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Glenda Mezarobba

Between Reparations, Half Truths and Impunity:
The Difficult Break with the Legacy of the Dictatorship in Brazil

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Armed Forces, Truth Commission and Transitional Justice in Peru

REGIONAL HUMAN RIGHTS MECHANISMS

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Cooperation Between the Universal and Inter-American Human Rights
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IN MEMORIAM

Kevin Boyle – Strong Link in the Chain

By Borislav Petranov



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CONTENTS

GLEND A MEZAROBBA	7	Between Reparations, Half Truths and Impunity: The Difficult Break with the Legacy of the Dictatorship in Brazil
GERARDO ARCE ARCE	27	Armed Forces, Truth Commission and Transitional Justice in Peru
REGIONAL HUMAN RIGHTS MECHANISMS		
FELIPE GONZÁLEZ	51	Urgent Measures in the Inter-American Human Rights System
JUAN CARLOS GUTIÉRREZ AND SILVANO CANTÚ	75	The Restriction of Military Jurisdiction in International Human Rights Protection Systems
DEBRA LONG AND LUKAS MUNTINGH	99	The Special Rapporteur on Prisons and Conditions of Detention in Africa and the Committee for the Prevention of Torture in Africa: The Potential for Synergy or Inertia?
LUCYLINE NKATHA MURUNGI AND JACQUI GALLINETTI	119	The Role of Sub-Regional Courts in the African Human Rights System
MAGNUS KILLANDER	145	Interpreting Regional Human Rights Treaties
ANTONIO M. CISNEROS DE ALENCAR	171	Cooperation Between the Universal and Inter-American Human Rights Systems in the Framework of the Universal Periodic Review Mechanism
IN MEMORIAM		
BORISLAV PETRANOV	184	Kevin Boyle – Strong Link in the Chain

PRESENTATION



We are very pleased to present the 13th issue of *Sur Journal*, which addresses the subject of regional human rights protection mechanisms. The purpose of this issue is to examine the development of these regional systems, their drawbacks and potentials, and to discuss the possibility of cooperation and integration between them and the international human rights system. The journal's first article, titled **Urgent Measures in the Inter-American Human Rights System**, by Felipe González, reviews the treatment given urgent measures by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (precautionary measures, in the case of the Commission, and provisional measures, in the case of the Court).

Juan Carlos Gutiérrez and Silvano Cantú, in **The Restriction of Military Jurisdiction in International Human Rights Protection Systems**, examine cases from the Universal, Inter-American, African and European human rights protection systems in order to place the matter of military jurisdiction in a comparative perspective, particularly when this jurisdiction applies to civilians, whether they are passive or active subjects.

Addressing the African system specifically, Debra Long and Lukas Muntingh, in their article titled **The Special Rapporteur on Prisons and Conditions of**

Detention in Africa and the Committee for the Prevention of Torture in Africa: The Potential for Synergy or Inertia?, analyze the mandates of these two special mechanisms and consider the potential for conflict generated by two mandates being held by a single member.

This edition of the journal also contains an article by Lucyline Nkatha Murungi and Jacqui Gallinetti on the role of the courts of Africa's Regional Economic Communities regarding the protection of human rights on the continent, in **The Role of Sub-Regional Courts in the African Human Rights System**.

Magnus Killander, in **Interpreting Regional Human Rights Treaties**, illustrates how regional human rights courts have, for the purposes of interpreting international treaties on the subject, followed the rules established by the Vienna Convention on the Law of Treaties.

Antonio M. Cisneros de Alencar, in **Cooperation Between the Universal and Inter-American Human Rights Systems in the Framework of the Universal Periodic Review Mechanism**, makes the claim that despite new opportunities for cooperation between the global and regional human rights systems, a great deal more can still be done to make the Inter-American system benefit from the UN Human Rights Council's Universal Periodic Review Mechanism.

We hope that this issue of Sur Journal will draw the attention of human rights activists, civil society organizations and academics to the possibility of a greater cooperation and integration between the regional and the international human rights systems.

We have also included in this issue the article **Strong Link in the Chain**, by Borislav Petranov, a homage to Professor Kevin Boyle, an exceptional academic and human rights defender, and a tireless partner of Sur Journal and the other initiatives of Conectas Human Rights. His life will remain a major source of inspiration for us. This issue includes another two articles, both dealing with the topic of transitional justice in post-dictatorship Latin America. The article by Glenda Mezarobba, titled **Between Reparations, Half Truths and Impunity: The Difficult Break with the Legacy of the Dictatorship in Brazil**, reconstructs and analyzes the process developed by the Brazilian State for making amends with victims of the dictatorship and with society. It also looks at what has already been done and what still needs to be done in terms of truth and justice and in relation to reforming the country's institutions.

The article by Gerardo Alberto Arce Arce, meanwhile, discusses the process of establishing a Truth and Reconciliation Commission in Peru, and the judicialization of the human rights violations that occurred dur-

ing the country's armed conflict in light of the relations between the Peruvian armed forces and the political and civil spheres of its society, in **Armed Forces, Truth Commission and Transitional Justice in Peru**.

This is the second issue released with the collaboration of the Carlos Chagas Foundation (FCC), which started supporting Sur Journal in 2010. We would like to thank the FCC once again for its support, which has guaranteed the continued production of the print version of this journal. Similarly, we are grateful to the MacArthur Foundation and to the East East: Partnership Beyond Borders Program (Open Society Foundations) for their support for this issue.

We would also like to thank the Centre for Human Rights, of the University of Pretoria (South Africa), and the Center for Legal and Social Studies (CELS, Argentina) for their involvement in the call for papers and the selection for this 13th issue.

Exceptionally, the present issue, dated December of 2010, was printed in the first semester of 2011.

Finally, we would like to remind everyone that the next issue of Sur Journal will address the UN Convention on the Rights of Persons with Disabilities and the importance of tackling this issue within the realm of human rights.

The editors.



GERARDO ALBERTO ARCE ARCE

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ABSTRACT

Peru has experienced, in the past few years, a process that has largely determined the dynamics of the relationship between the Armed Forces and the political and civil societies, through the creation of a Truth and Reconciliation Commission, and the judicialization of the violations of human rights committed during the internal armed conflict between the terrorist group *Sendero Luminoso* and the security forces of the State (1980-2000). This process incurred a stern reaction from the Armed Forces, expressed through a number of discourses and strategies that attempted to limit its reach, by means of continuous requests, to the political authorities, for political and legal support for the fulfillment of their duties.

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KEYWORDS

Peru – Armed Forces – Democracy – Human rights – Truth Commission – Transitional justice



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ARMED FORCES, TRUTH COMMISSION AND TRANSITIONAL JUSTICE IN PERU

Gerardo Alberto Arce Arce

1 Introduction

An affirmation that resists but little discussion is that civilian control over the Armed Forces understood, broadly, as “the ability of a democratically elected civilian government to carry out a political policy without interference by the military, to define the goals and general organization of national defense, to formulate and carry out a defense policy, and to supervise the application of military policies” (AGÜERO, 1995, p. 47), is one of the main requirements for the consolidation of democracy. In Latin America, after the end of military governments and transitions to democracy in the decade of 1980, these processes have had dissimilar results: in some countries, progress has been made regarding the institutionalization of ministries of Defense and the reduction of the institutional prerogatives of the Armed Forces; in others this progress has been slower and more sinuous, with the occurrence, in many cases, of resistance from the military corporation to this process; and, in some cases, rejection to the processes of transitional justice in societies that were leaving behind internal armed conflicts or episodes of political violence and State-sponsored repression.

