

## **FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION**

### **SUMMARY OF RECOMMENDATIONS SECTION<sup>2</sup> -VOLUME IX-**

#### **1. RECONCILIATION**

The Truth and Reconciliation Commission (TRC) understands “reconciliation” to be a process of reestablishment and recasting of fundamental ties among Peruvians; ties that were destroyed or that deteriorated in the conflict experienced over the past two decades. Reconciliation has three dimensions: 1) the political dimension, involving a reconciliation between the State and society, and between the political parties, the State and society; 2) the social dimension, encompassing reconciliation of civil society institutions and public spaces with society as a whole, with special consideration for marginalized ethnic groups; and 3) the interpersonal dimension, involving members of communities or institutions who found themselves in conflict. Thus, reconciliation requires the reconstruction of the social and political pact.

For reconciliation to be viable, the country must confront three vital issues. It will be necessary to: definitively overcome and resolve the conflict; critically discuss the ideas for reconciliation held by the different political and social sectors, and adopt State policies that address the demands of civil society. The last issue entails profound institutional reform, implementation of a plan of reparations for damages to the victims, and criminal sanctions for those responsible for the crimes and human rights violations.

Reconciliation in Peru must possess certain fundamental characteristics that respond adequately, and thus justly, to the concrete reality of the country. First, it must be multiethnic, pluricultural, multilingual and ecumenical, justly reflecting the value of Peru’s ethnic, linguistic,

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<sup>1</sup> This translation was supported by a grant from the Open Society Institute. For more information about the ICTJ, see [www.ictj.org](http://www.ictj.org).

<sup>2</sup> The recommendations of the Peruvian TRC appear in Vol. IX of the Final Report, available in Spanish on the TRC website ([www.cverdad.org.pe](http://www.cverdad.org.pe)). This document is a summary of those recommendations, prepared by the “Transfer Commission” under the authority granted to it by the Plenary of the TRC on the final day of the TRC’s mandate (31 August 2003). The Transfer Commission is a small team of former TRC staff that is charged by Supreme Degree 078-2003 PCM with the administrative closure of the TRC and transfer of files, information and documentation to either the Human Rights Ombudsman’s office or the Council of Ministers.

cultural, and religious diversity, which had not been adequately valued in the past. Second, it must lead to the integration of the rural population by the State. Third, there must be a place for historical memory as a collective reconstruction among persons who acknowledge each other and recognize their joint responsibility. Fourth, it must be oriented toward a reassessment of the value of women through recognition of their rights and their full and equal participation in civic life. Fifth, it must lead to the construction of citizenship, the spreading of democratic culture, and an education in values.

The realization of this concept of reconciliation requires concrete action from the State first, and then from civil society. These actions and initiatives are outlined below.

## **2. INSTITUTIONAL REFORMS**

The proposal for institutional reforms is oriented toward modifying the conditions that generated and deepened the internal conflict. The Commission's analysis shows that the violence from 1980 to 2000 originated in the actions of minority subversive groups with a fundamentalist, totalitarian ideology who used terror and violence to gain power. This was possible for two reasons. First, the subversive groups exploited fractures and disagreements within Peruvian society, organizing marginal sectors that were excluded from the process of social and political democratization expressed in the democratic regime. Second, they took advantage of parts of society that were underdeveloped and highly conflictive while exploiting the absence of the State and of political and social organizations capable of fulfilling representational functions. The TRC's investigations show that where there was greater State presence, and a denser political and social fabric, the subversion was unable to establish itself.

For these reasons, the recommendations presented seek to consolidate and extend state presence (with inclusion and respect for social organizations, local identities, and cultural diversity) and promote citizens' participation.

Additionally, the dynamics of the violence were the result of the State's inadequate responses. Thus, the Truth and Reconciliation Commission recommends reforms of the Armed Forces, the National Police, and the intelligence services that will ensure civilian democratic policy leadership of national defense and internal security tasks, based on respect for human rights and coordination with political authorities and social leaders.

Another area in which there was a limited State response to the challenge of subversion was in the administration of justice. The TRC's investigations show that the judicial system did not adequately use the law in the defense of the rights of the people who were victims of the

crimes and violations committed by the subversive groups or by State agents. Therefore, the TRC also recommends measures to strengthen the system for the administration of justice and to reform the penitentiary system.

Finally, given that the subversion partly emerged from aspects of public education, as discussed above, the Truth and Reconciliation Commission also recommends reforms of primary and secondary education, particularly in poorer and less developed regions.

In accordance with the TRC's mandate, its proposals for institutional reform are limited to the tragic events of the past two decades. The proposed reforms are changes to or modifications of current rules, institutional structures, or norms that impact a specific area, activity, or sector of State action. The recommendations are for organizational changes or new directions in public policy, through constitutional reforms, laws, or other rules or government policies, depending on the level and depth of the changes.

### **Recommendations for Strengthening Democratic Authority**

A.1. Develop policies and norms for collaboration among the National Police, municipalities, and the citizenry; this is indispensable.

