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President of the Special Procedures Coordination Committee

Gay McDougal

c/o OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Special Rapporteur on Violence against Women

Dr. Yakin Ertürk

c/o OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Dear Ms. McDougal and Dr. Ertürk,

Warmest greetings from the Peruvian National Human Rights Coordinating Committee (la Coordinadora Nacional de Derechos) and REDRESS TRUST.

The Peruvian National Human Rights Coordinating Committee (the Committee) is a collective which brings together 67 non-governmental organisations dedicated to human rights defence, promotion and education in Peru. The Committee has existed for more than 20 years and is the foremost reference institution in Latin America which unites a group of human rights organisations from a single country. It has Special Consultative Status with the United Nations Committee for Economic and Social Rights and is accredited for participation in the activities of the Organisation of American States.

REDRESS TRUST is an international non-governmental organisation whose mission is to assist torture survivors to seek justice and reparation. REDRESS pursues its mission through a number of different means including litigating cases, seeking justice system reform and law reform at a national and an

international level and carrying out research into areas which require legal clarification. As a result of its work in these areas for over 15 years, REDRESS has acquired significant expertise in the field of torture survivors' rights.

On this occasion, we are writing to you in order to bring to your attention the situation of investigations in Peru into cases of sexual violence committed against women during the country's internal armed conflict.

This letter was written in Spanish, as this is the official language of Peru. The Spanish version was already sent to your offices. However, in order to facilitate the understanding of the content of such letter, we have translated it into English.

I. MANDATE OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN AND COMPETENCE TO DEAL WITH THE PRESENT COMMUNICATION

Part of the Special Rapporteur on Violence against Women's mandate¹ is to analyse the general trends and patterns of human rights violations in a particular country or more generally, or the content of existing or draft legislation considered to be a matter of concern² (emphasis added). Taking into account the Special Rapporteur's mandate, the Human Rights Coordinating Committee and REDRESS consider it appropriate to convey their assessment of the situation of the investigations which are being carried out regarding women who were victims of sexual violence during the 20 years of political violence in Peru. In this regard, it is of utmost importance to emphasise the situation of impunity surrounding these cases.

II. SEXUAL VIOLENCE AGAINST WOMEN DURING THE INTERNAL ARMED CONFLICT

2.1 Gender perspective in human rights violations committed against women during the period 1980-2000

During the internal armed conflict which devastated Peru, men were the principal target for both the armed opposition groups and the government forces³. However, women were also directly affected, because of their gender

¹ The United Nations Commission on Human Rights in resolution 1994/45, adopted on 4 March 1994, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences. The mandate was extended by the Commission on Human Rights in 2003, in resolution 2003/45. Since March 2006, the Special Rapporteur reports to the Human Rights Council, as per Human Rights Council's decision 1/102 (Extension by the Human Rights Council of all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights). Special Rapporteur on violence against women, according to Resolution N°1994/95.

² Office of the High Commissioner for Human Rights. Manual of Operations of the Special Procedures of the Human Rights Council, August 2008, pg 12

³ Figures from the Peruvian Truth and Reconciliation Commission show that 80% of the people who were killed or murdered were males.

and because of the roles which they had to assume⁴. Given the gender inequality which persisted and which was exacerbated during the conflict, the problems which women faced remained hidden. As a result of the loss of their husbands or sons who were involved in the armed conflict, widows were forced to assume responsibility for their whole family and also to deal with the phenomenon of forced displacement. The daughters of fathers who had been killed in the internal armed conflict were forced to give up their hopes of finishing their studies and being able to move into a professional career.

In this regard, the Truth and Reconciliation Commission (TRC) stated that: “Women, especially in the rural areas of the country, were victims of human rights violations. However, it is important to emphasize that there was a differentiation based on gender. While with regard to extrajudicial executions, disappearances, torture and detention, violations were committed in a ratio of 10:3 with regard to men and women respectively...”⁵, with regard to sexual assault, women became the main victims. For this reason, the TRC established that “gender violence” took place, given that “...sexual violence affected women for the sole reason that they were women, and it affected them disproportionately...”⁶.

The following table gives a general picture of the way in which women were affected in the internal armed conflict.

WOMEN AS VICTIMS IN THE ARMED CONFLICT	
Women affected by crimes	Human rights violations Women were direct victims of grave violations of human rights, such as extrajudicial executions (50%), detention (27%), torture (23%), kidnapping (17%), disappearances (16%) and sexual violence (10%)
Women affected by crimes committed against family members	Witnesses and complainants Out of the 16,885 people who gave evidence to the TRC, 54% were women. This percentage is even higher in the south-central and north-eastern regions (64% Ayacucho, 63% Huanuco, 61% Ucayali). 24% were directly related to a victim. It was the mothers and sisters of disappeared persons who gave evidence. As majority of those killed were male, women had to witness and confront the conflict as it developed: as widows, orphans and sisters.
Women living in areas affected by the conflict	Everyday life in the conflict Women were affected as they were forced to live with the fear and anxiety generated by incursions and attacks in the population centres, threats, sabotage, electricity cuts, shortages, closure of markets, loss of crops, loss of labour force (through death and migration) etc.

⁴ CEDAW. General Recommendation 19: “The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”

⁵ Loli, Silvia; Espinoza, Eduardo; Agüero, José. *Violencia Sexual en el conflicto armado: Informe Nacional del Perú*. In: *Monitoreo sobre violencia sexual en Conflicto Armado*. Lima: CLADEM. 2007, pg. 220.

⁶ TRC Final Report, Vol. VI, pg. 276

Source: Agüero, José Carlos. *Análisis del rol de las mujeres durante el conflicto armado*. IPRODES PERÚ. 2005. Report prepared using information from the Final Report of the Truth and Reconciliation Committee 2003, vol. VIII.

2.2 Sexual violence as a form of torture during the internal armed conflict

Of the 6,433 acts of torture registered by the TRC, 20% of the victims were women. However, it is important to note the fact that cases of torture were underreported, owing to the fact that torture was often accompanied by other human rights violations such as forced disappearance and extrajudicial execution. Rises in the number of forced disappearances and extrajudicial executions produced greater numbers of cases of torture⁷.

According to data from the TRC, the greatest number of testimonies by female victims of torture were given in the departments of Ayacucho (45%) and Apurímac (11%). The majority of victims were Quechua-speakers, from rural areas with little access to education. For this reason, these women can be said to be victims not only as a result of the fact that they are women; additionally, there are social and cultural factors involved. Sexual violence was recorded in 15 of the 21 departments in the country, with Ayacucho being the department hit hardest by this type of violence.