A good example of this last case is that of Peru, which in the past few years lived a process that has largely determined the dynamics of the relationship between the Armed Forces, and the political and civil societies: the process of transitional justice after the end of the regime of Alberto Fujimori (1990-2000) and the creation of a Truth and Reconciliation Commission, in charge of investigating and clarifying the responsibilities for the violations of human rights committed during the internal armed conflict between *Sendero Luminoso* and the security forces of the State.

In this context, the objective of the following pages is to analyze the discourses and strategies developed from within the military corporation in response to these events, which will help us understand, in turn, the scope and limits of the security sector reform in the period after the transition to democracy, as well as the

Notes to this text start on page 49.

consequences that the process of political violence lived in Peru between 1980 and 2000 –and which has certainly not concluded in some regions of the country– has on the relationship between the Armed Forces, and the civil and political societies.

2 The transition to democracy in Peru

Given Alberto Fujimori's resignation from the presidency in November 2000, a transitional government was installed in Peru (November 2000 – July 2001) headed by Valentín Paniagua, which had as its main objective the organization of fair and transparent elections, to guarantee due process in the trials that had been opened for cases of corruption against political operators of the Fujimori regime, and to deliver the power to a new democratically elected government. In this context, after the public exposure of the network of corruption sponsored by Montesinos within the Armed Forces, and with these institutions increasingly discredited before the public opinion, it was not too difficult for the transitional government of Paniagua to dismiss all the military leaders¹, and to generate the adequate conditions for the Judiciary to indict them for the acts of corruption committed, with all the guarantees of due process. An unexpected circumstance that would accelerate this process was the public exposure, in April 2001, of a "Subjugation Act" signed in 1999 by, virtually, all high commanders of the Armed Forces, in which they supported the so-called self-coup of 1992, the counter-subversive policy applied by the Armed Forces during the internal armed conflict, and the amnesty laws:

The participation of the Armed Forces (...) in the decision adopted by the government of the president of the Republic on April 5th, 1992 was a conscious and serenely meditated act, and the support and endorsement given to that decision was the expression of the unanimous institutional will of the members that comprise the Armed Forces, PNP and other stratum of the National Intelligence System.

(...)

To stress that our nation has dictated laws of General Amnesty that are fully valid, in which it is clearly defined that no responsibility whatsoever, either institutional or individual, can be attributed, to the military, police and the intelligence community personnel that participated in the struggle against terrorism.

To declare that the Armed Forces (...) assume the institutional commitment, without limitations in time, to defend, protect and support its members in the event that, notwithstanding the full validity of the amnesty laws, it were intended to hold them responsible, prosecute them or perform any kind of reprisal due to their intervention in the fight against terrorism.

Adhesion Ceremony by Generals and Admirals, 13 March 1999 (PERU, 2004, pp. 3503-3505).

Even though it may be argued that the signature of this act was a compulsory action to which the military command was obliged to by Montesinos (despite which some generals were able to find good excuses to be absent on that day), it is also true that

the contents of the act roughly reflect the mood of the military leaders in the final days of Fujimori's mandate: the fear that, if Fujimori did not beat the opposition in the 2000 elections and was not reelected, the generals who supported the *coup* in 1992, as well as all other military personnel who committed human rights violations during their fight against subversion, would be persecuted or penally sanctioned.

Given the publication of this statement, the transitional government forced into retirement 50 major generals and brigadiers of the Army, 20 vice-admirals and rear-admirals of the Navy, and 14 generals of the Air Force who had signed the document (ROSPIGLIOSI; BASOMBRIIO, 2006, p. 46). Also, the Commanding Generals of the three armed institutions and the General Director of the PNP tendered their resignation, and issued a statement in which they apologized to the Peruvian people for the institutional participation of the Armed Forces in the *coup* of 1992, outlined a self-criticism for their participation in the Fujimori government and backed the creation of a Truth Commission, indicating:

A commitment to perform tasks within the framework of the respect for human rights, the strengthening of moral values and, consequently, to firmly and permanently fight any indication of corruption or misconduct in the institutional life that may compromise such values and principles. For this reason, it supports the initiatives directed towards the creation and installation of a Truth Commission that will allow for national union and reconciliation, based on justice and on an equitable and objective appreciation of the facts and circumstances in which the effort for national pacification was carried out.

Statement signed by the three Commanding Generals and the General Director of the PNP on 17 April 2001 (ROSPIGLIOSI; BASOMBRIIO, 2006, p. 48).

This 180-degree turn, in less than two years, is due not only to the change in the conduction of the Armed Forces (we are referring to the change in command), but mainly to their political weakness after the fall of Montesinos' network and the surfacing of the corruption cases. But this can also shed light on the superficial conviction of the new military leadership on the convenience of creating a Truth Commission.

3 The Truth and Reconciliation Commission

In June 2001, a few weeks before the conclusion of his brief eight months of government, former president Valentín Paniagua instituted a Truth Commission whose mandate was to “clarify the process, the facts and the responsibilities of the terrorist violence and the violation of human rights produced since May 1980 and until November 2000, attributable both to the terrorist organizations and to State...” (PERU, 2001). Likewise, among the objectives of the commission were the elaboration of proposals for reparation and restoration of the victims' and their family members' dignity, and to “recommend institutional, legal, educational and other reforms, as a guarantee of prevention, in order for them to be processed and implemented through legislative, political or administrative initiatives” (PERU, 2001).

According to one of its commissioners, the decision to create a Truth Commission was “the product of an agreement between a very articulate, but not very numerous, sector of civil society, where human rights defenders and radical democrats coincided with the political wing of this government that sympathized with those same causes” (AMES, 2005, p. 32). On our behalf, we would like to emphasize the revealing nature of the precarious correlation of political forces that sustained the commission, in the sense that it was created by a supreme decree, a norm inferior in hierarchy to a law, which would have had to be approved by Congress, which in 2001 still had a numerous pro-Fujimori group of congressmen that would have presumably opposed the creation of this organism. Due to some criticism received, particularly focused on the political past of some of its members (commissioners Bernales, Degregori and Tapia had been militants or leaders of parties that comprised the extinct coalition *Izquierda Unida [United Left]*), the government of Alejandro Toledo (2001-2006) expanded the number of members of the commission from 7 to 12 –among them, a retired military officer, Lt. General (r) FAP Luis Arias Graziani– and changed its name to that of Truth and Reconciliation Commission (CVR, for its acronym in Spanish).

In spite of being profoundly discredited before the public opinion due to the cases of corruption in which most of the military leadership was involved during Fujimori’s regime, the military corporation was not passive or inactive regarding the work of the CVR. However, during the two years of activity of the commission, the corporation attempted to show the commissioners the vision that the militaries themselves had on the internal armed conflict. To this end, in August 2001, the Army Command formed a commission to liaise with the CVR, which worked as a dependent office of the military Chief of Staff. As of January 2002, it was decided that the Direction of Civilians Affairs of the Army would assume the tasks of that office. In parallel, an instruction from the Ministry of Defense ordered the creation of the Support Committees to the CVR in each armed institution and in the Joint Command (CVR, 2002).