A.2. Strengthen the institutional structure of the *rondas* [patrols] and of adequately regulated *comités de autodefensa* (CAD) [self-defense committees]. Study the possibility, in the medium term, of creating a rural police force.

A.3. Strengthen the peace-time justice system, granting it sufficient jurisdiction to solve conflicts in people's daily lives.

A.4. Improve access to justice by increasing the number of public defenders and judicial offices and providing more resources to Public Legal Clinics.

A.5. Establish a system for the defense of human rights through the creation of specialized fora within the police, judiciary, and Public Ministry [in charge of criminal investigations and prosecutions], particularly in those regions where the violence had the greatest impact.

The recommendations set forth thus far refer to domestic security and access to justice. However, in the rural areas that were hardest hit by the violence, the presence of the State also must manifest itself by providing opportunities for development. We therefore propose:

A.6. Establishing short-term goals based on State policies approved in the National Accord, with priority for implementation in areas affected by the violence.

A.7. Establishing local institutional policies that assure the incorporation of the needs of those populations with little capacity to influence municipal plans and budgets.

A.8. Recommending that Regional Governments of departments that are largely rural develop territorial organization plans in coordination with the municipal governments to provide comprehensive services for low-density populations.

A.9. Giving incentives to State personnel to work in areas affected by the violence and that are far from urban centers.

A.10. Recognizing and integrating the rights of the indigenous populations and their communities in the national legal framework.

A.11. Creating an institution or body for State policy on indigenous and ethnic matters.

In addition to the above, we present recommendations for strengthening political and social organizations so that they are able to mediate between the State and society throughout the country:

A.12. Enact a law on political parties and modify the system of representation.

A.13. Strengthen the Anti-Poverty Forum and Pro-Development Forum.

A.14. Provide incentives for the participation of youth in all areas of life (schools, neighborhoods, higher education, work), to promote leadership development.

### **Recommendations for Consolidating Democratic Institutions**

Below are recommendations for consolidating a balanced relationship between the democratic authority and the Armed Forces and recommendations for improving the relationship between the security forces and society.

B.1. Establish the limits of the concept of National Defense and the meaning of the corresponding policy, so that anything termed “Defense” and that is structurally tied to military personnel or bodies is subject to the authority, responsibility, and jurisdiction of the Minister of Defense.

B.2. Develop a national security policy that includes a national pacification strategy directed at reconciliation and State presence throughout the territory.

B.3. Training of a civilian elite with expertise in security and defense issues.

B.4. Regulate states of emergency and immediately repeal Law 24150, as modified by legislative decree 749, which gives the Armed Forces jurisdiction over domestic order. It must be made clear

that states of emergency do not entail the suspension of the Constitution or the subordination of political authorities.

B.5. Place the military intelligence services under civilian democratic control. This includes:

- A law that regulates intelligence activities, even secret ones. The president of the National Intelligence Council must have the authority to approve the operational plans for obtaining intelligence from nonpublic sources and from counterintelligence. Additionally, the Council President must have knowledge of and evaluate all operations undertaken by the entities that obtain and work on intelligence.
- Regulating and strengthening the role of the National Intelligence Council as a body at the highest level.
- Strengthening the intelligence systems of the National Police and the Ministry of the Interior.
- Establishing a professional career for intelligence agents in order to have qualified professionals with university training.
- Creating a national office to monitor the professional ethics of civil servants that includes a central administration for access to classified documents

B.6. Separate National Defense from Internal Order and Public Security in the Constitution (and by extension, in secondary legislation). This must lead to a policy in which the Armed Forces do not insert themselves in matters of internal order or public security, except in grave circumstances expressly established by the Executive within the rules governing states of emergency.

B.7. Define the National Police as a civilian nonmilitarized institution, both constitutionally and legally. Modernize the career path for police agents in accordance with the National Police's definition as a civilian institution.

B.8. Reinforce, through explicit mention in the Constitution, the function of the Ministry of the Interior as the political and administrative authority that organizes and directs the police in the accordance with the law and in order to guarantee public order, the prevention of crime, and the application of the law.

B.9. Implement changes in military education and curricula to train officers with firm democratic values, respect for life and personal integrity, and loyalty to democratic authority.

B.10. Establish a new code of ethics that prominently incorporates the principles of democracy. In this new code of ethics the following must be incorporated:

- Officers shall swear not only to defend the nation but also the principles upon which it is based, as contained in the Constitution.

- Soldiers and officers shall commit themselves to the respect of human rights.
- Soldiers and officers shall be instructed that unconstitutional or illegal orders cannot be obeyed.
- Soldiers and officers shall be instructed that the Armed Forces belong to the nation and not to the government.
- Soldiers and officers shall be instructed that they are also citizens and as such have rights and duties.
- Reporting a superior for committing crimes does not constitute insubordination.

B.11. Create a Military Legal Office [*Defensoría Militar*] charged with processing complaints and formulating recommendations for handling relations within military institutions.

B.12. Modernize continuing education and training in ethics and human rights for the police as members of a civilian institution.