This analysis is supported by the fact that the TRC itself found that gender inequality was one of the causes of the internal armed conflict. Furthermore, in its Final Report, the TRC notes that of the above-mentioned 20%, the percentage affected specifically by sexual violence has not yet been determined. This lack of certainty regarding the percentage in question is because of the fact that many cases exist where women do not recognise themselves as victims⁸; moreover, underreporting is a typical aspect of sexual violence, principally because of victims' feelings of guilt, shame, or (well-justified) fear of stigmatisation or ostracism by the community⁹.

Equally, the Ombudsman Office noted in its Report N° 80 that, in Peru, the victims of the armed conflict were principally men (86%), compared to a minority of women (13.8%)¹⁰, which leads one to believe that women were the least affected by the internal armed conflict. However, if the information is analysed, one can conclude that, in many cases, women suffered greater effects than men, both in qualitative terms and in terms of percentages, when considered within their own universe of cases.

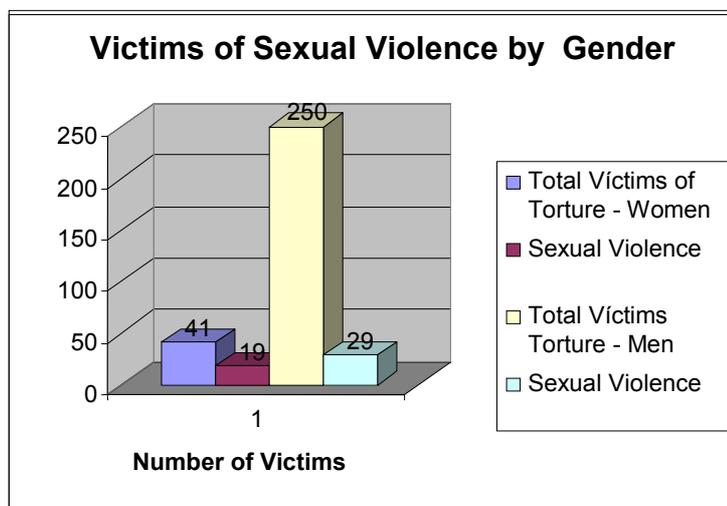
⁷ *Ibid.* See Vol. VI, pg 198, 219 and 270.

⁸ That is to say that formal complaints were not made to the relevant authorities, but rather the cases have come to light as a result of statements made by witnesses who are looking for their relatives who have been kidnapped (executed or disappeared).

⁹ Julie Guillerot. *Para no olvidar más: Mujeres y reparaciones en el Perú*. DEMUS. Lima, 2007. pg. 36.

¹⁰ The Public Ombudsman calculated these figures using a total of 9,508 cases of human rights violations, of which 1,315 were from women (13.8%) and 8,182 correspond to men (86%). There are 11 cases in which the sex of the victim had not been determined. Public Ombudsman, *Ombudsman's Report N° 80: Political Violence in Peru: 1980-1996. An analysis from a gender perspective (Violencia Política en el Perú: 1980-1996. Un Acercamiento desde la perspectiva de Género)*. Lima. 2004. pg.17.

As a result, although on the one hand it can be stated that of every 100 victims, 14 were women, if we take each of these groups as a universe within itself, we find that the universe of women was more severely affected. For example, a review of 291 cases of torture¹¹, of which 41 corresponded to women and 250 to men, reveals that 48 of these cases of torture involved sexual violence. Of these 48 cases, 29 of the victims were men and 19 were women. Although there is a greater number of male victims, of the 41 female victims of torture, 19 confirmed that they had suffered sexual violence, which is equivalent to 46.4%, while of the 250 male victims of torture, 29 stated that they had suffered sexual violence, a figure which constitutes 11.6%¹².



Source: Ombudsman's Office Report N° 80

Likewise, if an analysis is conducted of the type of violations experienced according to sex (disappearance, extrajudicial execution or torture), it is significant that the proportion of women who were extrajudicially executed is greater than that of men. This is the case in the Huancavelica, Ayacucho, Huánuco and San Martín departments. The situation in Huancavelica is particularly alarming considering that 25% of female victims of political violence were executed compared with 8.5% of men who were executed¹³.

2.3 Forms of sexual violence against women

The TRC considers sexual violence against women, in accordance with International Human Rights Law, to be *per se* a violation of that body of law. It should equally be considered as a grave breach of International Humanitarian

¹¹ *Ibid.*, pg 22.

¹² *Cf.* Ombudsman's Office, *supra* nt. 10, pg. 75-76.

¹³ *Ibid.*, pg 57. Data such as this has led us to believe that violence against women cannot be evaluated solely by reference to the number of female victims and the number of male victims. Rather, it is necessary to study the nature of the violence which was used against women, the conditions in which it was used, the context of the violence (military or terrorist, in police or military offices, in kidnappings, etc.) and whether women were victims.

Law, as it took place within the context of the internal armed conflict in Peru. The TRC noted that sexual violence during the period of the internal armed conflict constituted a crime against humanity, as it was a widespread and systematic practice.

Approximately 83% of the victims of sexual violence were submitted to such treatment at the hands of members of the Armed Forces and the National Police, while 11% of such violations can be attributed to the armed opposition groups known as the “Communist Party of Peru - Shining Path” (SL) and the “Tupac Amaru Revolutionary Movement” (MRTA). It is important to point out that, although these armed opposition groups were responsible for a lesser percentage of the sexual violence which took place, they were nevertheless responsible for acts such as forced abortion, forced marriage and sexual slavery. In general, the forms of sexual violence perpetrated by both State agents and armed opposition groups included the following¹⁴:

a) Rape

It was common for more than one perpetrator to take part in rape. There are a large number of registered cases of rape. Many women refer to having been subject to the practice known as “el largo” which consisted of rubbing and then penetrating women using a weapon.

b) Threat of rape or rape with objects

The TRC collected numerous testimonies from women who were subject to these kinds of threats. It was typical for women to be forcibly stripped before these acts were carried out. One testimony recounts that “One night they stripped her, blindfolded her and they said that they were going to give her ‘something to eat’ while they tortured her. They made her sit on an iron rod and they destroyed her coccyx”¹⁵.

c) Electric shocks to the body or genitals

These were applied to the sensitive areas of the body, generally to the nipples and to the genitals. To increase the intensity of the torture, water would be thrown on to the victims¹⁶.

d) Forced nudity, touching, sexual blackmail

Testimonies were collected which referred to the frequency of these practices in the context of detention. It was common for women to be told that unless they undressed themselves, they would be forcibly undressed by their captors. When they were naked, their captors would touch them and threaten to rape them unless they signed a statement or provided information.

