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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A)  
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1\***

**Peru**

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## I. METHODOLOGY

1. Peru was one of the first countries to return to democracy in the early 1980s. Unfortunately, this coincided with the onset of terrorist violence involving the Shining Path (Sendero Luminoso) and, later, the Túpac Amaru Revolutionary Movement. According to figures from the Truth and Reconciliation Commission,<sup>1</sup> nearly 70,000 people were victims of that violence and the successive responses by the Peruvian State. The process of building democratic institutions and establishing the rule of law was weakened and even delayed for two decades. At the end of the twentieth century this situation worsened owing to an increasingly authoritarian and corrupt regime that tried to cling to power.<sup>2</sup>

2. In late 2000, Peru embarked upon an exemplary process of political transition that has resulted in a democratic State, based on the rule of law and legally organized according to the principle of the separation of powers. The Peruvian State appreciates the important contributions made to that process by the inter-American and universal systems.

3. Peru's transition in the early twenty-first century has led to the adoption of various legal and institutional measures, including the establishment of the Truth and Reconciliation Commission in 2001, the signing of a National Agreement<sup>3</sup> in 2002 by the various political forces and representatives of civil society, and the passage of Act No. 28,480, which amended article 34 of the Constitution, recognizing the right of members of the armed forces and the national police to vote and take part in civic life.

4. Prepared in accordance with the Human Rights Council<sup>4</sup> guidelines, this report covers the period of political transition that began in late 2000. Albeit incomplete, that transition has had a significant impact on the enjoyment of human rights and fundamental freedoms in Peru. Nonetheless, the State acknowledges that there is a long way to go in consolidating and strengthening democratic institutions and the rule of law in Peru.

5. As far as the methodology used for its preparation is concerned, the State bodies responsible, principally the Ministry of Foreign Affairs, working in coordination with the National Human Rights Council, have gathered information from the relevant national agencies and civil society actors involved in the promotion and protection of human rights in Peru. They identified the areas that reflect achievements and best practices together with those posing challenges and where efforts will need to be stepped up or actions rethought. The first challenge that became obvious once the report was completed is the absence of centralized information and reliable statistics on the human rights situation in Peru.

6. Peru is one of the first 20 countries to be examined under the universal periodic review, proof of its commitment to the universal human rights system and, in particular, to the Human Rights Council's institution-building process. As a result it has not been possible to conduct prior consultations with civil society, as had been the intention of the Peruvian State. Nevertheless, it is hoped that consultations will be held in connection with the universal periodic review as a whole until such time as Peru is examined and once the outcome of the review is made known, so that any recommendations that are made can be properly considered and acted upon.

## II. LEGAL AND INSTITUTIONAL FRAMEWORK

7. This chapter has been divided into two sections, outlining the current legislative framework and the institutional framework for promoting and protecting human rights.

### **A. Legislative framework**

8. The 1993 Constitution and the human rights treaties to which Peru is a party constitute the main legal framework for the promotion and protection of human rights in Peru.

9. According to the Constitution adopted on 30 December 1993 Peru is a democratic, social, independent and sovereign Republic. Its government is unitary, representative and decentralized, organized under the separation of powers into executive, legislative and judicial branches, each of them autonomous and independent in accordance with the provisions of article 43.

10. Pursuant to article 1 of the Constitution, protection of the individual and respect for individual dignity are the supreme goal of society and the State. Article 44 establishes that it is a prime duty of the Peruvian State to guarantee the full enjoyment of human rights. There are a number of mechanisms for achieving effective protection of these rights. To this end, the Constitution includes a number of constitutional guarantees.<sup>5</sup>

11. Peru is a party to the seven main international human rights treaties and to the American Convention on Human Rights, among others. Human rights treaties are automatically incorporated into domestic law on ratification by the President of the Republic, in accordance with articles 55 and 56 of the Constitution, subject to prior approval by Congress. They have constitutional rank according to the fourth Final and Transitory Provision of the Constitution which provides that the rules governing the rights and freedoms recognized by the Constitution are interpreted in accordance with the Universal Declaration of Human Rights and with the international human rights treaties and agreements ratified by Peru, which complement the other rights protected under the Constitution. In addition, article 3 of the Constitution guarantees the protection of rights not expressly covered by the Constitution but analogous to fundamental freedoms or based on human dignity.

### **B. Institutional framework for the promotion, respect and protection of human rights**

12. The promotion, respect and protection of human rights entails complementary action on the part of all State powers, the executive, the legislature and the judiciary.

13. The Executive, under the President of the Republic, frames and implements State policies via the 14 ministries and the Office of the President of the Council of Ministers. Various ministries (or sectors) work on activities in areas that directly concern human rights.