### **Recommendations for Reforming the Administration of Justice**

These recommendations cover three areas: strengthening the independence and autonomy of the administration of justice, complying with due process and respect for human rights, and making changes in the penitentiary system.

C.1. Strengthen the independence of the system for the administration of justice, including the independent system for appointment, evaluation, and sanction of judges and the reestablishment of a judicial career and of the Public Ministry.

C.2. Establish a judiciary with tenured, rather than provisional, or substitute judges.

C.3. Incorporate the military court into the civilian judiciary under the authority of the Supreme Court of Justice through constitutional and legal provisions.

C.4. Create an autonomous entity responsible for the Program for the Protection of Victims and Witnesses.

C.5. Establish a specialized temporary system for trying cases of human rights crimes and violations. This system must include:

- A chamber of the Superior Court of Justice of Lima with national jurisdiction.
- A coordinating Prosecutor's office.
- No fewer than three specialized criminal courts, with responsible people with knowledge of and experience in human rights and international humanitarian law.

- No fewer than eight specialized prosecuting offices, three of which must be in Lima and five in the provinces (two in Ayacucho, and one each in Huánuco, Huancayo, and Abancay).

C.6. Initiate an integrated system to deal with the issue of persons disappeared during the internal armed conflict from 1980 to 2000. The TRC proposes the creation of a National Commission for persons disappeared during the armed conflict as an autonomous institution that will coordinate and supervise a National Plan for Forensic Anthropological Interventions. This Commission will be made up of the Public Ministry, the Ombudsman, the International Red Cross, churches, and civil society institutions.

C.7. Incorporate into legislation advances in international legal instruments covering the administration of justice and due process. Expressly establish in the Constitution the constitutional superiority of treaties relating to human rights.

C.8. Initiate a sustained program for the training of judges, prosecutors, and lawyers in Human Rights, Humanitarian Law, and democratic culture.

C.9. Create a specialty, within the Public Ministry, for investigating human rights problems.

C.10. Grant judicial authority for the permanent exercise of broad control over states of emergency.

The following recommendations cover reform of the penitentiary system:

C.11. Define an institution to specialize in penitentiary matters.

C.12. Modernize the Code of Criminal Procedure to make it consistent with penitentiary realities.

C.13. Implement the Regulations of the Code for Criminal Enforcement [*Código de Ejecución Penal, which deals with post-sentencing matters*] DS 023-2001-JUS.

A general law such as the Code for Criminal Enforcement warrants elaboration through regulations that clarify its scope and contents, providing those working in the prison system with clear and precise guidance for action. Moreover, such regulations provide the users of the system (prisoners, family, human rights organizations, etc.) with a public instrument that allows them, when defending the rights of the imprisoned, to hold oversee the actions of prison officials.

C.14. Establish the necessary procedures and institutional structures for the investigation and resolution of requests for pardon from individuals convicted of terrorism who allege their innocence.

C.15. Reaffirm in the Constitution that the goal of the penitentiary system is reeducation, rehabilitation, and reintegration of prisoners into society (as specified in the Constitutions of 1979 and 1993).

C.16. Cease the indiscriminate transfers of male and female prisoners, in favor of incarceration near families, and concentrate prisoners convicted of terrorism in a few facilities to improve treatment and security.

C.17. Treat prisoners convicted of crimes of terrorism or treason according to their specific circumstances, differentiating between affiliation and conduct, e.g., prisoners from the PCP-SL and MRTA who are no longer members and have repented, and those who allege innocence. In these cases, preference should be given to alternative measures such as restitution of penitentiary benefits and access to the commutation of sentences.

C.18. Improve the conditions of the penitentiary population in terms of access to basic services (food and health).

### **Recommendations for Reforming Education to Promote Democratic Values**

D.1. Place emphasis on educational policies designed to transform the school into a place that respects the humanity of the students and contributes to the comprehensive development of their personalities.

D.2. Establish a curriculum that stimulates knowledge and orients it toward well-being in order to achieve comprehensive development and move away from the tendency toward violence.

D.3. Promote education on respect for ethnic and cultural differences. Adapt schooling in all its aspects to the ethnic, linguistic, cultural, and geographic diversity of the country.

D.4. Reinforce instances of participation and democratization in the school.

D.5. Discipline based on punishment and threats does not contribute to the construction of a culture of peace; worse still, it generates violence. We propose prohibiting and punishing the use of all forms of corporal punishment or of humiliating practices as a form of discipline and exercise of violence.

A particularly critical area is the rural school, especially in the regions most affected by the violence. Here we suggest the implementation of a special program that includes:

D.6. Pay urgent attention to the most vulnerable population: begin with the youngest in the poorest regions. Especially, encourage early education for boys and girls from 0–5 years, taking into account the ethno-linguistic and cultural diversity of the country, and developing, as

appropriate, scholastic and nonscholastic means for comprehensive services (including health and diet).

D.7. Initiate a literacy plan with priority for adolescent and adult women in rural areas.

D.8. Redefine education with respect to contents, methodologies, and material covered to facilitate access to the labor market, placing emphasis on the rural population.