¹⁴ Cf. TRC Final Report, Vol. VI, pg. 266 *et seq.*

¹⁵ Cf. TRC Final Report, Vol. VI, pg. 317.

¹⁶ Maria Jennie Dador T., *Mujeres Sobrevivientes Víctimas de Violencia Sexual Durante el Conflicto Armado Interno en Busca de Justicia*. Published by the Seminario Internacional Justicia y Reparación para mujeres víctimas de violencia sexual en contexto de conflicto armado interno. Consejería en Proyectos. Lima, 2007. pg 18. Available at <http://www.pcslatin.org/public/justicia_reparacion.pdf>.

e) Forced Abortion

There are numerous cases of pregnant women who were raped and consequently had miscarriages.

f) Unwanted pregnancy resulting from rape

In the areas of Manta and Vilca, in the department of Huancavelica, in the southern mountain range of Peru, there are many cases of children who do not know the identity of their fathers. There is a very high number of children who are not registered with the real surname of their fathers and, furthermore, are known by nicknames which were commonly given to soldiers such as “Moroco” and “Sinchi”.

g) Forced marriage

This practice came about in order to legitimate rape, as it was commonly believed that if a woman was raped by her husband, even in the context of a purely *de facto* marriage, then it was no longer considered to be rape.

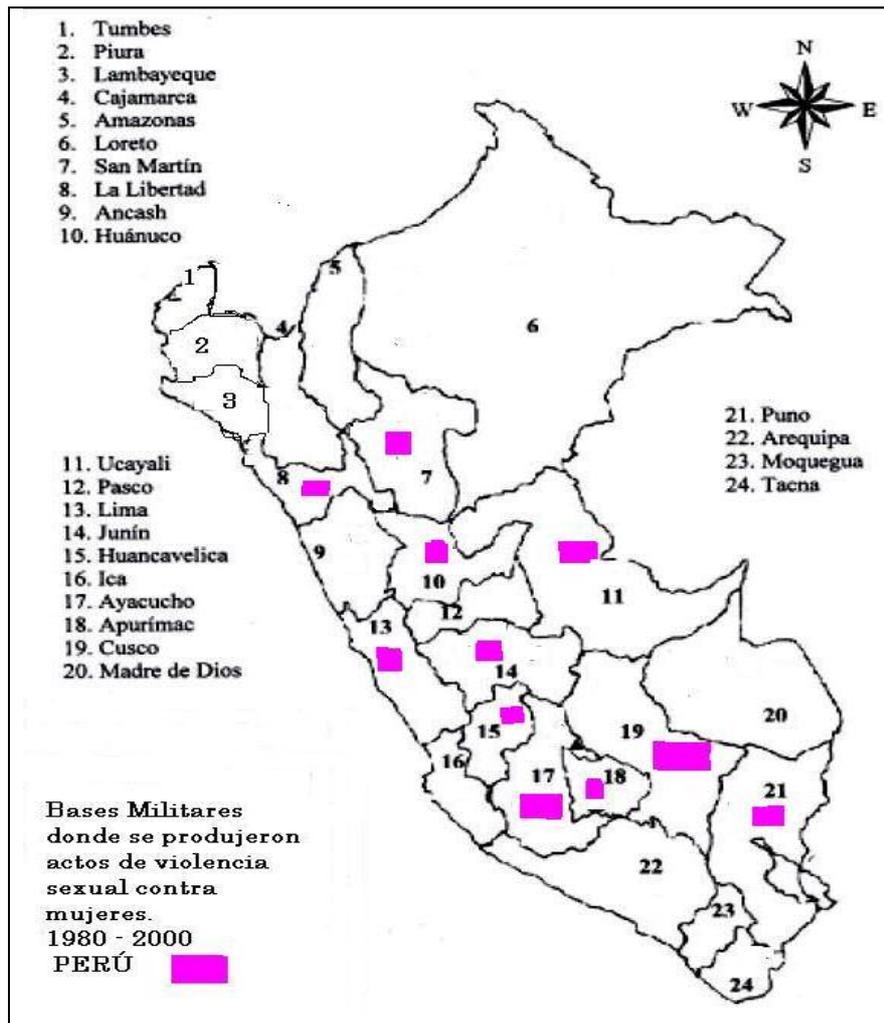
h) Sexual slavery

The testimonies collected by the TRC show that the main perpetrators of this practice were the commanders of both the SL and the MRTA. In the SL camps or “retreats”, the young female members were forced to have sexual relations with the high-ranking officials.

In contrast, the incidents of sexual violence which are attributed to the MRTA took place principally in the context of armed incursions. Although the MRTA had supposedly prohibited this type of practice, “on some occasions, they would pardon their members up to three times for such transgressions”, according to a testimony which the TRC obtained from a witness who was a member of the MRTA since 1988.

2.4 Areas in Peru where the TRC reported incidents of violence against women which constituted torture

The areas in Peru where these acts took place were mainly poor, excluded and marginalized villages characterised by poverty and lack of access to education and where the inhabitants were Quechua-speakers. The map below shows places where there were military bases in which acts of sexual violence were carried out, according to the TRC report.



[Translation of caption accompanying the map: ‘Military bases where acts of sexual violence against women took place’]

2.5 Profile of the victims of sexual violence which constituted a form of torture

The victims of this form of violence were mainly women from rural areas, who were poor and marginalised Quechua-speakers. The TRC report states that the greatest number of victims of sexual violence are to be found in the provinces of Huancavelica and Ayacucho.

The percentage of sexual violence suffered by women in urban areas, such as Lima, was smaller. Typically, women who lived in urban areas were targeted because they “appeared” to be involved in one of the armed opposition groups. They would be detained and forced to sign statements of ‘repentance’, among other documents, which incriminated them as members of terrorist groups¹⁷.

¹⁷ Cf. TRC Final Report, Vol. VI, pg. 328 *et seq.*

III. SITUATION REGARDING THE INVESTIGATION AND PROSECUTION OF CASES OF SEXUAL VIOLENCE AGAINST WOMEN WHICH OCCURRED DURING THE INTERNAL ARMED CONFLICT

The TRC, in addition to its Final Report, presented 47 cases to the Office of the Public Prosecutor (Ministerio Público) for investigation. These cases were emblematic or representative of the human rights violations which took place during the internal armed conflict. They relate to serious crimes which the TRC either investigated itself or where it continued and broadened the investigation. Of the 47 cases, only 2 dealt with sexual violence against women: one being the case of sexual violence in the areas of Manta and Vilca (in the department of Huancavelica); and the other dealing with the rape of Magdalena Monteza (in the department of Lima). Later, other cases were also brought.