Thus, during 2002 and 2003, the commission developed a series of interviews with the high commands of the Armed Forces linked to the anti-subversive fight between 1980 and 2000. Among others, they interviewed generals (r) José Valdivia Dueñas, Luis Pérez Documet and Clemente Noel Moral, who had been responsible for the political-military commands in the areas declared in state of emergency during that period. In those encounters, the commission requested the interviewees for their version regarding the strategy and anti-subversive actions that they were in charge of implementing, as well as the specific cases of human rights violations that were investigated by the CVR (CVR, 2003a). It must be indicated that the interviews requested by the commission were free and voluntary, and the level of response to the call for interviews was high.

Likewise, the commission established channels for dialogue and working meetings with the leadership of the military institutions of that period (2001-2003), who communicated to the commissioners the “institutional view” within the armed institutions regarding the work of the CVR. Thus, in a meeting held at the facilities of the General Army Headquarters in February 2002 –which was

attended by the General Commander of the Army, General Víctor Bustamante Reátegui, along with the chief staff of that institution, and commissioners Ames, Bernales and Tapia—, General Bustamante told the commissioners that he had “three concerns gathered within his institution”:

- a) *The CVR wants to find military personnel responsible for violations of human rights in order to send them to prison.*
- b) *The truth commissions were created at the end of the internal conflicts, but Sendero Luminoso continues to operate in Peru in spite of its reduced presence.*
- c) *There is a risk that the negative views of the Army, caused by the actions of the military leadership of the 90's, may influence the conclusions of the CVR. (sic)²*

When analyzing the concerns expressed by the General Commander of the Army, as its spokesperson, it becomes clear that a feeling of fear exists that the work of the CVR would lead to the imprisonment of the officers involved in the fight against subversion, a fear perhaps heightened by the sad spectacle shown by the military leadership of Fujimori's regime, that, at the time, was imprisoned for crimes of corruption. This meant that if the generals who exercised—whether in alliance or under control of Montesinos—a complete control of the Armed Forces and that, at the time, appeared to be infinitely powerful and immune to the legal system, were now in prison serving long sentences, there would be no impediment for generals, who no longer enjoyed that sort of political power, as well as the lower-ranking officers, not to end up in prison; and not for crimes of corruption, but for much more serious crimes such as human rights violations, which in spite of having been perpetrated long before, could be deemed not subject to prescription (crimes whose responsibility is not extinguished by the passage of time).

The Truth and Reconciliation Commission made its Final Report public in August 2003. In it, they concluded that “the immediate and fundamental cause for the triggering of the internal armed conflict was the decision by the Communist Party of Peru – *Sendero Luminoso* (PCP-SL) to initiate the ‘armed struggle’ against the Peruvian State...” (CVR, 2003b, Vol. VIII, p. 317). Likewise, it is indicated that *Sendero Luminoso* was the main perpetrator of crimes and violations of human rights, being responsible for 54% of the fatalities reported to the commission. The CVR also concluded that the Armed Forces applied a strategy that, in a first stage, comprised indiscriminate repression against population suspected of belonging to the PCP-SL; and that, in a second stage, that strategy would have become more selective, although it continued allowing numerous violations of human rights (CVR, 2003b, Vol. VIII, p. 323).

It also indicates that, in certain places and moments of the internal armed conflict, the behavior of the members of the Armed Forces involved not only some individual excesses by officers or troop personnel, but also generalized and/or systematic practices of violations of human rights (murder, extrajudicial executions, sexual violence, torture and cruel, inhumane, or degrading treatment) which constituted crimes against humanity, as well as transgressions to the norms

of the International Humanitarian Law (CVR, 2003, Vol. VIII, pp. 323-325). However, the commission also recognized the important and legitimate role played by the Armed Forces in the fight against subversive groups: “The CVR acknowledges the sacrifice and hard work that the members of the Armed Forces performed during the years of violence, and renders its most sincere tribute to the more than a thousand valiant military agents who lost their lives or became incapacitated in the fulfillment of their duties” (CVR, 2003, Vol. VIII, p. 323).

Finally, it must be indicated that the Final Report also presented a set of recommendations for institutional reforms, meant to guarantee the prevention of these acts in the future. In the case of the Armed Forces and the National Police, the recommendations were aimed towards “strengthening the democratic institutions, based on the leadership of the political power, for the defense of the nation and the preservation of internal order” (CVR, 2003b, Vol. IX, pp. 120-125).

It must be pointed out that the only commissioner who signed the Final Report “with reservations” was Lt. General FAP (r) Luis Arias Graziani –who was one of the commissioners appointed by president Toledo– who, in a letter addressed to the president of the CVR, Salomón Lerner, indicated, after acknowledging that the commission fulfilled its mandate with “seriousness and thoroughness”, that:

4. (...) one cannot judge with the same level of responsibility, both the infamous terrorist hordes (Sendero Luminoso and MRTA) and the troops of the Armed Forces. The latter participated in a counter subversive action in compliance with their Constitutional mission, by mandate of the Government in power for two decades. It is important to highlight that those Governments had been elected by popular vote, which suggests that they democratically analyzed the convenience of ordering the participation of the Armed Forces, as well as declaring the States of Emergency and establishing the political-military chains of command.

(Letter from Lt. General FAP *Luis Arias Graziani – CVR, 2003b, Vol. VIII)

It should be noted that, at no point in the report of the commission are the Armed and police Forces placed in the same level of responsibility as the subversive groups. Aside from the human rights violations perpetrated, it is indicated, at all times, that the former acted in the name of the law and in defense of the democratic regime, while the latter rose authoritatively against said regime. In the letter mentioned above, Arias Graziani also requests that the Final Report not mention the names of all the military personnel responsible for human rights violations, asking instead for them to be confidentially delivered to the executive branch, so that it, in turn, send them to the Public Prosecutor’s Office for the corresponding investigation. Lastly, Arias Graziani³ demands a clear distinction be made between the individual responsibilities of the military officers who were responsible for the perpetration of human rights violations and the “intended suggestion of institutional responsibility”. This distinction would be common in the pronouncements of retired –as well as active– military officers in reaction to the final report of the CVR, and one which would avoid the acknowledgement of the institutional responsibility of the Armed Forces

in the systematic practices of human rights violations, just as was done, in their time, by the high military commanders in Chile and Argentina, in connection with the crimes perpetrated during the repression in the context of the military dictatorships of the Southern Cone.

4 The reactions to the Final Report of the CVR

The months and years in which the work of the CVR developed, as well as the period after the publication of their Final Report, was a period of constant loss of legitimacy of the same government that had provided it with support for the fulfillment of its mandate –the government of Alejandro Toledo–; a support that materialized not only with the increase of the number of members of the commission, the granting of part of the necessary budget to achieve its goals –complemented with resources coming from international cooperation– as well as an extension in the duration of its mandate, but also in the public endorsement of its conclusions and proposals for institutional reform.

Also, some sectors of the political opposition, amongst which stood out the American Revolutionary Popular Alliance (APRA, for its acronym in Spanish) –the second largest majority in Congress between 2001-2006–, and the weakened but still present support for the Fujimori regime, seized the opportunity of the publicity of the Final Report to aim their efforts against the government, for their alleged collusion or alliance with the progressive sectors (known, by then, as *caviars*). But perhaps the loudest reactions came from the sectors of the economic and social right wing, and from the Armed Forces through their formal and informal spokespersons.