D.9. Return dignity to and improve quality in rural schools. This requires changing and adapting the conceptual underpinnings of the curriculum so that it reflects the reality of the students, returning dignity to rural schools so that they are places that provide a standard of decorum for study, providing sufficient and creative incentives to educators who opt to work in rural schools so that good or even the best teachers go, and promoting the active support of rural schools from state agencies for education and health.

### **3. COMPREHENSIVE PLAN FOR REPARATIONS**

The Final Report includes a Comprehensive Plan for Reparations for the victims of the violence. Implementation and execution of the Plan depends on the existence of the clear political will to put it into practice and the cumulative sum of many contributions and efforts. The TRC considers a *victim* to be all those people or groups of people who, because of the internal armed conflict experienced by the country from May 1980 through November 2000, have suffered acts or omissions that violate the norms of international human rights law. A *beneficiary* is any victim who shall receive some benefit, whether symbolic or material, individual or collective, from the Comprehensive Plan for Reparations (PIR [the Spanish acronym for *Plan Integral de Reparaciones*]). In addition to the direct victims of documented violations, the conflict affected a broader universe: the relatives of the victims, and groups that, because of the concentration of massive violations that occurred in their midst, suffered collective harm and the violation of their collective rights. Beneficiaries may be individual and collective. With respect to the individual, the harm done directly to the person or to their closest relatives is recognized, and with respect to the collective, the damage done to the common social fabric is recognized. These realms are not mutually exclusive. Beneficiaries may be eligible for both individual and collective reparations and vice versa, as long as the same benefit is not duplicated.

The plan is composed of the following programs:

### **Symbolic Reparations**

The TRC proposes that some symbolic acts be developed in the form of a series of civic rituals that are directed at establishing a new social pact. These symbolic acts should also establish markers demonstrating the will of the State and society to ensure that the acts of violence and violations of human rights that took place from 1980 to 2000 are not repeated.

The objective of symbolic reparations is to restore the social ties that were torn apart by the violence between the State and the people, and among the people themselves, through a public acknowledgement of the harm inflicted by the acts of the subversive groups and the acts or omissions of the State, so as to promote national reconciliation and the strengthening of a sense of solidarity on the part of Peruvian society as a whole toward the victims.

The components of this program are: public gestures, acts of acknowledgement, memorials or sites of memory, and acts that may lead to reconciliation.

### **Health Reparations**

The objective of this program is to help the population affected by the armed internal conflict recover its physical and mental health, reestablish social support networks, and build capacity for personal and social development. All this will support the victims in the development of the autonomy necessary for individually and collectively reconstructing their expectations for the future, which were cut short by the armed conflict.

### **Education Reparations**

The general objective of the Program for reparations in the area of education is to provide facilities and new or better opportunities for access to those persons who, as a result of the armed internal conflict, lost the chance to receive an adequate education or complete their studies.

The components of access to and restitution of the right to education are: waivers of tuition and monthly allowances for the beneficiaries, comprehensive scholarship programs, and adult education.

## **Restitution of Rights of Citizenship**

The general objective of the Program consists of completely and effectively reestablishing the civil, political, and citizenship rights of the population affected by the actions or omissions of the State during the armed internal conflict, leading to their legal rehabilitation. Thus a sector of society needs preferential access or priority treatment in order to ensure this sector's equal status in the exercise of their rights with respect to other citizens.

The program includes: regularizing the legal status of the disappeared and those with arrest warrants; expunging police, judicial, and criminal records; regularizing the status of undocumented individuals; providing legal aid; and making these processes free of charge [for beneficiaries].

## **Program for Economic Reparations**

Economic reparations are part of the State's recognition of the harm inflicted, losses suffered, and the emotional distress endured by the victims of the internal armed conflict. These reparations symbolize the public effort and recognition of the will to reestablish conditions of justice and to compensate for damages suffered by citizens. Economic reparations also contribute to the creation of a new social pact based on the reduction of exclusion and the respect for and guarantee of human rights and the rule of law.

The objectives of the economic reparations program consist of economically compensating emotional and economic damages sustained by the victims and their families as a result of the internal armed conflict, and helping victims and their family members to be able to imagine a life in the future that includes dignity and well-being.

### **Beneficiaries**

The following will be considered beneficiaries of the economic reparations program:

- Relatives of victims who were murdered or disappeared;
- Individuals who were permanently disabled, whether physically or mentally, partially or totally, and whose disability is the result of rape, torture, injuries, or wounds described by the TRC and which occurred during the period of internal armed conflict;
- Innocent people who were imprisoned;
- Rape victims; and
- Children born of rape.

Additionally, and only as beneficiaries of nonmonetary economic reparations in the form of services, all individual beneficiaries will be included.

## **Components**

The economic reparations program of the Comprehensive Plan for Reparations is composed of the following components (explained in detail in the Final Report of the TRC):

- Economic reparations in the form of pensions and/or compensation, composed of five [different] measures: (1) for relatives of the dead or disappeared; (2) for those permanently, partially, or completely disabled, either mentally or physically; (3) for persons unjustly imprisoned; (4) for rape victims; (5) for children of rape.
- Economic reparations in the form of services, composed of complementary services that grant preferential access to state housing and employment programs.

