Heraclides Pablo Meza, Felipe Flores Chipana, Marcelino Rosales Cardenas and Juan Gabriel Mariños Figueroa; and the teacher Hugo Muñoz Sánchez.

The military left the university, taking the nine students detained and the teacher, to subsequently murder them. The victim’s bodies were buried clandestinely in Santa Rosa Hill, Km, 1.5 of the Ramiro Priale highway. Later, due to a public denunciation for these events, the authors of the crime, exhumed the bodies, and incinerated the bodies and moved them to new clandestine graves, located in Chavilca, Cieneguilla.

As result of the sentence of the Barrios Altos case the Inter American Court of Human Rights of 2001, reopened the case Barrios Altos in 2002 and, subsequently the judge from the Special First Criminal Court of Lima, on the 24th of January 2003, opened proceedings against some members of the “Colina” group for the disappearance and murder of the students and teacher from “La Cantuta” university. On August 2005, the oral trial started in the Special First Criminal Court of Lima.

On the other hand, the Inter American Court of Human Rights declared regarding the facts of “La Cantuta” condemning the Peruvian State, this entailed that on October 2007, the judge from the Fifth Criminal Court also opened criminal proceedings against Vladimiro Montesinos Torres, Nicolás de

Bari Hermoza Ríos, Luis Pérez Document and José Varela Astete, for homicide and forced disappearance of the victims of “La Cantuta”. Likewise, the Public Ministry has also presented a supplement denouncement to include it in the new proceedings for Martin Rivas, Carlos Pichilingue, Juan Rivero Lazo, Jesus Sosa Saavedra and Federico Navarro Pérez.

Forced disappearance of Eladio Mansilla Calle

Eladio Mansilla Calle, was leader of the Barrios del Pueblo Federation of Ayacucho, he lived in Humanaga city with his wife and seven children. On June 7th 1990, approximately 15 soldiers from the army entered his house and detained him, hitting him brutally in front of his family, later he was taken in a truck to the Quarter BIM 51 “Los Cabitos”. Since then, Eladio Mansilla Calle is disappeared.

At first the supra provincial court of Ayacucho opened the criminal proceeding against Petronio Fernández Dávila Carnero (Chief of the Military Political Command of Huamanga in 1990), Raúl Eduardo O’Connor La Rosa and Donato Pascual Saavedra Gárate, for kidnapping and forced disappearance. Subsequently, the National Criminal Court worked to conduct the oral trial.

On October 18th 2007, the National Criminal Court acquitted Petronio Fernández Dávila Carnero, Political and Military Chief of Ayacucho; Raúl O’Connor La Rosa, Operational Commander in Chief and Donato Saavedra Gárate, Administrative Commander in Chief.

The Tribunal considered that they could not establish with certainty if the detention was made by police agents, military staff or combined forces, given the witnesses could not specify in their statements because they did not remember. Likewise, the Tribunal also pointed out that there was no proof that any of the accused had given the order, which as a consequence derived in the detention and disappearance of Mansilla. In spite of all the National Criminal Court stated that in the application of the principle of presumption of innocence they had to acquit the accused, for not having probatory elements that linked them with Eladio Mansilla’s disappearance.

Case of Adrián Medina Puma

Adrián Medina Puma, General Secretary of the Union of the Company of Military Transport Equipment (ETRAMSA), was kidnapped on July 8th 1992 in the afternoon, when visiting his friend Reynaldo Rodríguez, along with his son Rosendo of three years of age and Eudes Najarro Gamboa.

The kidnappers abandoned the minor three blocks away from his grandmothers house, in the Independencia district. According to the recounted

facts by Rosendo to his relatives, one of the strangers detained his father and wounded his leg.

Half an hour later after the son of Medina Puma was found, Eudes Najarro – considered a friend of Adrián Medina – arrived at his family's house and said the three of them had been intercepted by a group of persons who could be DINCOTE agents and, Medina and his son were obliged to get on a Cherokee truck.

The body of Adrián Medina was found the next day of his disappearance in a waste ground in Comas district. The autopsy concluded that the body had gunshots in the head, abdomen, left leg and right arm.

Adrián Medina was murdered as retaliation to his syndicalist activity, even before his death he denounced he had been detained in two opportunities by members of DINCOTE and that his house had been searched in five occasions.

After all the proceedings the family carried out to locate Adrián Medina, identify his body and present the denunciation, Eudes Najarro disappeared. The family also thought he had disappeared.

The investigation for the Medina Puma murder was closed and was opened in 2002 upon request of the Inter American Human Rights Commission. Precisely, product of these investigations they managed to discover that Eudes Najarro was an agent from the Military Intelligence Service, undercover in ETRAMSA and his mission was to deliver Adrián Medina to the “Colina” group.

After this revelation, Najarro was called to declare before the Specialized Prosecutor for Human Rights, where he recognized his relationship with the army.

For it, on March 7th 2008, Prosecutor Jorge Díaz Pérez formalized a criminal denunciation against Santiago Martin Rivas and sub officer EP Eudes Najarro Gamboa for forced disappearance crime and murder, which was presented before the Second Court or Supra Provincial that rejected it requesting to reformulate it.