In this sense, as soon as the Final Report was made public, the strongest reactions arose from several sectors, in many cases criticizing the number of fatal victims estimated by the commission (69.280 people), or the assignment of responsibilities to military personnel involved in cases of human rights violations. Thus, a group of 42 former Commanding Generals of the Army, Navy and Air Force of Peru issued a statement aggressively criticizing the Final Report of the CVR and denouncing a bias in its conclusions:

4. For all that has been said, it is not acceptable for the CVR to affirm in its report (conclusion N° 54) that the Armed Forces applied a strategy of indiscriminate repression that allowed for numerous human rights violations. It is inconsistent to attempt to discredit, through an inaccurate and biased criterion as the one presented by the CVR, the dignity and honor of the Armed Forces, demonstrated throughout the history of Peru, which cannot be compromised due to certain individual actions that deserve to be punished and which in no way must be generalized. It is false that the Armed Forces acted recurring to systematic practices in violation of human rights. We reiterate that the Armed Forces acted under the rule of the Constitution, the laws and their own regulations, with dedication and total sacrifice that should, instead of being subject of derision, receive acknowledgement from the Nation.

(DIARIO CORREO, 2003b, p. 15).

On their part, the Association of Officers, Generals and Admirals (ADOGEN, for its acronym in Spanish), the most representative union of retired military personnel, published a statement in which they categorically rejected the assertions of the Final Report of the CVR, particularly those concerning the actions of the Armed Forces during the internal armed conflict:

Facing the biased treatment with which the Final Report of the CVR refers to the performance of the Armed Forces and PNP during the period of the barbaric terrorism (...) the Association of Officers, Generals and Admirals, interpreting the feelings of the officials with the highest institutional hierarchy, in accordance with those of the branches, organisms, dependencies and unions that sustain and defend the constitutional order and the national interest, address the public opinion in order to point out the following:

(...)

If there were excesses by some of its members, these responded to a stratagem applied by Sendero Luminoso in order to provoke violent reactions against the civilian population that must not be attributed either to the entire Armed Forces, or to superior orders. The accusation against the defenders of the State in this special circumstance, contemplated by the law, would be the culmination of this ruse, which seeks to demoralize the Armed Forces and the PNP, and to alienate them from society in order to weaken the defensive capacity of the country.

(...)

ADOGEN, aware of its professional duty, firmly rejects the assertions of the Final Report which attribute a general and systematic character to the reprehensible actions of some personnel of the Armed Forces, considering that they exalt the individual and the negative in detriment of the professional and collective efficiency of the Armed Forces and the PNP, and thus constitute an inconsequential act towards the fundamental institutions of the nation, which are owed acknowledgement and gratitude.

(DIARIO EL COMERCIO, 2003a).

Finally, the text indicates that the referred group expected the government to take into account the concerns of the Armed Forces when assuming a position towards the report of the CVR. As can be seen, these statements do not seek to express an institutional or corporate *mea culpa*, nor do they show the slightest hint of a self-critical vision regarding the role of the Armed Forces during the internal armed conflict and the recent political process—for example, the cases of corruption and the institutional cooptation during the Fujimori regime—. On the contrary, the CVR is characterized as biased or as being a political instrument of leftist movements. Furthermore, they conceptualize the role of the Armed Forces—defined by the members of ADOGEN as *fundamental institutions of the nation*—within the State and society, which still shows worrisome remnants of the doctrine of National Security practiced by the military dictatorships that governed the region between the decades of 1960 and 1980.

This type of reactions regarding the appreciation of the Final Report of the CVR on the role of the Armed Forces during the internal armed conflict, came not only from retired personnel of the Armed Forces, but also from the business

sector. Thus, in a statement issued by the National Confederation of Private Business Institutions (Confiep, for its acronym in Spanish) the following excerpt is included:

CONFIEP considers that it is not acceptable that any ideological bias, political opportunism or any other purpose or interest, may drive us to a fragmented version of the historical truth, an official history or a fabricated myth, that future generations may accept as history when, in reality, it is neither history nor truth.

(...)

Second: We do not agree to characterize the actions of the Armed and Police Forces as a systematic and generalized policy of perpetration of attacks on human rights, and as crimes against humanity. It must be clearly established that the role of the Armed and Police Forces is that of the defense of the State in compliance with the instructions of the Governments which, in every governmental period, have the responsibility to preserve the integrity of the Nation. In this endeavor, thousands of military and police personnel gave their lives or became disabled due to protecting the State and its citizens. The individual actions of a member of said forces, violating legal norms, both institutional and criminal, are the sole responsibility of their authors and must be sanctioned in accordance with the law.

(...)

Fifth: We do not agree with the treatment of the issue of the victims of terrorism because it does not describe, in all its magnitude, the facts that all of us as Peruvians have lived; not only the sacrifice of the poorest and most unprotected peasants of our homeland, but also the suffering of thousands of family members of military, police and militia that defended the Nation, the sacrifice of businessmen, government officials and workers who were murdered and the numerous material losses that affected the State, when attacking the sources of wealth-production and taxes and the infrastructure of the Nation itself.

We also do not agree with comparing the murders perpetrated by the terrorists to the deaths caused by the forces of order in combat and defense of the homeland.

(DIARIO EL COMERCIO, 2003b).

We have reproduced an extensive part of the statement by the Confiep because we believe it is a good portrait of the political culture that rules the social and economic elites of our country, as well as the conservative political sectors. This position considers that the conclusions of the CVR were not the result of scientific research and historical reconstruction, but rather a mere product of the alleged ideological bias of its members. Likewise, this position denies the systematic character –in certain places and moments during the internal armed conflict– of the human rights violations committed by members of the Armed Forces. This entire set of statements was based, primarily, on a partial interpretation of the chapter on conclusions in the Final Report, ignoring the analysis on the causes and consequences of the process of political violence, as well as the cases investigated and the depth of the studies performed. Likewise, the Integral Program of Reparations and the proposals for institutional reform were not considered by these pronouncements.

Finally, it must be said that the Ministry of Defense did not issue any public pronouncements regarding the Final Report of the CVR, given that the government's

official position would be issued by president Alejandro Toledo. However, two weeks after the presentation of the Report, minister Aurelio Loret de Mola, during a ceremony to award compensations to the widows of militia members, seized the opportunity, given the presence of the media, and “paid tribute to the members of the three branches of the Armed Forces who were killed, wounded, incapacitated or left with psychological or psychiatric problems”, as a consequence of their participation in the armed conflict (GUILLEROT, 2003a, p. 6). Furthermore, during the month after the publication of the Final Report, the Ministry of Defense would post a publicity video in certain television channels, which showed members of the Armed Forces who were wounded and disabled as a consequence of the actions of *Sendero Luminoso*, and expressed a heartfelt gratitude towards them. However, this video suffered from a biased perspective, given that it didn’t show the victims caused by the actions of the Armed Forces (VICH, 2003). The official position of the Executive Branch was communicated by president Alejandro Toledo, through a message to the nation that was made public on 23 November 2003, almost three months after the publication of the Report. In that message, Toledo apologized, on behalf of the State, to the victims of violence. Likewise, he acknowledged that: “In a conflict of this nature, some members of the Armed Forces incurred in painful excesses. It shall be the task of the Public Prosecutor’s Office and the Judiciary to dictate justice on these matters, without fostering impunity or abuse. We respect the independence of the branches of government” (GUILLEROT, 2003b, p. 14).