## **Collective Reparations Program**

The objective is to support the reconstruction and consolidation of the collective institutional nature of the communities, settlements, and other population centers that, as a result of the period of violence, lost their social and physical infrastructure, either partly or completely. It is also to compensate for the loss of capital suffered by entire populations, providing them with technical resources and with the capital for comprehensive reconstruction.

Beneficiaries of the Collective Reparations Program include peasant communities, native communities, and other population centers affected by the armed conflict as well as organized groups of displaced people who have not returned to their affected communities, in their places of insertion.

The components of the program are:

- Institutional consolidation
- Recovery and reconstruction of the productive infrastructure
- Recovery and expansion of basic services
- Employment and income generation

## **National Agency for Coordination and Supervision**

In order to make the reparations plan viable, the TRC recommends the creation of a national agency charged with coordinating and supervising the implementation of the reparations program. This entity must include legal counsel for the determination of the victims, based on the same criteria used by the TRC, and for the determination and accreditation of the beneficiaries.

The Commission recommends that assistance be provided to the potential beneficiaries of the PIR to access the benefits to which they are entitled, and that programs be developed for dissemination, information and training, in coordination with the Executive's regular agencies, through the Justice Ministry's network of free legal clinics, and with the support of the Ombudsman.

Management of the Program must include criteria for confidentiality in granting benefits in order to avoid any type of social stigma or discrimination against the beneficiaries.

The TRC recommends the creation of a *National Reparations Fund* to finance the components and actions of the Comprehensive Plan for Reparations to be managed by the national agency charged with the global management of this plan. This fund must be supported principally by resources from the national budget because that is the only way to ensure the financial viability of the PIR in the medium term and to demonstrate that implementing reparations is the responsibility primarily of the State. Therefore, the Commission recommends allocating a special budget line to finance the reparations fund. The TRC also believes that the Reparations Fund may be financed in part by extraordinary funds. Therefore, it is recommended that part of the ill-gotten monies that have been recovered be allocated for the financing of the Fund. These resources are currently available from the Special Fund for the Administration of Money Illicitly Obtained from the State (FEDADOI [*Fondo Especial de Administración del Dinero Obtenido Ilícitamente en perjuicio del Estado*]).

Finally, the TRC calls upon the international community to show solidarity with the victims of the violence by actively participating in the complementary financing of the PIR. The Commission believes that international cooperation may contribute to the financing of the PIR through diverse routes, one of which would be the creation of a mechanism for exchanging foreign debt for projects directly linked to the reparations policy.

#### **4. NATIONAL PLAN FOR FORENSIC ANTHROPOLOGICAL INVESTIGATIONS**

The complexity of the internal armed conflict, specifically with respect to forced disappearances and extrajudicial executions and the number of victims generated, requires tools that facilitate forensic anthropological interventions employing different approaches, adapting them to the socio-cultural circumstances.

One of the most important issues is the exhumation and identification of the victims of serious violations of basic rights for humanitarian as well as judicial purposes. The humanitarian work is primordial and progresses through the discovery, identification, and restitution of human

remains to the families. This allows the families access to the legal documentation necessary for resolving problems of inheritance generated by the disappearance of relatives.

However, it is crucial that this humanitarian purpose converge with the objective of imparting justice. Thus, there must be appropriate judicial processes that include the discoveries as part of the elements of proof to establish the facts and circumstances that led to the disappearance of the victims (time and place, perpetrators, among others).

Public institutions have a special responsibility to carry out this process. But it is important that humanitarian organizations and the international community also collaborate.

The TRC has produced a National Registry of Burial Sites based on the information obtained during its investigations. At the end of its mandate, the TRC had registered 4644 burial sites across the country and had carried out preliminary documentation of 2200 of these.

The areas where the National Registry of Burial Sites was implemented and carried out included territory covered by the following [TRC regional] offices:

- Northeastern Office (San Martín, Huánuco, Ucayali)
- Central Office (Cerro de Pasco, Junín, Huancavelica)
- South Central Office (Ayacucho, Apurímac, Huancavelica)
- Southern Andes Office (Apurímac, Cuzco, Puno, Madre de Dios)

The compiled information has been systematically organized in a Data Base specially designed for this purpose. The Data Base records the general descriptive aspects of each of the registered sites, as well as graphic and photographic information, and is linked to a geographic data base that requires further analysis in order to obtain concrete results.

An Pre-mortem Data Base has also been considered that would include information from 1504 data forms of a total of 1884 data forms collected by the TRC during its mandate.

## **General Aspects**

### **-Coordination and Supervision**

A permanent, interinstitutional, multidisciplinary work group (the Public Ministry, Ombudsman and representatives of civil society) will assume the coordination and supervision of the forensic anthropological investigations. The members of this group must include:

### **-The Participation of Forensic Experts**

The participation of forensic experts in the several stages of the forensic anthropological intervention is of vital importance. Specialists should be included from all forensic fields:

medicine, anthropology and archeology, dentistry, and especially the various specialized areas of crime analysis.