3.1 Investigations and the process of prosecution in the cases relating to female victims of sexual violence which constituted a form of torture

3.1.1 Sexual violence in Manta and Vilca

During the period when the military bases were operating, there was permanent sexual violence against women in these areas. On occasion, women were also forced to carry out domestic labour for the soldiers who were stationed in the bases. On top of the physical and mental scars which the victims suffered, the TRC also recorded numerous cases of unwanted pregnancy and of children born as a result of rape.

The TRC concluded that sexual violence was a persistent, everyday practice in the areas of Manta and Vilca. The perpetrators were members of the Armed Forces stationed in the military bases in the area. The testimonies relating to rape committed by military personnel against women in Manta and Vilca, as well as in the towns of Moya and Acobambilla - areas which came under the control of both military bases – indicate that these abuses began from the moment when the military bases were installed and continued until they were withdrawn.

As was the case in other areas of Peru, the women in Manta and Vilca were victims of sexual violence in a variety of situations, including as ‘punishment’ for their participation in or links (real or presumed) with the guerrilla group Shining Path, or when they attempted to ask for information about relatives who had disappeared.

In other cases, their husbands would be detained by soldiers and taken to the military base, at which point the women were left at the mercy of the soldiers. Young women were also specifically made into targets of sexual violence¹⁸.

It should be noted that on October 5, 2007, the Supraprovincial Criminal Prosecutor’s Office (Fiscalía Penal Supraprovincial) in Huancavelica, formally

¹⁸ Cf. TRC Final Report, Vol. VI, pg. 321

charged nine soldiers with the commission of crimes against liberty in the form of violation of sexual liberty¹⁹ classified as acts or forms of torture and, owing to the widespread and systematic nature of the crimes, also as crimes against humanity committed against seven women from the community. In March 2009, the Fourth Supraprovincial Court (Cuarto Juzgado Supraprovincial) in Lima finally decided to open a criminal case against ten soldiers from the Peruvian Armed Forces involved in the rape of seven women, upholding the qualification of the crimes as crimes against humanity and attributing criminal responsibility by means of command responsibility and complicity²⁰.

3.1.2 Cases in the village of Capaya

a) The kidnapping, torture and disappearance of Mercedes Gutierrez Caypani, Gloria Cortez Chipana, Eprocina Chipana and others

In August 1988, a group of soldiers belonging to the Peruvian Armed Forces, from the military base at Capaya, in the Apurímac region, detained the following people on the orders of Lieutenant Marco Antonio Castro:

- Mercedes Gutiérrez Caypani, a woman from a rural area who was illiterate, single, 32 years old and lived with her 78-year old mother. Ms. Caypani was physically maltreated and raped. When her mother complained about this, she too was beaten and forced to carry out military training exercises. The whereabouts of Mercedes Gutierrez Caypani is still unknown – she was forcibly disappeared.

- Gloria Cortés Chipana and her husband. The couple were tied up and hung from the beams of the roof in the local district school. The village's inhabitants tried to defend them but the soldiers and officials threatened to do the same thing to them.

- A number of young women between the age of 18 and 30, were raped after having been submitted to cruel treatment by soldiers from the military unit. Carrasco Huyhua, Eprocina Chipana and Llachua Jauregui Benites are among the victims.

b) The kidnapping, torture and disappearance of Magdalena Bazán Huamaní, Maria Elena Zavala Cayllahua, Rosa Niño De Guzmán Aivar, Rosa Velásquez Marca, Matilde Niño De Guzman (killed) and Luisa Ayvar Niño De Guzmán

¹⁹ When the reported crimes were committed over an extensive period of time, in relation to six of the accused, the charge is for the offence provided by law at the time, which is crimes against public morals, freedom and sexual honour ("delito contra las buenas costumbres, la libertad y el honor sexual").

²⁰ While the soldiers who committed the rapes and other acts of sexual violence are considered as the presumed authors of the crimes, two colonels from the army who were in charge of the military bases at Manta and Vilca were included as accomplices.

On January 11, 1988, members of the Peruvian Armed Forces detained inhabitants of the Rural Community (“Comunidad Campesina”) of Checcasa, in the Justo Apu Sahuaraura district, Aimaraes Province, Department of Apurímac. Magdalena Bazán Huamaní was detained along with two other people. On the way to the military base, they were tortured and interrogated as suspected Shining Path members. In Checcasa, Magdalena Bazán Huamaní’s husband, Juan Esperanza was detained. A few hours later, Juan Pablo Carbajal Hurtado and Maria Elena Zavala Cayllahua were interrogated and brutally tortured for an entire day.

The soldiers and the detainees arrived at a cabin belonging to Manuel Niño de Guzmán, in Sallalli. In the cabin were Matilde Niño de Guzmán, her six-month-old daughter, Luisa Ayvar Niño de Guzmán, Rosa Niño de Guzmán y Rosa Velásquez Marca. The soldiers sexually abused the women. The following day, the soldiers burnt the cabin and took the detainees to the Military Base.

On January 21, 1988, the Political Military Chief (Jefe Político Militar), Colonel Víctor Ernesto Márquez Torres, wrote a report which certified that María Elena Zavala Cayllahua, died in a clash with the military on January 14 in Sallalli.

In total, 13 people were detained, of whom 6 were women, one of whom was a six-month-old baby. To date, the whereabouts of the detainees is unknown and it is presumed that their remains are to be found in Antarumi, the military base at Santa Rosa and Capaya. According to her relatives, the decapitated body of Matilde Niño de Guzmán was found and showed signs of burns in her vaginal area and cuts on her breasts.

Both cases are being investigated by the Office of the Prosecutor, but to date there have been no formal criminal charges brought against those responsible. Indeed, there is a real risk that no charge can be brought against those responsible because of claims that such crimes are subject to a statute of limitations²¹.

3.1.3 The rape of Amalia Tolentino and of Lourdes (a minor)

On April 8, 1993, military operations were being carried out in the Alto Huallaga area in the jungle region in the north-east of Peru. These aimed to wipe out the remaining members of the Shining Path armed opposition group. During the operations, Amalia Tolentino was stopped by a military patrol made up of approximately sixty soldiers, while she was travelling with her husband and a number of other people from Puerto Moyuna to Huánuco. Mrs. Tolentino and a 13-year-old girl called Lourdes were raped by a group of soldiers. The other people who were travelling together with her and her husband were executed and their bodies were disappeared. Mrs. Tolentino managed to survive.

²¹ Rodrigo Uprimny Y. Violación Sexual Como Crimen de Lesa Humanidad. *Amicus Curiae*. Presented to the First Provincial Prosecutor’s Office in Abancay. Lima. 2009. Pg. 73. Available at: http://dejusticia.org/interna.php?id_tipo_publicacion.