Also, Toledo announced the creation of a State policy for reconciliation, and a Plan for Peace and Development, consisting of a set of investments for 2800 million soles (PEN) in order to promote development in the areas affected by the political violence.

5 The trials for violations of Human Rights

One of the legacies of the work of the CVR was the opening of the possibility for judicial investigations and criminal procedures against those military officials responsible for serious human right violations and crimes against humanity, and thus, to grant justice and reparation to the victims. At the conclusion of its mandate, the Commission delivered to the Public Prosecutor’s Office the set of evidence obtained on 47 cases, which had been the subject of investigation during their work. This evidence was used by the Public Prosecutor’s Office to initiate the investigation on those cases.

However, after seven years of the initiation of that process, the result is very limited. As pointed out by the Ombudsman Office,

even though the efforts of the Public Prosecutor’s Office and the Judiciary are commendable, particularly regarding the creation of some specialized instances for the investigation and judgment of these cases, it is also necessary to indicate that there have been difficulties in the development of the investigations, and setbacks with regard to jurisprudential criteria established by the Constitutional Tribunal, the Supreme Court of Justice and the National Criminal Court.

(DEFENSORÍA DEL PUEBLO, 2008, p. 104).

It must be said that these setbacks went hand-in-hand with the evolution of the political process and the recovery, by the Armed Forces, of part of the political power that they enjoyed in the past.

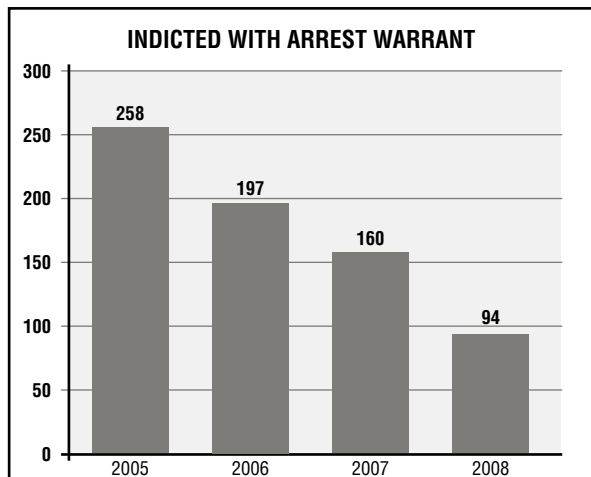
In the last years, the Ombudsman Office has been performing a follow-up of the status of these judicial proceedings, in which most of the accused are military personnel. In this universe of 194 cases (47 of which were presented by the CVR, 12 were investigated by the Ombudsman Office itself, and 159 by the Inter-American Commission on Human Rights), 112 (57.7%) continued in the stage of preliminary investigation towards the end of 2008, even though the majority of them were initiated between the end of 2001 and the beginning of 2004. This was the situation of cases such as “*Violations of human rights in the Military Base of Capaya*” and “*Massacre of peasants in Putis*”, among others, which were being investigated since December 2001 (DEFENSORÍA DEL PUEBLO, 2008, p. 125).

Likewise, 57.4% of the cases in the stages of instruction and oral proceedings, or pending the latter (27 cases), have been in process since mid-2004 (16 cases) or early 2005 (13 cases), such as in the cases of “*Violations of human rights in the Barracks of Los Cabitos N° 51*” and “*Extrajudicial execution of Juan Mauricio Barrientos Gutierrez*,” whose terms for judicial investigation had been extended up to six times (DEFENSORÍA DEL PUEBLO, 2008, p. 127-128). According to the reports from the Ombudsman Office, among the factors that contribute to this stagnation are the difficulties to individualize those responsible due to lack of collaboration by the Ministry of Defense, and their reluctance to provide information on the identity of the military officers involved in these cases.

Regarding the number and situation of the militaries being prosecuted, it is known that the 30 criminal procedures related to the cases presented by the CVR and the Ombudsman Office involve 339 defendants, out of which 264 belong to the Army, 47 to the Peruvian National Police, 17 to the Navy, and 11 are civilians (DEFENSORÍA DEL PUEBLO, 2008, p. 139)⁴. It is worth indicating that 61.4% of these defendants (208) are encompassed in 5 cases: “*Colina Group*” (58 defendants), “*Arbitrary execution of civilians in Cayara*” (51), “*Arbitrary executions in Pucará*” (41), “*Arbitrary executions in Accomarca*” (31) and “*Massacre of 34 peasants in Lucmahuayco*” (27) (DEFENSORÍA DEL PUEBLO, 2008, p. 142). On the situation of these defendants, it is worth noting that:

In the cases of defendants prosecuted for human right violations, the tendency of the judges to impose arrest warrants has varied significantly throughout the last years. Thus, of the total number of defendants being prosecuted in the cases presented by the CVR and the Ombudsman Office, in the year 2005, 258 defendants had arrest warrants issued against them (67%). In the year 2006, this number was reduced to 197 (53%), and currently there are only 94 defendants with arrest warrants issued against them (27.7%). The remaining 72,3% (245 defendants) have been served with orders to appear before the law, with restrictions.

(DEFENSORÍA DEL PUEBLO, 2008, p. 145).



Source: Files from the criminal and anti-corruption supra-provincial courts; criminal and mixed courts; and National Criminal Court. Source: Defensoría del Pueblo (2008)

Further, the Ombudsman Office reports that, until November 2008, out of the 94 defendants with pending arrest warrants, only 43 were effectively complying with this measure, while 51 were considered fugitives or in contempt of court. According to the Ombudsman Office, the low rate of execution of arrest warrants is a factor that slows down the process of judicialization of human rights violations. This, in turn, is due to a lack of will on the part of the authorities of the Ministry of Defense to collaborate in the fulfillment of these mandates

(DEFENSORÍA DEL PUEBLO, 2008, p. 146-148). In any case, it could be argued that this gradual decrease in the number of military personnel with arrest warrants (orders for their detention) could be correlated to the equally gradual recovery of political power by the Armed Forces, as we will see in the remaining sections.

However, the judicialization of human rights violations committed by military officers is not precisely one of the priorities in public opinion, perhaps due to the generalized perception that the main perpetrators of these crimes during the internal armed conflict were not the Armed Forces, but rather the subversive groups:

WHO DO YOU BELIEVE TO BE RESPONSIBLE FOR THE GREATER NUMBER OF VICTIMS OF THAT PERIOD: THE ARMED FORCES OR THE SUBVERSIVE GROUPS?

Answers	Locations			
	Lima-Callao	Other cities	Huánuco-Junín	Ayacucho
Armed Forces	8,2	13,2	12,5	15,3
Subversive groups	46,2	42,4	46,2	25,5
Both, equally	40,0	42,3	38,3	50,5
No response	5,6	2,1	3,0	8,7
Total	100	100	100	100

Source: Sulmont 2007

Although in this survey on issues of transitional justice, carried out by the Idehpucp (for its acronym in Spanish; stands for the Institute for Democracy and Human Rights of the *Pontificia Universidad Católica del Perú*) towards the end of 2006, a high percentage of those interviewed responded that both, the Armed Forces and the subversive groups, caused the greater number of victims during the conflict (even though, when both groups are individualized, it becomes evident that greater responsibility is attributed to the subversive groups in comparison with the Armed Forces), when asked about the measures to be adopted in the future, the majority

of those interviewed answered that the granting of economic reparations and the investment in the development of the poorest areas of the country had priority over the investigation and punishment of those responsible for human rights violations.