### **-Stages of the Investigation**

The forensic anthropological intervention must progress through a series of successive stages that facilitate an optimal completion of the cases, or that achieve an adequate construction of them. The stages that the forensic anthropological intervention must adhere to are as follows:

- Preliminary National Investigation and Registration and Inspection of Sites
- Inspection and exhumations
- Analysis and identification of victims

### **Development of Normative, Legal, and Technical Aspects**

**-Normative and Legal Aspects.** The legal norms required to implement the National Plan for Forensic Anthropological Intervention must take the following into account:

- The creation of a National Commission for Persons Disappeared during the internal armed conflict between 1980 and 2000.
- The creation of an Office of Persons Disappeared because of the internal armed conflict (OPD) made up of the following operational units: a Unit Specialized in Preliminary Investigations of Disappeared Persons; Evaluation Unit, Analysis, Exhumation and Recovery of Mortal Remains and Evidence; Post-Mortem Analysis Unit, Victim Identification Unit, Legal Unit, Computer and Technical Support.
- The Data Base should become a means for continuing the work on cases opened during the TRC's mandate. To the extent possible, it should also include cases pursued by other institutions to facilitate their overall, scientific, and impartial management and incorporation as one of the principal issues of national interest.

**-Prosecutorial Investigation.** It is crucial to support the prosecutor's office in its technical-legal aspects, infrastructure, and material and human resources. With respect to human resources, the Special Prosecutor must have access to a team of Prosecutors to cover all the territorial jurisdictions where cases of human rights violations are reported. These Prosecutors must have a deep ethical and professional commitment to the investigations being carried out as well as a broad understanding of their scope and limitations.

**-Accreditation of Experts.** The expert assigned to the cases must be highly trained in Forensic Archeology and Anthropology (forensic surveying and archeological excavation, cartography, geography, and graphic recording, as well as estimation of age, sex, height, lateral characteristics, pathologies and other identifying characteristics such as observation of wounds and causes of death in skeletal remains). They must also have a background in International Human Rights Law and in International Humanitarian Law.

**-Expert Report.** The Expert's report, which will be delivered to the specialized prosecutor, will report on medical-legal and forensic anthropological questions as the principal results of the joint work. It will contain annexes of dental and ballistic analyses, descriptions of clothing and personal effects, and documents associated with the bodies that provide the authorities with sufficient evidence in support of the expert report.

**-Final Disposal of the Remains and the Legal Condition of the Disappeared.** A technical and legal mechanism must be established that will provide for temporary internment of the human remains if identification is not possible.

**-Protection of the Information.** All the documentary and testimonial information that is generated by the National Registry for Burial Sites, including testimonies and details from the pre-mortem forms, the postmortem analysis, and genetic information, must be protected.

**-Technical Aspects.** The technical aspects will need to include:

- Adoption of Protocols and Documentation Cards, and editing of reports.
- Development and updating of logistic infrastructure.
- Preparation of programs and projects to obtain lines of financing.

#### **-Implementation of the National Plan for Forensic Anthropology Investigations**

- **Evaluation Phase.** Evaluation is made of cases that are under investigation, cases in which the human remains are at risk of disappearing or of being seriously altered, and cases that have the strongest foundation at the preliminary investigation level. Completion of this part of the investigation will provide the basis for strategies to begin the subsequent processes of exhumation and analysis.

- **Operational Phase.** From the results reached during the first phase a significant number of sites and cases will become available for examination. In this stage specific strategies for investigation

can be adopted and developed, and then applied to those cases that fall within the Regional Plans for Intervention.

– **- Quantity of Annual Interventions.** The quantity of interventions and cases per month and per year will depend on the complexity of the cases and logistics. Several “small” cases could be pursued in a short period of time, or there may be cases that require a greater amount of time and resources. It is important to clarify that two or more cases may be undertaken only when the necessary operational infrastructure is available, considering the type of demands generated by these interventions. It is very important that no cases remain inconclusive in any intervention and that, once the Plan is operational, that there is at least one intervention a month.

## 5. MECHANISMS FOR FOLLOWING THE TRC’S RECOMMENDATIONS

These recommendations have diverse characteristics, and because of their complexity and diversity require a coherent, ordered process. The TRC therefore recommends the following:

- a. That a prudent timeframe be granted for the technical and administrative closing down of the TRC, including the dissemination of this report.
- b. That an Inter-institutional Working Group similar to the one that led to the Truth and Reconciliation Commission, be created to draft legislative and other proposals in the short term.
- c. That Congress be asked to consider the adoption of the law allowing the creation of a public agency to centralize decisions over the long term.