The TRC presented to the Prosecutor's Office the case of "The destruction of the left bank of the Huallaga river" ("Los arrasamientos en la margen izquierda del río Huallaga"), which details a series of executions and forced disappearances during military operations carried out in the area between 1989 and 1994. Following this, a preliminary investigation was opened by the Mixed Provincial Prosecutor's Office (Fiscalía Provincial Mixta) in Aucayacu, in the Huánuco region in 2004 for forced disappearance and extrajudicial execution.

However, the rape which Mrs. Tolentino was victim to was not denounced and it was not until later, in the course of the investigation into forced disappearance and extrajudicial execution, that this crime came to light. A psychological evaluation of Mrs. Tolentino was ordered and a statement was taken from her about the incident. No further enquiries were ordered.

In January 2007, a "Prosecutor's Office for Terrorism and Crimes against Humanity" ("Fiscalía para casos de Terrorismo y Lesa Humanidad") was set up, with its original headquarters in the city of Huánuco. The investigation was transferred to this Office. The Office has now moved to the city of Tingo María.

The case is still in the preliminary stage of investigation and, although pressure is being exerted to bring a criminal charge before the relevant judge in order to begin a judicial process for crimes of forced disappearance and homicide as well as for rape, there is very little chance that the latter crime will be included in the charges if they are formalised.

3.1.4 Case of Rosa Díaz Cusi, Primitiva Pahuara, Glora Ramirez Gutierrez

In September 1984, a contingent of approximately 40 soldiers under the command of Lieutenant Colonel Augusto Salaverry Pereyra arrived in the community of Lucmahuayco (Cusco). According to his declarations, Colonel Gil Jara was the Political Military Chief in the Security division of the Armed Forces in Andahuaylas (Apurímac, border with Cusco), while the operational command was under the control of the Company Head (Jefe de Compañía), Major Hugo Figueroa Gonzáles. Both the Armed Forces and the armed opposition groups moved into the community of Lucmahuayco. It was in this context that the following facts took place:

- Gloria Ramirez

The Ramírez Gutierrez family, along with other members of the community, was displaced into the mountain area but continued to receive threats from the armed opposition groups who forced the family to take part in look-out duties.

Gloria Ramírez Gutierrez, along with a number of other people, went to Chamanayoq, to observe whether patrols or the Army were present. For doing this, she was branded as a terrorist. She was detained, raped and executed. Her body was abandoned at the end of the road. Nobody buried her body and, over time, it became covered with weeds.

- Rosa Díaz Cusi and Primitiva Pahuara

The members of the Díaz Cusi family were separated from each other. Some of the family moved to other communities, while Mrs. Rita Cusi Pacheco settled in the Erapata community, along with her two daughters, Rosa and Rufina Díaz Cusi, who were 9 and 15 years old respectively.

According to the victim's mother, in the morning of the events in question, a woman arrived at their house to ask if Rosa could help her cook for the police. While Rosa was doing this, a resident of the area, Julio Puma, recognised her as being from Lucmahuaycco and informed on her, saying that she used to associate "with 'los compañeros'" (referring to the armed opposition groups). She was detained and driven to Lucmahuaycco.

Primitiva Pahuara was 16 years old when soldiers detained her in Aymabamba and accused her of terrorism. She was driven, together with Rosa Díaz, to the town of Lucmahuaycco.

According to witnesses Raúl Gutierrez (Lucmahuaycco) and Antonio Valenzuela (Amaybamba), who acted as guides for the army, Rosa and Primitiva were driven to the school in Lucmahuaycco. The witnesses stated that they had heard screams in the night, which they attributed to torture, and that in the morning the girls were killed.

During the exhumations which were carried out in 2005 in Lucmahuaycco, for other crimes, the bodies of the young girls were found. The Second Mixed Prosecutor's Office of the Convention (La Segunda Fiscalía Mixta de la Convención) in Cusco arranged the opening of a preliminary investigation.

Although an investigation was opened for these three events, in December 2008, the Public Prosecutor's Office provisionally closed the case owing to a failure to identify the perpetrators.

3.1.5 The case of Nazaria Quispe Huamán (The Llusita case)

Llusita is a village in the province of Victor Fajardo, in the department of Ayacucho. This rural community was one of the places most adversely affected by sexual violence against women²². The strong presence of Shining Path, holding meetings with the local community members in the school yard and talking about their activities, was used as to justify frequent incursions by military patrols in the community, during which the soldiers would commit various forms of sexual violence against the women in the community.

Nazaria Quispe Huamani is the sister of Feliciano Quispe Huamani, who was being persecuted by the Army and the Anti-Subversive Civil Patrols (DECAS). In order to exert pressure on the community to hand over Feliciano Quispe, a

²² See documentary: "LLUSITA: No es solo mi problema, es de todo mi pueblo" ("LLUSITA: It's not just my problema, it's the whole community's problem). 2003. Director: Carlos Cárdenas Tovar.(15 min.) Available at: <http://www.youtube.com/watch?v=wZZF02yHtCY>.

group of DECAS members from the community of Circamarca captured Nazaria Quispe Huamani and detained her in the military base at Huancapi. One week later, she was detained again and taken to the military base of Circamarca. On both occasions, Nazaria Quispe was raped by members of the armed forces in the military base at Huancapi²³. At present, the case is being investigated by the First Prosecutor's Office (Primera Fiscalía) in Ayacucho.

3.1.6 Cases which are currently under investigation in the First and Second Supraprovincial Prosecutor's Offices (la Primera y Segunda Fiscalía Supraprovincial) in Ayacucho

Since September 2004, a criminal justice structure has been set up in Peru which is specialised in prosecuting and adjudicating crimes against humanity and common crimes which may have constituted human rights violations²⁴. Within this structure, cases of human rights violations have been heard.

The prosecutor's offices (fiscalías) which have the largest amount of cases under investigation are those in Ayacucho. According to information provided by the Public Prosecutor's Office²⁵, the First Supraprovincial Prosecutor's Office (Primera Fiscalía Supraprovincial Penal) in Ayacucho had a case load of 720 preliminary investigations between 2003 and 2008. During this period, formal criminal charges were only brought in 29 cases. Up until September 2008, of the 358 investigations which were still ongoing, only one formal criminal charge was made.

The Second Supraprovincial Prosecutor's Office (Segunda Fiscalía Supraprovincial Penal) in Ayacucho is in charge of 217 prosecutory investigations proceedings, according to the same source. Not one formal criminal charge has been made in the last two years.

This is the general panorama of the legal cases of human rights violations which are being investigated in Ayacucho. In particular, there are less than twenty legal cases which deal with the rape of women in the context of the internal armed conflict, and these cases involve at least 42 named female victims, as well as others who have not yet been identified.