4. EMBLEMATIC CASES: PUTIS AND CABITOS

The methodological choice of briefly examining two emblematic cases allows identifying certain patterns of human rights violations and the response on behalf of the State to attend the victims and their rights. In this sense, and due that it is about proceedings that are currently under investigation, we will describe the cases of Putis community and the burial sites in the quarters Los Cabitos briefly, both occurred in the Ayacucho region.

4.1 Putis

According to the testimonies received by the Truth and Reconciliation Commission, during the first years of the eighties decade, families and communities of Vizcatampata, Cayramayo, Sinhuamachayniyocc, Orccohuasi and Mashuacancha lived terrorized due to the continual attacks of “Shining Path”, for this reason they left their farmhouses and ran to live in the mountains, leaving their main source of maintenance, their land and only taking their children and elder. On December 1984, however, they received a call from an established military base in Putis community with the promise of protecting them from the violence. One dawn, some months later, army personnel obliged them to gather in the town plaza, separating men from women. These were sexually abused while the men were taken to a waste ground and obliged to dig a hole with the excuse that they would make a fish farm for the community. Hours later, they were all taken to the pit; they were riddled with bullets and stabbed, almost 125 persons between men, women, elders and children were killed.

This case has special relevance. The exhumation of the graves has proceeded as part of the investigation followed by the Second Criminal Prosecutor Supra Provincial of Ayacucho, where 60 remains have already been exhumed and yet to be identified. According to the Prosecutor in charge, communications to the Defense sector have been sent requesting the names of the military who worked in the zone at the time, receiving the answer that such information has been incinerated. They also have not received any explanations regarding the case.

4.2 Los Cabitos

According to the CVR report, members of the Army established in Huamanga between 1983 and 1984, stationed in the Military Quarter 51, known as “Los Cabitos”, along with members of the intelligence unit known as “La Casa Rosada”, were responsible for human rights violations of approximately 138 persons, committing crimes of sexual violence, forced disappearance, arbitrary detentions and extra judicial executions.

This situation was favored, among other motives, the ongoing of a permanent exceptional state in several provinces of the region - promulgated by the President Belaúnde Terry on October 1981 after an attack to a police post Tambo, Ayacucho - what later gave way to form the “Military Political Commands”, in charge of watching over the political security and internal order in the region (exercising functions that are limited to the police forces). On December 1982, President Belaúnde Terry authorized the Military to enter the Ayacucho region and appointed General Clemente Noel Moral as Military Political Chief, in charge of the Second Infantry Division. He, established his operation center in “Cabitos”, he even lived in the aforementioned quarter. For

1984, another general from the army, Adrian Huamán Centeno, is appointed being the time when most of the disappearances were registered.

After serious questionings due to serious crimes perpetrated in the military base, a new change in the military political authority took place, appointing this time Wilfredo Mori Orzo who months later ordered the construction of an "oven" in the military base Los Cabitos to cremate almost 300 bodies buried in the clandestine graveyard in the Base. He is recognized as responsible for the massacres of Umaru, Bellavista and Acomarca, among other cases. The investigation of "Cabitos" case has been divided in two, one regarding the events occurred in 1983 and another regarding the events of 1984 and 1985.

Regarding the events of 1983, on December 2004 the criminal denunciation was formalized. Recently, in mid June this year, the pre-trial proceedings concluded, so the case has been derived from the Second Supra Provincial Court of Ayacucho to the National Criminal Court so the records of the case were remitted to the Public Ministry for the corresponding criminal charge regarding the eight members of the army that are been prosecuted.

Regarding the investigations of the disappearances of years 1984 and 1985, it is still in the preliminary investigation stage, the First Specialized Prosecutor Office of Human Rights is in charge of leading the investigations. Since 2005 until now there have been exhumation proceedings, finding whole remains of 34 persons, two which belong to pregnant women with six and eight months approximately; also the body of a minor approximately 6 years of age. Likewise, we must point out that, during the whole proceeding, several disturbed graves have been found, which added to the existence of the base of an oven, electricity cables, a fuel tank and bone fragments that could belong to 35 or 40 individuals, prove the cremation practice.

5. PSYCHOSOCIAL APPROACH OF FORCED DISAPPEARANCES

The psychosocial approach puts forward the impact of the forced disappearances on persons, families, groups and communities and was the economic, social and political relationships, marked by the violence, specifically invades physical and psychological integrity of the relatives of the detainees-disappeared persons. Likewise, proposed a psychosocial practice to promote change participation processes in the social relationships to recognize the fundamental rights and the full exercise of citizenship.