### **The Transition: Technical and Administrative Closure**

The TRC’s widespread efforts allowed it to collect abundant information that is part of the documentary record that must be transferred to the Office of the Human Rights Ombudsman for its safekeeping and administration. Much of this information must be copied or saved in an electronic format for its proper care, and some is confidential and must be delivered in an organized manner directly to the Ombudsman. Furthermore, administrative, accounting, and financial reports must be issued in order to provide a scrupulous accounting of the money received through the various cooperation agreements signed within the framework of projects of the United Nations Development Program. Similarly, it is important to transfer the assets to the President of the Council of Ministers in an organized fashion so that their legal disposition and use can be determined. The TRC recommends that most of these assets be assigned to the

Ombudsman's office in accordance with the functions that office is required to fulfill in carrying out these recommendations.

### **The Inter-institutional Working Group**

The TRC was established through a proposal from the working group created by Supreme Resolution no. 304-2000-JUS of December 9, 2000. Similarly, the TRC suggests that the Executive convene an Inter-institutional Working Group to organize its recommendations, contribute to the dissemination of the final report and submit specific proposals to the corresponding public agencies. This group could be created by administrative decree and could have a term of no more than five months to complete its work. It could be established immediately, without affecting the technical and administrative work that is recommended above. Members of the group should include sectors of the Executive mentioned in some of the recommendations (the Ministries of Women and Social Development, Justice, Economy and Finance, the Interior, and Defense, among others), the Human Rights Ombudsman, as well as representatives of the churches (National Evangelical Council and the Peruvian Episcopal Conference) and civil society, especially the human rights organizations. It ought to be headed by an independent well-known figure appointed by the Executive and be staffed by a small professional team responsible to the Human Rights Ombudsman.

At the end of its term, this Working Group could present the following results:

- A plan for implementing recommendations that are the responsibility of the Executive branch, including the responsibilities of the appropriate sectors, a timeline for implementation and an oversight mechanism.

- Draft legislation that might be submitted to Congress by the Executive branch, relating to the various recommendations made by the TRC throughout its report and which require legislative initiatives.

- Proposals for administrative decisions that lie within the province of the Judiciary or within the authority of other constitutionally autonomous institutions.

- A National Dissemination Plan for the Final Report, its conclusions, and recommendations.

No member of the TRC shall form part of this Working Group, nor of any other mechanism resulting from its recommendations. This is a unanimous decision of the Plenum of the Commission.

### **The National Council for Reconciliation**

In January 2003, the TRC began research on draft legislation that would give a substantial push to the implementation of its recommendations. The bill was the subject of a number of consultations with entities within the Executive branch, Congressional representatives and civil society. It was even partially incorporated in two legislative initiatives that are currently on the agenda of the Congress of the Republic (Bill No. 7045 and No. 6857). The following is the original version:

# LAW ESTABLISHING THE NATIONAL COUNCIL FOR RECONCILIATION<sup>3</sup>

## TITLE I THE OBJECTIVE OF THE LAW

### Singular Chapter

#### Article 1- Objective of the present law

1.1 This Law creates and regulates the National Council for Reconciliation, as a public agency responsible for the development and implementation of the recommendations of the Truth and Reconciliation Commission. The law also delegates authority to the Executive Branch to legislate on this matter.

1.2 The recommendations of the Truth and Reconciliation Commission (hereinafter “TRC”), created by D.S 065-2001-PCM, are developed and implemented in accordance with the provisions in this Law consistent with principles of progressive advancement and equity.

1.3 The TRC’s conclusions and recommendations constitute public documents for the purposes for which they were formulated. The Conclusions and Recommendations and the report that supports them are attached hereto as an annex.

## TITLE II THE NATIONAL COUNCIL FOR RECONCILIATION

### Chapter 1

Creation, objectives and composition

#### Article 2- Creation of the National Council for Reconciliation

2.1 The National Council for Reconciliation (hereinafter “the Council”) shall be created as a decentralized public agency of the Presidency of the Council of Ministers with the legal status of a public entity, and technical, administrative, economic and financial autonomy, with the purpose of centralizing the decisions for developing and implementing the recommendations of the TRC.

2.2 The Council has national jurisdiction and is based in the city of Lima.

#### Article 3- Objectives of the National Council for Reparations and Reconciliation

Objectives of the Council include:

- a) Implementing and developing the TRC’s recommendations, through actions, norms and policies that articulate the proposals of public and private institutions,
- b) Formulating and carrying out specific policies that tend to strengthen the process of national reconciliation,

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<sup>3</sup> TR note: As noted in the foregoing text, this is a draft law prepared by the TRC, and is not in effect. This draft was not presented to the Peruvian legislature.

- c) Coordinating and executing the policy for comprehensive reparations, subject to the provisions of this Law and within the framework of the available financial resources,
- d) Proposing the institutional reforms indicated in the TRC's recommendations, including formulation of the appropriate legislative initiatives, which shall be submitted for consideration to the Council of Ministers.