14. The Executive Secretariat of the National Human Rights Council,<sup>6</sup> a multisectoral body under the aegis of the Ministry of Justice, advises the Executive on how to promote, coordinate and publicize the protection and enjoyment of fundamental human rights.<sup>7</sup> Another body under the aegis of the Ministry of Justice, the National Prison Institute, is responsible for the prison system throughout Peru.

15. Other ministries working on the promotion and observance of human rights include the Ministry of Education, the Ministry of Women and Social Development, the Ministry of Health and the Ministry of Labour and Promotion of Employment. It is worth noting some of their most important work. The Ministry of Education, responsible for 85 per cent of the education service in Peru, is promoting human development by means of a new education system, including the National Education Project 2021, a State policy for establishing access to exclusion-free education.<sup>8</sup> The Ministry of Women and Social Development, the lead agency for social programmes, has implemented medium- and long-term national plans for improving equity, inclusion and social

development with innovative approaches, and particularly a gender and human rights perspective.<sup>9</sup> Primarily focusing its resources and capacity on a dozen national health strategies, the Ministry of Health has set up a Department of Public Health with a view to offering a rights-based approach to health, with an emphasis on the protection of human dignity.<sup>10</sup> Another new institution is the Office of the Ombudsman for Health and Transparency, responsible for taking action, *ex officio* or on request, with regard to any act or deed that effectively or potentially violates the right to health of individuals, families and the community. In the area of labour, the key policy of the Ministry of Labour and Promotion of Employment is to provide access to decent work, ensuring compliance with legal standards<sup>11</sup> and improving working conditions. To that end the Ministry has implemented various programmes including the Pro Jóven youth job training programme, in which young people aged 16 to 24 are taught a trade free of charge for three months and then given three months' placement in a company, factory or workshop.

16. The promotion, observance and protection of human rights are supported, above all, by the work of the legislature. The main functions of the Congress of the Republic<sup>12</sup> are to represent the Nation, frame legislation, exercise constant control and oversight of the country's economic, political and social development, reform the Constitution where necessary and perform other special functions. Congress debates and adopts laws and takes legislative decisions on human rights; it plays a key role not only in the promotion and protection of human rights, but also in their observance, since its powers of investigation allow it to monitor the Executive's acts or omissions in that regard.<sup>13</sup>

17. Another important institution is the Office of the Ombudsman, an autonomous constitutional body<sup>14</sup> created under the 1993 Constitution and governed by an Organization Act.<sup>15</sup> Its mission is to protect the constitutional and fundamental rights of the individual and the community, monitor the civil service in the performance of its duties and provide services to the public by dealing with queries, requests and complaints.<sup>16</sup> For that purpose, the Office of the Ombudsman issues decisions and reports containing recommendations and suggestions. These have no binding administrative or judicial force but nevertheless serve as important guidelines for the national authorities.<sup>17</sup> The Office of the Ombudsman has played a central role in investigating the cases of people imprisoned on terrorism charges and pardoning those who were sentenced without the observance of due process of law.

18. The observance and protection of human rights are ensured by the judiciary's powers to administer justice through the various levels of courts in accordance with the Constitution and the law. The highest court in Peru is the Supreme Court, composed of Supreme Court Judges, who in turn make up the permanent and *ad hoc* special divisions of the Supreme Court, each of which has its own speciality and jurisdiction throughout the Republic. The Supreme Court is the final court of appeal against sentences handed down by the next lower court, that is to say any High Court of Justice in Peru,<sup>18</sup> which in turn reviews judgements handed down by the courts of first instance, in compliance with the due process guarantee of a second hearing. There is also a special criminal division, which is responsible for prosecuting senior officials of the State accused of committing offences in the course of their duties.

19. There are currently four supra provincial criminal courts, which are based in Lima but have nationwide jurisdiction, and these work with four supra provincial prosecutors' offices, also based in Lima and with nationwide jurisdiction, with the exception, in both cases, of the jurisdiction of Ayacucho. Once a criminal investigation has been completed by the supra provincial courts and prosecutors' offices, the case goes before the National Criminal Division, also with nationwide jurisdiction and which conducts the oral hearings with the National Criminal Prosecutor's Office.

20. Pursuant to article 139 of the Peruvian Constitution, the judiciary is independent. With the exception of justices of the peace, all judges, including Judges of the Supreme Court, are appointed and removed by the National Council of the Judiciary,<sup>19</sup> an autonomous constitutional body made up of representatives of various levels of the State. In September 2004, the growing workload of human rights cases led the judiciary to create a special court subsystem for human rights violations.<sup>20</sup>

21. The Public Prosecutor's Office, an independent constitutional body, is another key institution for safeguarding and ensuring the effective enjoyment of human rights. Its main role in this regard is to promote judicial action in the defence of public interests protected by law. As the body responsible for public prosecutions, the Office investigates cases and institutes proceedings when the facts demonstrate that criminal offences or human rights violations have occurred.