²³ Cf: Inter-American Commission on Human Rights, Report No 101/01, Case 10.247 and other Extrajudicial Executions and Forced Disappearances of Persons – Peru. October 11, 2001. Para. 61.

²⁴ The National Criminal Chamber (Sala Penal Nacional) was created and four Supraprovincial Criminal Courts (Juzgados Penales Supraprovinciales) were set up in Lima and one in Ayacucho (later, one more will be set up); a Supreme National Criminal Prosecutor's Office (Fiscalía Superior Penal Nacional) was also created, with three Supreme Prosecutor's Offices and four Supraprovincial Criminal Prosecutor's Offices (Fiscalías Penales Supraprovinciales) in Lima and one in Ayacucho. Later, there will be a Second Supraprovincial Prosecutor's Office (Segunda Fiscalía Supraprovincial) created in Ayacucho, and also one in Huancavelica and another in Huanuco.

²⁵ Document N° 627-2008-FSPNC-MP-FN, September 12, 2008, given by the Supreme Coordinating Prosecutor of the Supreme National Criminal Prosecutor's Office and Supraprovincial Criminal Prosecutor's Offices (Fiscal Superior Coordinador de la Fiscalía Superior Penal Nacional y Fiscalías Penales Supraprovinciales) to the Peruvian National Human Rights Coordinating Committee.

Investigations being carried out by the Supraprovincial Prosecutor's Offices (Fiscalías Supraprovinciales) in Ayacucho into the rape of women

Prosecutor's Office	File No.	Name of the victim	Name of the accused
1º FISCALÍA	147-04	Maximiliana Apari and 10 others	LQRR
1º FISCALÍA	149-04	Teodora Fonseca and 3 others	LQRR
1º FISCALÍA	66-05	Nazaria Quispe Huamán	LQRR
1º FISCALÍA	68-05	Margarita Esquivel Chipana and 10 others annexed to file 90-01	LQRR
1º FISCALÍA	15-06	Agripina Esther Saleroza Loayza and 3 others	LQRR(*)
1º FISCALÍA	61-08	Senobia Aedo Vila	LQRR
1º FISCALÍA	82-08	Celestina Barraza Chahuayo, Olga Tenorio Quispe	LQRR
2º FISCALÍA	33-2008	Darfa Arango Mendoza	LQRR
2º FISCALÍA	31-2008	Salomé Arango Mendoza.	LQRR
2º FISCALÍA	141-2007	Dominga Pariona Gonzales	LQRR
2º FISCALÍA	34-2007	Felipa Aparicio Oré y 1 other	LQRR.
2º FISCALÍA	102-2006	Maximiliana Apari	LQRR
2º FISCALÍA	103-2006	Teodora Fonseca y others	LQRR
2º FISCALÍA	198-2006	Méndez Vargas Eulogia	LQRR
TOTAL	14 Proceedings	42 Victims	Not a single perpetrator has been identified

Source: Legal Department of the Peruvian National Human Rights Coordinating Committee. December 2008.

(*) LQQR: Spanish acronym which stands for “Those who may be responsible” (“Los que resulten responsables”).

3.1.7 Group cases for sexual violence as a form of torture which have been investigated / prosecuted under the rubric of other offences

It is important to note that the *modus operandi* of the Armed Forces was to commit rape prior to carrying out extrajudicial executions. The following section will address two emblematic cases of extrajudicial executions of groups of people. It is important to emphasize that the investigation and prosecution of these cases has not included crimes of sexual violence, despite the evidence which exists to support such charges.

a) Putis Case

In December 1984, following an invitation from the army, dozens of families from the communities of Vizcatampata, Cayramayo, Sinhuamachayniyocc, Orcohuasi and Mashuacancha, in the province of Huanta, Ayacucho, sought protection in the military base of Putis from harassment and attacks by the Shining Path group.

However, on the night in question, the families were gathered together and then the men and women were separated. The soldiers insulted the women. They then said that they were going to install a fish farm and ordered the men to dig a hole. When they had finished digging, they were shot in groups of six and buried in the hole which they themselves had dug.

In May 2008, almost 24 years later, exhumations were carried out in five of the mass graves in Putis, in Huanta, Ayacucho. After many days of work and meticulous laboratory analysis, the exhumations revealed the remains of 94 people, of which 23 were women and 48 were children (38 of whom were under 10 years old). Personal belongings were found among the victims' clothes, as well as bullets from firearms. This case is currently being investigated by the Supreme Coordinating Prosecutor's Office (Fiscalía Superior Coordinadora) in Lima. However, the alleged perpetrators, such as for example the ex-General of the Peruvian Armed Forces, Wilfredo Mori, have not attended the appointments scheduled by the Public Prosecutor's Office (Ministerio Público).

b) Accomarca Case

On August 14, 1985, 69 rural villagers from Accomarca, in Ayacucho, were extrajudicially executed in an area called Llocclapampa, by soldiers belonging to the Political Military Command in Ayacucho, under the command of General Wilfredo Mori Orzo. A 'Plan of Intervention' called 'Huancayocc' had been drawn up. The plan was named after a ravine of the same name, where there was activity by armed opposition groups, and it was the aim of the plan to capture and/or destroy the terrorists which were present in the area.

During the morning of August 14, 1985, military patrols moved in to Huancayocc village and violently entered every one of the houses of the inhabitants of the village, ordering the villagers to come to a meeting in the area of Llocclapampa. Some of the villagers were incredibly frightened and believed that the military were going to kill them, so they decided to flee and hide in the brushwood and bushes in the neighbouring areas. However, more than 63 villagers were assembled in a place called Hatumpampa. There, the soldiers separated the men from the women and children and began to beat them brutally. The women were raped.

All of them were locked up in one local house and the soldiers began to shoot them relentlessly. They later began to burn the houses and finally blew them up with grenades. This massacre took place at approximately 8.30am. At around 4pm, after having checked that no one remained alive, the soldiers withdrew. However, they did not notice that a number of villagers had managed to survive, as they had hidden in the bushes. These survivors were witness to this reprehensible act.

In November 2008, two exhumations were carried out by the Institute of Legal Medicine (Instituto de Medicina Legal, part of the Public Prosecutor's Office). At the same time, one of the suspects was freed from prison, having exceeded the maximum period of detention. The other six suspects were also freed. To date,

the case file is with the Tercera Fiscalía Superior Nacional, where they are deciding whether or not to press charges.

3.2 The Perpetrators of Violence against Women during the Internal Armed Conflict

The agents that committed torture, inhuman or degrading treatment included, on the one hand, members of the Peruvian Armed Forces (FFAA) and the National Police (PNP) and members of the Self-Defence Committees, and, on the other hand, members of the Communist Party of Peru - Shining Path (SL), and the Tupac Amaru Revolutionary Movement (MRTA).