**Article 4- Composition of the National Council for Reparations and Reconciliation**

The Council is constituted in the following manner:

- a) An independent figure of recognized prestige and moral fiber who will preside over it, named by the President of the Republic;
- b) Two representatives of the Executive, representing the Inter-ministerial Committee of Support for the Council. These representatives must hold at least the rank of Vice-Minister;
- c) The Human Rights Ombudsman; and,
- d) The Executive Secretary of the National Coordinating Committee for Human Rights

**Chapter II**  
**Consultative Committee of Victims of the Violence**

**Article 5- Consultative Committee of Victims of the Violence.**

The Consultative Committee of Victims of the Violence is made up of seven representatives of the victims of crimes and/or violations of human rights committed between May of 1980 and November of 2000. The Consultative Committee assists in meeting the objectives of the Council, receives the information that it may request, and responds with regard to matters put to it for consultation.

The members of the Consultative Committee are appointed by the President of the Republic based on the proposals of victims' organizations, taking representativity into consideration.

**Article 6- Inter-ministerial Committee in Support of the National Council for Reconciliation**

An Inter-ministerial Committee in Support of the National Council for Reconciliation shall be created and will be presided over by the President of the Council of Ministers. The Committee will be made up of the Ministers of Defense, the Interior, Justice, Economy and Finance, and Women and Social Development. The Inter-ministerial Committee elects from among its members two representatives on the Council. Their purpose is to make the Council's decisions viable, and coordinate the support of the Executive Branch.

**Article 7- Functions and Authority of the National Council for Reconciliation**

The Council has the following functions and authority:

- a) Issue administrative norms and directives to implement the recommendations of the TRC.
- b) Draft proposed legislation to develop the Council's programs, as well as other levels of norms to be evaluated on a priority basis by the appropriate sectors.
- c) Approve the annual activities plan, the budget, and any other initiative proposed by the Council to third parties.
- d) Direct the general policy of the Council, including the programs that may be created for the development of its recommendations.
- e) Present six-month reports to the Permanent Commission of the Congress of the Republic on advances in its activities, detailing obstacles encountered, and indicating any public institutions whose administration has not made a contribution, if such is the case. The Permanent Commission of the Congress will then call for an explanation of the alleged lack of compliance from the head of the corresponding Sector.
- f) Disseminate annually the results and advances of its work to the public..
- g) Appoint, supervise and if necessary, remove the Executive Director of the Council.

#### **Article 8- Director of the National Council for Reconciliation**

The Director of the Council represents it and directs its activities. The Director is in charge of the corresponding budget and executes the annual plans approved by the Council in Plenum. He is a non-voting Member of the Council .

#### **Article 9- Programs of the National Council for Reconciliation**

The Council oversees the following programs:

- a) Comprehensive Program for Reparations (PIR)
- b) Historical Memory Program (HMP)
- c) Justice Program (JP)
- d) Institutional Reform Program (IRP)

#### **Article 10- Financing and Assets of the National Council for Reconciliation**

The Council's resources include:

- a) Assets acquired by the Truth Commission or that were allocated for its use by international donors or by the Executive. Transfer of assets will be carried out within the budgetary division of the President of the Council of Ministers.
- b) Resources allocated in the General Budget of the Republic, within the budgetary division of the President of the Council of Ministers, for which the Council shall be considered a Decentralized Public Body.
- c) Resources transferred by public institutions within the framework of specific agreements or from existing special funds.
- d) Resources obtained from international donors.
- e) Donations and transfers from individuals or legal entities.

#### **Article 11- Internal Regulations of the Council**

The council approves its Internal Regulations and all other administrative norms required for its functioning. These norms are published in the Official Gazette, *El Peruano*.

## FINAL AND TRANSITIONAL PROVISIONS

### **Article 12.- Time Limits**

The President of the Council and the representatives of the Executive shall be appointed within 30 days following the date this Law enters into force.

The Council shall sit immediately following the appointment of its members. It will have a time frame of three months to establish its internal organization. Subsequently, the Council has 4 years to carry out its objectives. This time limit cannot be extended.

### **Article 12. [sic]- Delegation of Legislative Authority and Complementary Norms**

The Executive is granted by delegation the authority to legislate, within a period of 90 days from the date this Law enters into force, on the following matters:

- a) Components of the Comprehensive Program for Reparations, including the amounts that must be paid individually and collectively to the victims identified as such by the TRC and those who may be determined by the Council. The program will also include components of symbolic, legal, mental and physical health and educational reparations.
- b) Development of the Program on Historical Memory, including legislative modifications of current laws in order to regularize the legal status of persons disappeared because of the violence, as well as insuring the development of the National Plan for Forensic Anthropology Investigations presented by the TRC;
- c) Creation and development of a specialized system of justice that supports the investigation, prosecution and punishment of serious crimes and violations of human rights that may have been determined by the TRC; and,

Within a period of 120 days, the Executive will promulgate the regulatory norms necessary for further elaboration on the subject of this Law and of the respective Legislative Decrees.

### **Article 13- Repeal**

Law No. 25237, Legislative Decree no. 652 and all legal or administrative provisions that are contrary to the present Law, shall be repealed.<sup>4</sup>

### **Article 14- Entry into Force of the Present Law**

This Law takes effect the day following its publication.

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<sup>4</sup>The repeal of these laws means that the Council for Peace disappears. Analysis of the repealed laws indicates that there are no relevant functions that must be assumed by the National Council for Reconciliation.