22. Specific action taken includes the creation of special prosecutors' offices and the establishment of and increase in the budget of the Institute of Forensic Medicine for finding missing persons and exhuming unmarked graves. More recently a special national subsystem has been created to address terrorism, crimes against humanity, human rights violations and related offences. On the model of the former prosecutors' offices for terrorism, the Public Prosecutor's Office has also created the National Criminal Prosecutor's Office, with jurisdiction to investigate, among other things, human rights violations and crimes against humanity.<sup>21</sup>

23. Another institution that has proved crucial for the respect and protection of human rights in Peru is the Constitutional Court, an autonomous, independent body for verification of the constitutionality of laws.<sup>22</sup> The Constitutional Court is entrusted with upholding the principle of constitutional supremacy, against laws or acts of State bodies that might undermine it. It discharges this task partly through constitutional reviews and partly, in terms of direct protection of human rights, through the extraordinary remedies of habeas corpus, *amparo*, habeas data and enforcement of the constitutional guarantees provided by the Constitution. Through its work as peacemaker, social mediator and educator, the Constitutional Court has succeeded in establishing important case-law precedents for the protection and observance of human rights in Peru. The Constitutional Court has made significant pronouncements on the recognition of new rights not explicitly mentioned in the Constitution, such as the right to the truth.<sup>23</sup>

### **III. ACHIEVEMENTS AND BEST POLICY PRACTICES REGARDING THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

24. The observance and protection of human rights form a fundamental pillar of the Peruvian State's domestic and foreign policy. Greater emphasis has been laid on them since democracy was restored in late 2000.

25. The defence of fundamental freedoms, the democratic system and the rule of law, the fight against poverty, and economic growth and environmental protection have been key objectives addressed in the various policies under the National Agreement.<sup>24</sup>

26. The National Agreement embodies the State's commitment to the promotion and protection of human rights and fundamental freedoms. In this regard, in accordance with the provisions of Policy No. 1, on strengthening the democratic system and the rule of law, and Policy No. 6, on foreign policy for peace, democracy, development and integration, various actions and initiatives have been taken with a view to providing an appropriate regulatory framework and acceding to the

main international human rights instruments in active cooperation with the universal and inter-American systems for human rights protection. This is evidenced by Peru's participation in the Human Rights Council ever since it was established.

27. During the period under consideration, Peru has not only ratified a good many international human rights instruments, in addition to the seven major international treaties and the American Convention on Human Rights,<sup>25</sup> to which it is already a party, but has taken a number of other initiatives, including those detailed below.

#### **A. Truth and Reconciliation Commission and follow-up to its recommendations<sup>26</sup>**

28. As stated at the beginning of this report, Peru experienced a period of terrible violence during the last two decades of the twentieth century, when serious violations of human rights and international humanitarian law took place.

29. In 2001 the Truth and Reconciliation Commission<sup>27</sup> was set up, with the task of throwing light on the acts of violence that occurred between May 1980 and November 2000, and attributable to terrorist organizations and agents of the State alike, and proposing initiatives to guarantee peace and harmony among all Peruvians.

30. In a transparent, open process that actively engaged ordinary people, the Truth and Reconciliation Commission conducted public hearings that enabled the victims of serious crimes and violations of human rights and international humanitarian law to tell the country their version of the facts and helped them to claim their rights, in the first step towards national reconciliation. After collecting 16,986 statements from witnesses nationwide and holding 21 hearings with the victims of violence, attended by over 9,500 people, the Truth and Reconciliation Commission delivered its final report on 28 August 2003.

31. Preparation of the final report involved sober, responsible reflection as a society on the violence experienced in Peru, and entailed for the State a moral obligation to uphold truth and justice and try to close up the marked social divides that had contributed to the conflict, so that such a thing can never happen again.<sup>28</sup> The Commission made numerous recommendations in its report: reparations for victims, institutional reforms to address the causes and consequences of the violence, and measures to strengthen the national reconciliation process. In recent years a number of bodies have been set up to implement these recommendations.

32. In this connection, the Ministry of Women and Social Development decided to conduct what it called a Census for Peace, a large-scale study of villages affected by the violence, to make it easier to frame policies for restoring, nurturing, developing and promoting a culture of peace. Four phases of the census (2001, 2002, 2003 and 2006) have been completed,<sup>29</sup> and preparations are under way for the fifth.