The forced disappearance produced a violent situation which generated psychosocial damage to relatives of the disappeared person and to the network of community relations they belonged to. The psychosocial consequences are many, and if a reparation process does not occur, most of the times they imply permanent damage. So at individual level, and without attempting a detailed

list, the consequences are manifested in the deep alteration of the lives of relatives, depression, recurring thoughts, special mourning, anxiety, despair, substance abuse and aggressiveness. At family level we find conflicts and violence in the family relationships, abandonment of surviving children, aggravation of generational gap, loss of the breadwinner, children assuming adult roles, decrease in family income, difficulties in processes of emotional differentiation and autonomy, denying death of the disappeared person. At community level, distrust in the links, lack of authorities and legitimate leaderships, resentment and embedded envy, polarization between sides, difficulty to agree, displacement, substance abuse as a community problem, weakening of support networks, etc.

In this sense it is very important that the policies of the health sector and similar:

1. To consider a psychosocial approach as transversal during the reparation processes, State reform and the victim's mental health, promoting rights, gender and intercultural approaches. The processes of truth, justice and reparation also imply the exercise of the victim's rights, necessary conditions so the relationship democratic State-Citizenship recovers the trust and legitimacy link infringed upon by the internal armed conflict and the deep economic, social, political and cultural causes that generated them.
2. To strengthen the Direction of Mental Health of the Health Ministry as the competent national authority to formulate, plan, regulate and control the mental health policies. Likewise, and within the governmental levels, it is basic that the Regional Health Directions (DIREAS) count with permanent mental health teams for working at clinical (individual, family and group) and community level with the relatives of the victims and the communities where the forced disappearances took place. In this aspect it is urgent to develop capabilities for these teams to pass a model for hospital clinical attention to an integral communal mental health model; also making possible to take into account the local mental health organizations experiences on the subject of attending the relatives of disappeared persons and during the exhumation processes.
3. To visualize what resources and strengths families count with as well as the communities this in spite of the impact of the disappearances confronted this loss using their resilient capabilities. Strengthen the social communal tissue, where grassroots organizations and associations of those affected by the internal armed conflict are important actors; it is a central objective in the reparation and recovery of families and communities impacted by disappearance.

4. To organize a program for psychosocial attention for victims and communities this includes before, during and after the exhumation processes. This program must not be a plan of precise and fragmented actions it must follow a logical process and inter sector articulation between the State and civil society organizations. Particularly, the inter sector coordination between the DIRESAS mental health teams and the teams of forensic anthropology from the Legal Medicine Institute or of the civil society for a proper attention and psychosocial support for relatives and communities.

The permanent health teams will also count with a supervision program to assure the quality of the interventions and of spaces for self-care due to the secondary trauma, which is an expected phenomenon in teams attending limit situations. Likewise, the forensic anthropological teams should count with self-care spaces and training with psychosocial approach about the impact of the exhumations on persons and the communities.

In general, the interventions regarding mental health with affected population due to forced disappearance should have the goal of rescuing the relatives and the community from an incapacitation condition of victims to the possibility of perceiving and interacting with more conscience of being legal persons in capability of exercising their citizenship.

6. RECOMMENDATIONS TO THE PERUVIAN STATE

1. To impulse of the preliminary investigations (which are most of the cases), the swiftness of the judicial proceedings in course and its articulation with the National Plan of Forensic Anthropological Investigations (currently inactive), so it eases the zoning and exhumation of the graves. A denunciation for human rights violations can pass very long periods (some cases have four years in the preliminary prosecutors investigation), which generates a series of distortions like loss of evidence, exposure of the possible witnesses to potential risky situations to their security, etc.
2. To speed the restitution of exhumed remains to the families in the shortest time possible. We have the case of the relatives of the nine students and the teacher of the University La Cantuta - perpetrated in 1992 and which the remains where found in 1993- and only 16 years later after the events they have received the remains of their loved ones to bury them.

3. To grant integral reparation to the victims, both at individual as collective level (in communities where forced disappearance occurred among other crimes). Namely, give top priority to implement the Program for Integral Reparation and the National Plan for Forensic Anthropological Intervention recommended by the Truth and Reconciliation Commission.
4. To demand the collaboration with justice of Defense and Interior sectors to identify the perpetrators of the human rights violations. This implies not only to facilitate information but a public delimitation for those found responsible.
5. To assure financing and sustainability of permanent mental health teams of the Regional Health Directions (DIREAS) – now they are exclusively financed by International Cooperation- since they are who keep direct contact with the most affected population both in clinical and community attention.
6. To apply the ruling of the sentence by the Constitutional Tribunal N° 17-2003-AI, dated March 16th 2004, relapsed in an Unconstitutionality Action presented by the People’s Ombudsman against diverse articles of Law 24150; and Area of Competence N° 18-2004, Criminal Permanent Court of the Supreme Court – which defines the competence of the Military Jurisdiction in cases strictly linked to offenses when performing their duty and facts that violate military juridical goods; and never to know cases of human rights violations.
7. To sign the International Convention to Protect All Persons against the Forced Disappearance of the United Nations.
8. To modify the current criminal offense so it includes as authors of a crime those who not being public servants act with their consent.
9. To adequate the national criminal legislation to the Rome Statute and the incorporation of crimes against humanity and against the humanitarian international law specified in the mentioned international document.
10. To implement a system to protect victims, witnesses and defenders for cases of denunciations and criminal proceedings against human rights.