THINKING ABOUT THE FACTS THAT OCCURRED AND IN THE FUTURE OF THE COUNTRY, OF ALL THE THINGS MENTIONED, WHICH DO YOU BELIEVE IS THE MOST IMPORTANT?

Measures	Locations			
	Lima-Callao	Other cities	Huánuco- Junín	Ayacucho
To provide support and reparation to the victims of violence	20,7	22,4	31,1	32,3
To invest in the development of the poorest areas of the country	32,5	32,2	28,7	23,8
To investigate and punish those responsible for human rights violations	24,9	16,6	13,5	23,3
To reform our education in order to promote peace	13,5	13,3	14,7	9,3
To guarantee that, in the future, the Armed Forces will respect human rights	5,8	14,7	10,3	4,4
No response	2,5	0,9	1,8	6,9
Total	100	100	100	100

Source: Sulmont 2007

Lastly, we must indicate that, as mentioned by the Ombudsman Office, one of the factors that has some incidence in the slow development of the proceedings for human rights violations (in many cases they go for more than 7 years without obtaining a judgment) was the lack of collaboration, on the part of the Ministry of Defense, with the institutions in charge of administering justice, and their reluctance to provide information on the identity of military officers involved in these cases. Without going into greater details, we must note that the excuses given by officers at the Ministry of Defense aim at the inexistence of said information –in many cases it is alleged that the information was either destroyed or that it never existed (it is said, for example, that the record kept of the officers assigned to a particular military base did not include their names, but only their *aliases*, due to security reasons). However, other alternatives to access or reconstruct said information were not attempted (such as the systematic review of the service files of all the officers in order to find out which ones were assigned to certain bases, and at what time).

6 The pronouncements on the human rights trials: requests for legal and political backing

As we have seen through the statements of the associations of retired military personnel, the years after the democratic transition were a special period in which the relationship between the Armed Forces, and civil and political society were marked by the processes of judicialization of the cases of human rights violations being investigated by the CVR, in which military personnel were involved as the main perpetrators of crimes. The rise in civil-military animosity can be appreciated, for example, in the statement that, in March 2005, a group of 17 former Commanding Generals of the Army –ranging from the ones that led the institution during the ‘70s, such as generals Francisco Morales Bermúdez (former president of the Republic) and Edgardo Mercado Jarrín, to the ones that did so in this century, such as generals Carlos Tafur, Jose Cacho Vargas and Víctor Bustamante– produced “in interpretation of the feelings of the officers, technicians, non-commissioned officers, troops and draftees, civilian employees and military family”, in which they indicate that:

5. The excesses of several judges and district attorneys who lead the cases against the military personnel being denounced, are fostering feelings and reactions that may have very serious consequences for the future development of the Army personnel, because these would directly affect our national security, possibly generating, among others, the following effects:

a) Avoiding taking decisions and actions to resolutely combat those who threaten national security and internal peace, given the fear of legal reprisals to which the officers, technicians, non-commanding officers, troops and draftees are exposed to, due to the lack of legal and political backing for their actions in combat operations and/or reestablishment of the public order.

(...)

7. As in the past, there are some people and organizations who, consciously or not, collaborate with the psycho-social actions of the terrorists or unfoundedly attack the Army, confusing public opinion in their paltry ambition to obtain privileges or earning notoriety, without understanding that their actions debilitate and divide Peruvian society, by developing a harmful and anti-patriotic behavior, pretending to own the truth in detriment of national unity.

8. Thus, we intend that the human rights of all Peruvians are respected, which is why we do not seek conflict or confrontation, neither do we seek to generate any controversies: however, we do urge the Peruvian people to remain vigilant to the actions of ideologies and entities that seek to confront the State and society against their Army. This is the new strategy of terrorism that we all should know in order to combat it, decidedly and frontally.

(DIARIO EL COMERCIO, 2005, emphasis added by the author).

Several elements stand out in this statement, among them the critique of the work of the Judiciary and the Public Prosecutor's Office, and the attack on the human rights organizations—and their whimsical linkage with the “strategies of terrorism”—; but the greatest concern is the open threat or blackmail expressed with regard to the Armed Forces not complying with their constitutional functions and missions—meaning the duties assigned to them by political authorities, among which are included the control of internal order under certain circumstances, which would constitute an act of rebellion— unless the military was granted the necessary “*legal and political backing*” understood as immunity against charges of human rights violations committed, both in the past, during the internal armed conflict, as well as during the “*operations of combat and/or reestablishment of the public order*” performed during that time and throughout the decade. In sum, it is a claim that seeks to exchange impunity for obedience, in a context of growing social unrest in which, in some cases—such as the protests developed in the regions of Arequipa and Puno during the years of 2002 and 2003—, the Armed Forces were used to quell the protests that threatened to put the stability of the regime at risk.

7 Responses from the State to the demands for political and legal backing

The electoral process of 2006 brought, as a consequence, a radical change in the political scenario. Indeed, as a product of the elections emerged a new correlation of forces—visible both in the Parliament, as well as in the Executive Branch— very different from the one that had made possible the creation of the CVR during the transitional government, and the development of its mandate during the government of Alejandro Toledo. In this new scenario, the pro-Fujimori sectors, who had been a small minority in Congress during the period between 2001-2006, regained strength and became a gravitational force, allowing the APRA party to conform majorities—together with the *Unidad Nacional* [*National Unity*] party—in order to carry out certain initiatives.

Indeed, after Alan García (APRA, 2006-2011) won the election and took the first decisions of his new government, his alliance with the same sectors that had opposed him in the past—the social, economic and political right wing— became increasingly more apparent. For this reason, García's decision to appoint Allan Wagner as his Defense Minister surprised many, because it was expected that, in an area as sensitive as Defense, and given his new closeness to the most conservative sectors of the business community, the church and the Armed Forces (the last two corporations represented by his closeness to Opus Dei Cardinal Juan Luis Cipriani, and vice-admiral and new vice president Luis Giampietri, respectively), he would name a more conservative politician for this post. It must be noted that this forecast would materialize later in time, with the successive appointments, in the area of Defense, of Antero Flórez Aráoz and Rafael Rey.

Wagner, former foreign minister for García during his first government, a career diplomat with more centrist political preferences, would make an effort to contradict the predictions by political analysts in relation to the possible right-wing

conversion of the regime, in that he would name, for the high directing posts of the Ministry of Defense, a prominent team of professionals whose careers did not reflect this alleged move towards the right. However, Wagner's term did mean a "political and legal backing" to the military corporation. This materialized through the decision of the ministry to offer free legal assistance –that is, paid for by the State– to the military personnel being prosecuted for human rights violations. Indeed, the same State that refused to grant individual economic reparations to the victims of political violence was, in contrast, committing to pay for the expenses of the legal defense of the perpetrators of those human rights violations. In order to understand the reasoning that prompted Wagner to make this decision, we will quote his very words before the National Defense Commission of Congress, during a presentation before the commission in which he outlined the basic blueprint for his tenure as minister:

This leads us to other aspects that I have had the chance to mention in public, such as the case of the support of the legal defense of the members of the Armed Forces that are being investigated or prosecuted. The law is for everyone, we are all equal before the law and we all have the same rights and obligations; and one of the rights that the law gives us and the Constitution enshrines, is the right to a defense, and thus there is a necessity for the State and society, not only the State, to come in support of the right to a defense of those who are, at this time, being prosecuted or investigated.