3.2.1 State Agents: Armed Forces, National Police, and Self-Defence Committees

With regard to members of the FFAA or the PNP as the authors of these human rights violations, the establishments where the majority of the cases of torture were reported are military establishments (26%) and police stations (18%).

If we consider that the general data shows that 75% of the cases of torture are attributed to State functionaries or to persons under State authority, including “patrollers” (members of the “Rural Patrol”) and the Self-Defence Committees (CAD), the cases of torture acquire greater clarity. One consistent aspect of torture is that it occurs in the first moments of capture and detention²⁶. One frequent form of torture against women, not only physically but psychologically, was the use of sexual violence.

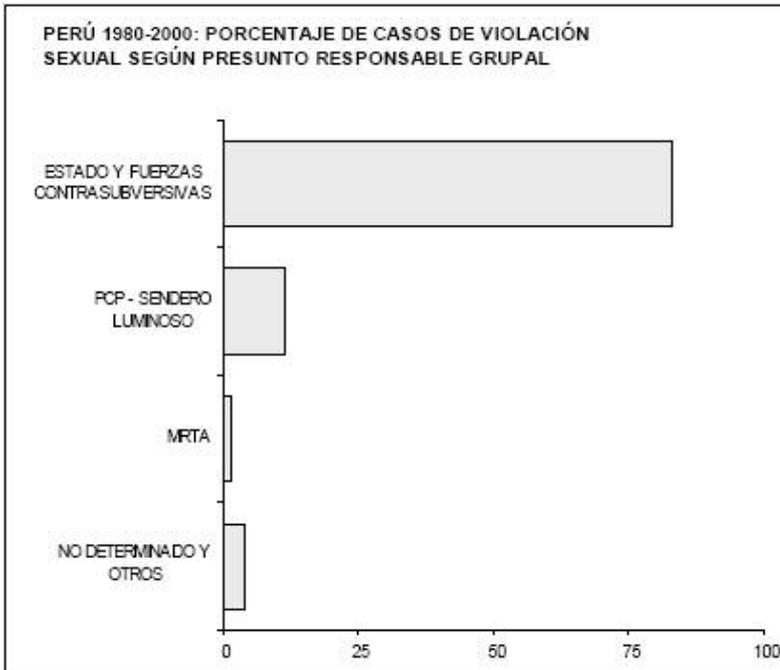
With reference to the perpetration of sexual violence against women as a form of torture, the TRC report notes that there were violations during police and military interrogations, as well as in operations to trace the whereabouts of terrorists or in massacres committed by the security forces. The forms which this violence assumed include the introduction of foreign objects into the vagina or anus combined with electric shocks to the genitals or the breasts, the rape of pregnant women and the rape of minors.

Additionally, rape as a form of torture carried out by armed opposition groups is severely underreported. This is due, among other reasons, to the fact that on the inside of these groups, the women who were forcibly recruited and who on many occasions were the victims of sexual violence, do not denounce these crimes because they are threatened or coerced by the other members of these guerrilla groups.

According to the Final Report of the TRC, 11% of the acts of sexual violence can be attributed to armed opposition groups who committed this type of violation as a form of intimidation, punishment or repression²⁷.

²⁶ Cf. TRC Final Report, Vol. VI, pg. 86.

²⁷ Cf. TRC Final Report, Vol. VI, pg. 282 *et seq.*



[Translation of captions accompanying the chart:
Peru 1980-2000: Percentage of cases of rape, according to group suspected to be responsible
State and Counter-Subversive Forces
Communist Party of Peru - Shining Path (PCP-SL)
Tupac Amaru Revolutionary Movement (MRTA)
Not determined and other]

Source: TRC Final Report, Vol. VI, pg. 198.

IV. DIFFICULTIES IN THE INVESTIGATION/PROSECUTION OF SEXUAL VIOLATIONS AS A FORM OF TORTURE DURING THE INTERNAL ARMED CONFLICT.

4.1 The Perspective of the Victim

One of the principal problems in investigating and prosecuting cases of sexual violence as a form of torture is that consideration of the victim has remained at the margin because of the perceptions they have themselves as women that privilege the wellbeing of their families and communities above their own rights. In this way the cases of many female victims were only identified when they went to denounce what had happened to other family members or ask what had become of their loved ones.

In the case of women that were subjected to sexual violence, they present a profound feeling of shame towards the community, because other members of the community or even their own families apply the same discriminatory criteria that produce such acts. In this way they blame them for having caused the act themselves. Therefore the women victims not only bear the trauma produced by

the act itself but also often have to fight against stigmatization by their community.

- The victims and their families, especially children that are the product of sexual assault, display psychological consequences produced by these acts.
- In many cases, the family of the aggrieved and the community are unaware of the acts of sexual violence or they are not able to recognize them.
- Due to the special nature of the human rights violations of which women have been victims, many of them demonstrated reticence in participating in the investigation or prosecution process of their cases because they are frightened of being marginalized from their family and community.

4.2 The Perspective of the Peruvian Judicial System

- The vast majority of cases were not registered by the justice system when there was an opportunity or were not reported; if they were, the evidence of such cases was not registered. In other words, the direct proof of the commission of the crime does not exist.
- In the cases of victims reporting such incidents, there are numerous testimonies that suggest the complicity or negligence of the medical examiners²⁸ (médicos legistas) at the moment when the medical evidence was registered while they were attending to the female victims. In many cases they refuse to acknowledge the signs of sexual violence.
- Psychological expertise that uncovers the psychosocial consequences of the perpetration of sexual violence as a form of torture is insufficient to demonstrate its existence, in the perception of some judges.
- In this way it generates a form of “revictimization” (or double victimization) on the part of the administrative personnel in the investigation bodies and the judicial operators who maintain an attitude of disdain, distance and insensitivity and, at times, even corruption, that causes victims to stop participating in the investigations or trials.
- Access to justice is difficult for victims because they are completely unable to fund the costs of the judicial process (payment for lawyers, judicial costs, expert witnesses, etc.) This means that the victims are discouraged from trying to move the cases forward.
- The requirement of high levels of proof means that often evidence, for example a victim’s statement, is disregarded or is given lesser evidential value. What is not taken into consideration is that that the situation involves a crime that often takes place within the context of power relations, where the victims are completely and absolutely under the control of the perpetrators.
- There are unjustified procedural delays and little interest from the judicial authorities, as well as little knowledge about how to treat this type of process.