(...)

Indeed, justice has to be based on due process, in the exercise of a legitimate defense, the defense to which every member is entitled to, but at the same time, to have the responsibilities individualized and avoid putting everything in the same bag, which is affecting, undoubtedly, the morale, as well as the people and their families.

Therefore, there is a necessity to attend to this situation, and just as the State is decided to provide economic support in order for this legal defense to be carried out, we also consider that society itself, which was defended by our Armed and Police Forces, should mobilize and support the defense of these members of our institutions.

(PERU, 2006a).

The free legal defense for alleged perpetrators of human rights violations committed during the internal armed conflict would materialize through a norm (PERU, 2006b) that establishes that the "police or military personnel, either retired or in service, who are criminally denounced or indicted before the civil jurisdiction due to alleged crimes against human rights, for acts performed in the exercise of their duties, in the anti-subversive struggle in the country" (PERU, 2006b, art. 1), would receive a legal defense paid for with resources from the budgets of the ministries of Defense and Interior. Years later, during the term of Rafael Rey, it would come to be known that a large number of indicted military personnel that invoked this norm in order to receive this benefit, requested that the ministry of Defense hire the legal services of the firm of César Nakasaki (and Rolando Souza, a congressman linked to Fujimori) who was also the lawyer of Alberto Fujimori in the case of the killings of *La Cantuta*

and *Barrios Altos*, as well as of other military leaders indicted for corruption during the Fujimori regime (DIARIO EL COMERCIO, 2009, DIARIO LA REPÚBLICA, 2009).

This positive predisposition towards the indicted military personnel, by minister Wagner, would be deepened after his replacement, as minister of Defense, by Antero Flórez Aráoz, towards the end of 2007. The animosity of Flórez Aráoz against the sectors that defend the cause of human rights, as well as his defense of the military personnel being tried for these crimes, would become evident with his stern opposition to the creation of a Museum of Memory to remember the victims of the process of political violence lived by Peru in the previous decades. After an offer from the German government of a two-million dollar donation for the construction and implementation of this Museum, towards the end of 2008 (an offer that was initially rejected by the García administration), Flórez Aráoz became the main spokesperson in opposition to this initiative within the cabinet of ministers, clearly and publicly expressing the official position that the construction of a memorial to remember the crimes committed by agents of the State –among other actors– in the context of the armed conflict, was not exactly a priority for the government, which should rather be working towards the fight against poverty.⁵

Flórez Aráoz would be greatly surprised when, a few days later, and after a heated debate in the media in which he exchanged severe epithets with writer Mario Vargas Llosa (LLOSA, 2009), the government created a High Level Commission for the management and implementation of the Museum of Memory,⁶ presided precisely by Vargas Llosa and composed by Monseñor Luis Bambarén, Frederick Cooper, Fernando de Szyszlo, Juan Ossio, Enrique Bernales and Salomón Lerner (the last two, former members of the CVR). However, it must be noted that in the mandate granted to said High Level Commission there is no mention related to the human rights violations perpetrated by State agents during the internal armed conflict, but rather only to the ones perpetrated by subversive groups. Indeed, the mandate of that commission consists of:

Ensuring that the Museum of Memory represents with objectivity and amplitude of spirit the tragedy lived by Peru during the subversive actions of Sendero Luminoso and the Revolutionary Movement Túpac Amaru during the last decades of the 20th century, with the purpose of showing to the Peruvians the tragic consequences that result from ideological extremism, the transgression of the law and the violation of human rights, in order for our country not to relive such regrettable experiences.

(PERU, 2009, art. 2).

If we compare this restricted mandate with the ample mandate given to the CVR –which had the mission to investigate human rights violations perpetrated both by subversive groups, as well as by State agents–, this would give the impression that, during the internal armed conflict, the Armed Forces had no participation in the perpetration of human rights violations. However, it would be difficult to expect something different from a government like that of Alan García, given his responsibility in the government during part of the period of political violence, and his current alliances. Indeed, the extreme sensitivity generated by this initiative

among different public sectors (among them, the Armed Forces, themselves), motivated the commission presided by Vargas Llosa to work in great detail to ensure its viability. In this context it can be understood that Vargas Llosa had to request a meeting with the Commanding General of the Army, General Otto Guibovich, in order to “exchange ideas regarding the contents and scope” of the Museum –now known as Venue for Memory– and explain to him that it would have no ideological bias nor any hostility towards the Armed Forces (DIARIO PERÚ, 2010).

In July 2009, three months after the incident with Vargas Llosa, Flórez Aráoz would be replaced, in the direction of the Ministry of Defense, by Rafael Rey. This character, as a member of the Opus Dei and a representative of a social and political ultra-conservative tendency, probably represents, better than his predecessors, the correlation of forces in current Peru, as well as the political alliances held by the García government. It is no exaggeration to affirm that Rafael Rey would turn the militant defense of military personnel indicted for human rights violations into the *leit motiv* and the *raison d'être* of his tenure at Defense. This was reflected in the approval of several initiatives (both, materially, as well as symbolically) in favor of the military personnel indicted for human rights violations. The main one would be the promulgation, in September 2010, of Legislative Decree No. 1097, on the “application of procedural norms for crimes that imply human rights violations”. Said decree established the application of the New Procedural Criminal Code to the military personnel being prosecuted of these crimes, with the purpose of making trials more agile and reducing their duration. But it also gave ample powers to judges in order to change arrest warrants into orders of appearance in court for the accused military personnel, surrendering the “care and vigilance” of the accused to the armed institutions to which they belong. Likewise, this norm established the “dismissal due to excesses in the terms of instruction or of the preparatory investigation” (article 6). The term after which the judges could approve said dismissal, in accordance with the New Procedural Criminal Code, is that of 36 months, deadline that had already been greatly overcome in most of the judicial procedures against military personnel who perpetrated violations of human rights during the internal armed conflict –most of these procedures were initiated between 2003 and 2005.

Likewise, in said norm, a series of benefits for indicted military personnel were approved, such as the possibility of annulling arrest warrants, for cases of indicted fugitives of justice, in exchange for a bail bond that could be paid for by the Armed Forces themselves, using public resources (in a similar manner to the payment of the legal defense approved during Wagner’s mandate):

In relation to those being prosecuted, who are declared absent or in contempt of court, and who express their will to comply with the law, the judge may change the arrest warrant in order to resolve the condition of absentee or contemptuous, imposing an economic bond, if the income of the accused allows for it, which may be substituted by a personal bond, both suitable and sufficient, from the accused himself or from a family member, or a third-party guarantor, be it either a natural or juridical person, or the military or police institution to which they belong.

(PERU, 2010, art. 4).

Finally, another of the provisions of this norm, which could imply serious consequences for the process of judicialization of human rights violations, is the final provision that establishes that the application of the “Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity”, signed by the Peruvian state in 2003, would only be legally binding from that date on. This would mean that the crimes committed before 2003 could not be considered “crimes against humanity”, nor judged as such, but only as common crimes, subjected to the statutory limitations established for them (terms that, in most cases, had already been overcome). It must be noted that, after a few days of the approval of this norm, there were already 21 military men who had requested the archiving of their cases under the protection of the provisions on dismissal, among them, those responsible in the cases of *Barrios Altos*, Pedro Yauri, and the *Santa*, Santiago Martín Rivas, Carlos Pinchilingue, Nelson Carbajal, Jesús Sosa, among others (members of the Colina Group) (DIARIO LA REPÚBLICA, 2010a; DIARIO EL COMERCIO, 2010).