²⁸ Cf. TRC Final Report, Vol. VI, pg. 380

- Neither the Prosecutor's Office nor the Judiciary provide a system of protection to the victims and witnesses, and thus many of them do not want to present their statements to the Prosecutor's Office. The State has not taken any measures to improve this situation.
- There is a permanent refusal on the part of the Ministry of Defense and military bodies to provide the Prosecutor with the required information regarding the suspected perpetrators or the documents regarding the actions and personnel assigned to the zones where the facts occurred.

V. REPARATIONS FOR WOMEN VICTIMS

Measures intended to provide women with rights and remedies are essential, because through them it is possible to push forward policies directed at a broad exercise of citizenship and greater representation and participation²⁹.

Currently in Peru there is an Integral Reparations Plan, Law No. 28592, whose implementation will be monitored by the High Level Multi-Sector Commission (CMAN)³⁰, which is an organization in charge of following-up the actions and policies of the State in the spheres of peace, collective reparation³¹ and national reconciliation. One of the planned actions of the Commission is the elaboration of a Registry of Victims (RUV). This is very important for the identification and location of those affected by violence so that they can access reparation measures; however the Committee has only contemplated the idea of collective reparations.

Additionally, according to Article 3 of Law 28592 as well as Article 45 of the Regulations³² they must only allocate sexual rape as a violation of human rights for which reparation should be granted, overlooking once more the other forms of sexual violence recognized in the final report of the TRC. This means that other crimes of sexual violence such as sexual slavery, forced pregnancy, forced prostitution or forced marriage will remain excluded from reparations. In any case they will only merit reparations if they have occurred together with other human rights violations recognized by the Integral Plan for Reparations.

In light of this, they have presented the Bill No. 2906/2008- CRV that seeks the formation of a new norm, with the status of law, that widen the Integral Reparations Plan approved by the Law No. 28592, and requires that those

²⁹ Julie Guillerot. *Para No Olvidarlas Más. Mujeres y Reparaciones en el Perú*. Lima. Demus 2007. pg 88.

³⁰ Created by Supreme Decree N° 011-2004-PCM; subsequently modified by Supreme Decree N° 024-2004-PCM. Article 4.1 of this Decree refers solely to collective reparations:

The functions of the Commission are:

4.1 *Design a national peace, reparation and **collective reparations** strategy for the Council of Ministers.* (emphasis added)

³¹ According to Article 4 of the D.S 11-2004-PCM; the functions of the Commission include: "*Design a national peace, reparation and **collective reparations** strategy for the Council of Ministers.* (emphasis added). Available at <http://www.planintegraldereparaciones.gob.pe/pdf/DS%20011-2004-PCM.pdf>

³² Supreme Decree 015-2006-JUS published in the Official Diary "El peruano", July 6, 2006. Available at: <http://www.registrodevictimtas.gob.pe/archivos/reglamentoeditado28592.pdf>

persons who have suffered forms of sexual violence other than rape³³ during the internal armed conflict, also be included as victims and beneficiaries for reparations.

Furthermore, it is important to emphasize that for the moment there is only a limited application of the Reparations Plan, owing to a minimal budget, which has meant that it is not even been possible to put together the National Register of Reparations for Victims³⁴.

REQUESTS TO THE SPECIAL RAPPORTEUR

Confronted with this situation we consider it pertinent to submit the present report to the Special Rapporteur to invite her to:

1. Ask the Peruvian State to require the Public Prosecutor's Office and the Judiciary to report about general actions that they have undertaken at the national level in relation to incidents of sexual violence against women in the context of political violence in the country (if they have designated resources to the prosecutors in charge of these investigations, if they have trained officers in these areas so that they perform an adequate investigation, among others).
2. Ask the Peruvian State to provide information on whether they have implemented policies for the protection of victims of sexual violence during the internal armed conflict, to the effect that such victims can make reports without fear of reprisals.
3. Ask the Peruvian State to provide information on whether they have implemented social programs for mental health and rehabilitation for persons who were victims of sexual violence.
4. Ask the Peruvian State to provide information on whether they have a register of boys and girls born in this context or as a result of rape.
5. Recommend to the Peruvian State that they adopt concrete measures to move forward the investigations into cases of sexual violence that occurred during the period of political violence, for example the provision of resources and improvements to the investigation system, as well as training and awareness-raising for those in charge of these tasks.

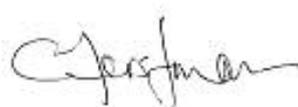
³³ Bill 2906/2008- CRV. Law to expand the Integral Reparations Plan and propose that those persons who have suffered forms of sexual violence other than rape during the internal armed conflict, also be included as victims and beneficiaries for reparations. Available at <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf>

³⁴ Cf. National Reparations Council. Executive Summary – Annual Report. October 2007-2008..Lima. 2008. pg 3. Available at: <http://www.registrodevictimas.gob.pe/archivos/informeannual02.pdf> Also cf. Statements of the President of the CMAN, available at: <http://www.ideeleradio.org.pe/look/portal/article.tpl?IdLanguage=13&IdPublication=7&NrIssue=53&NrSection=50&NrArticle=21654>

6. Recommend to the Peruvian State that they set norms for the protection of witnesses and victims of human rights violations, with special emphasis on cases of sexual violence as a form of torture.
7. Recommend to the Peruvian State that they implement free specialized programs for persons that have been victims of sexual violence during the internal armed conflict.
8. Undertake an Official Visit to Peru. Country visits are a fundamental means through which to obtain direct, first hand information as they allow the direct observation of the human rights situation they facilitate intense dialogue with the competent State authorities, in particular the executive, legislative and judicial powers. This also allows the establishment of contact with the victims, witnesses, international NGOs and local and other members of civil society, academic circles and functionaries of international organisms present in the country in question and the obtention of information from them. Because of this, an official visit to Peru represents the opportunity to understand better, on a national, regional and international level the specific problems they are dealing with.
9. Recommend to the Peruvian State that they accept true responsibility for the process of improving the penal organization Peru according to the Statute of the International Criminal Court with the effect of designate sexual rape and other sexual acts as conduct which, upon verifying the respective elements, qualify as crimes against humanity and war crimes.



Ronald Gamarra Herrera
Executive Secretary
Peruvian National Human Rights Coordinating Committee



Carla Ferstman
Director
Redress Trust: Seeking Reparations for Torture Survivors (REDRESS)

ANNEXES:

- a. Final Report of the Truth and Reconciliation Commission (TRC)
- b. Report of the Ombudsman Office N° 80: Violencia Política en el Perú: 1980-1996. Un acercamiento desde la perspectiva de género.
- c. Table describing the international obligations of Peru under International Human Rights Law

[These documents are only available in Spanish and have been included in the letter written in Spanish].