However, Legislative Decree No. 1097, which for many did not constitute anything other than a covert amnesty, generated stern criticism from multiple sectors, both at the national and international levels. In Peru, criticism did not come only from human rights organisms, grouped under the National Coordinator for Human Rights, but also from State institutions, such as the Public Prosecutor’s Office, whose authorities issued a public statement against the decree and even issued an internal order aimed at avoiding the application of the decree by the system for the administration of justice (DIARIO LA REPÚBLICA, 2010b). To the statements against LD 1097 by several institutions and civil society collectives in Peru (Bar Association of Lima, Episcopal Conference, etc.), must be added the declarations by several foreign institutions, both from NGOs like WOLA or Human Rights Watch, as well as from international organizations such as the Inter-American Commission on Human Rights, and even, from the United Nations Special Rapporteur on Human Rights.

In the political sphere, criticism for LD 1097 came not only from the government opposition—the Nationalist Party presented, before the Constitutional Tribunal, a lawsuit of unconstitutionality against this decree— but also from the very members of APRA in Parliament (RPP, 2010; DIARIO LA REPÚBLICA, 2010). As days went by, the rejection for LD 1097 became increasingly generalized. One of the factors that contributed to the generalization of this rejection—both in public opinion, as well as within the political society— was the revealing of the participation of César Nakasaki, former lawyer for Alberto Fujimori, in the elaboration of this norm (IDL-REPORTEROS, 2010).

All of this produced ample rejection within public opinion. A symptom of this rejection was the resignation of Mario Vargas Llosa from the commission in charge of implementing the Venue for Memory. In his letter of resignation, Vargas Llosa indicated that the reason for this was grounded on his rejection of LD 1097, which he described as a “barely disguised amnesty to benefit a good number of people linked to the dictatorship and, either accused or being prosecuted, for crimes against human rights” (a few weeks after this event, the

writer would receive the Nobel Prize in Literature).⁷ The same day in which his resignation was made public –13 September 2010–, the Executive Branch presented Congress with a bill through which the derogation of LD 1097 was requested. The following day, the plenary of Congress approved the derogation of this norm (which, thus, was in force for only 13 days) by 90 votes in favor and only one against. The single vote against came from vice president and former Admiral (r) Luis Giampietri. It stands out that, in this opportunity, not even Fujimori’s supporters, who had initially defended the decree, had voted against its derogation. It is possible that this decision may have been influenced by pre-electoral calculations, given that these incidents happened only 7 months before the general elections of 2011, in a context in which the great majority of public opinion was against this measure.

8 Conclusions

Throughout these pages we have wanted to present the main strategies, both discursive and political, used by the Armed Forces and the sectors that presented themselves as their spokespersons, with regard to the processes of transitional justice and clarification of responsibilities that had to be faced in the period immediately after the transition to democracy. Among the main strategies used by the military corporation stand out the statements by the former Commanding Generals and the association of retired military, in which they would constantly request “political and legal backing”, to defend them from the accusations for human rights violations perpetrated during the internal armed conflict, and with the threat that the Armed Forces would not fulfill their constitutional missions if this support failed to materialize, in a context in which social conflicts were increasing –and military participation in them– and participation of the Armed Forces in the counter-insurgent strategy against the remnants of the *Sendero Luminoso* in the valley of the rivers Apurimac and Ene (VRAE), was being intensified.

Political society responded to this request for support through several measures: the approval of legal defense services paid for by the State for indicted military personnel, the opposition of the Ministry of Defense to the creation of the Museum of Memory, and the issuance of Legislative Decree 1097 on procedural and penitentiary norms. These initiatives, which sought to benefit, either materially or symbolically, the military personnel being prosecuted, entailed serious obstacles for the transitional justice process, and for the access to truth, justice and reparation claimed by the victims of the political violence that took place in Peru in the last decades.

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NOTES

1. A few days after assuming his post, the new Minister of Defense, Gral. (r) Walter Ledesma, retired all members of the class of 1966 to which Vladimiro Montesinos belonged (12 division generals who comprised the highest command of the army) (ROSPIGLIOSI; BASOMBRÍO, 2006).
2. *Meeting at the Army General Headquarters. Draft of Act. 16 February 2002.* Document that is part of the documentary resources that the CVR delivered to the Ombudsman Office, after concluding its mandate, and which is currently located in the archives of the Center for Information for the Collective Memory and Human Rights. The code of the document is SCO-310-01-012.
3. It must be noted that Arias Graziani also served as the presidential advisor in matters of security and defense throughout the entire presidential term of Alejandro Toledo.
4. Aside from these 339 being processed for cases presented by the CVR and the Ombudsman, there are 28 other military personnel indicted (out of which 22 belong to the Army) for cases presented by the Inter-American Commission on Human Rights.
5. "Flórez Aráoz: *Crear Museo de la Memoria no es prioridad para el Perú* [Flórez Aráoz: *Creating Museum for Memory is not a priority for Peru*]" In Radio Programas del Perú, February 26 of 2009. Available at: <http://www.rpp.com.pe/2009-02-26-flores-araoz--crear-museo-de-la-memoria-no-es-prioridad-para-el-peru-noticia_166846.html>. Last accessed on: Nov. 2010.
6. Through Resolución Suprema No. 059-2009-PCM, of April 1st, 2009.
7. The text of the letter can be read at: <<http://www.scribd.com/doc/37361078/Carta-de-renuncia-de-Mario-Vargas-Llosa>>.

RESUMO

Nos últimos anos, o Peru tem atravessado um processo em grande medida decisivo para as relações entre as forças armadas e as esferas política e civil da sociedade marcadas, particularmente, pelo estabelecimento de uma Comissão da Verdade e Reconciliação e pela judicialização das violações de direitos humanos ocorridas durante o conflito armado interno, protagonizado pelo grupo terrorista Sendero Luminoso e pelas forças de segurança do Estado (1980-2000). Esse processo provocou críticas ferozes por parte das forças armadas, por meio de uma série de discursos e estratégias que buscavam limitar seu escopo, o que se deu pela demanda constante por respaldo político e jurídico de autoridades políticas para que a Comissão pudesse exercer suas funções.

PALAVRAS-CHAVE

Peru - Forças Armadas - Democracia – Direitos humanos – Comissão da Verdade – Justiça transicional

RESUMEN

El Perú ha vivido en los últimos años un proceso que en gran medida determinó la dinámica de las relaciones entre las Fuerzas Armadas y la sociedad política y civil: la instalación de una Comisión de la Verdad y Reconciliación, y la judicialización de las violaciones de derechos humanos cometidas durante el conflicto armado interno, protagonizado por el grupo terrorista Sendero Luminoso y las fuerzas de seguridad del estado (1980-2000). Este proceso generó airadas reacciones desde las Fuerzas Armadas, a través de un conjunto de discursos y estrategias que intentaban limitar sus alcances, por medio de continuos pedidos a las autoridades políticas de medidas de respaldo político y legal para cumplir con sus funciones.

PALABRAS CLAVE

Perú – Fuerzas Armadas – Democracia – Derechos humanos – Comisión de la Verdad – Justicia transicional

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