33. On 28 July 2005, pursuant to Act No. 28,592, the Comprehensive Reparations Plan<sup>30</sup> for the victims<sup>31</sup> of the violence was drawn up in accordance with the recommendations of the Truth and Reconciliation Commission. In 2006 the corresponding Regulations were adopted,<sup>32</sup> establishing the mechanisms, modalities and procedures for access to programmes under the Plan and detailing its objectives.<sup>33</sup>

34. Moreover, the Comprehensive Reparations Plan Act provides for a Reparations Board to prepare a Central Register of Victims. The Reparations Board is responsible to the Office of the President of the Council of Ministers and is chaired by a renowned defender of human rights, Ms. Sofia Macher. The Board's members come from a variety of backgrounds,<sup>34</sup> and this has

enabled them to establish agreed strategies, procedures and methodologies for adding victims of the violence to the Register. As the Reparations Board noted in its annual report, between October 2006 and May 2007 it was setting up and creating the necessary conditions in which to operate. Between June and October 2007, it achieved a number of objectives, including the production of a national map showing the main centres of the violence and the development of a strategy for ensuring that the remotest and poorest communities have access to the register and can be entered automatically or on request.

35. By March 2008, the Reparations Board had registered 1,133 names in volume 1, on individual victims. In volume 2, communities, it had registered 2,344 communities and population centres, mostly in Junín, Huancavelica, Apurímac and Cusco - some of the areas where the most violence took place between 1980 and 2000. It had also issued 103 group beneficiary certificates to provincial, district and municipal authorities in Huanta, the province most affected by violence in the whole country.

36. The Reparations Board has created a social and institutional support network that has enabled it to deploy an inclusive nationwide strategy that takes into account the country's multiculturalism and its special ethnic, social, economic, linguistic, gender and health-related features; identification with the activities carried out; legitimization of work; support for the gathering of information, and necessary social and political support are actions it has also successfully carried through.

37. The Reparations Board has worked in close cooperation with the central, regional and local governments and with autonomous agencies and bodies such as the National Register of Identity and Civil Status, the judiciary, the Public Prosecutor's Office and the Office of the Ombudsman.

38. In 2008 the Reparations Board intends to expand its operations by launching a national campaign to collect information on the victims of violence in the 10 worst affected departments. The Board's aim for this year is to include in the Central Register of Victims cases from existing registers such as the list of victims of the National Police, the Armed Forces and the Self-Defence Committees; cases of forced disappearance, from the Office of the Ombudsman; the National Registry of Victims of Huancavelica; the National Register of Displaced Persons compiled by the Ministry of Women and Social Development; 159 cases contained in the joint press communiqué issued by the Inter-American Commission on Human Rights and Peru<sup>35</sup> in January 2001, and volume 2 of the Census for Peace. Also this year, the Register will incorporate the records of the 10 departments prioritized by the Reparations Board, and open special units in 15 departments in order to identify some 80,000 individual victims by the end of 2008.<sup>36</sup>

39. Mention should also be made of the High-Level Multisectoral Commission to monitor State action and policies regarding peace, collective reparation and national reconciliation, created by the executive in February 2004 (Supreme Decree No. 003-2004-JUS). Like the Reparations Board it is currently responsible to the Office of the President of the Council of Ministers. Its purpose is to provide the State with a mechanism for accepting, and taking responsibility for implementing, the recommendations of the Truth and Reconciliation Commission.<sup>37</sup> In practice the Commission focuses on implementing the Collective Reparations Programme. This programme was launched on 16 June 2007 in a ceremony at the Ayacucho stadium, the site of many human rights violations, attended by the President, the Chairperson of the Truth and Reconciliation Commission and other senior officials. The budget allocated to the Collective Reparations Programme in 2007 was 45 million soles, and 46 million soles in 2008.<sup>38</sup> The programme benefits 440 peasant and indigenous communities in the regions most affected by the violence providing funding for productive projects. The findings from the first phases of the Census for Peace proved extremely useful in identifying the affected communities.

40. Last but not least, Congress has established a procedure that governs absence due to forced disappearance during the period 1980-2000 (Act No. 28,413). This mechanism is intended to provide the relatives of persons who involuntarily disappeared without trace between 1980 and 2000, and for anyone with a legitimate interest, with the wherewithal to gain recognition of their rights. To that end, the Ombudsman maintains a Register of Absence by reason of Forced Disappearance and, at the request of family members or others with a legitimate interest, may issue a certificate of absence by reason of forced disappearance. This certificate allows victims' families to become permanent members of the Comprehensive Health Insurance. In addition, by means of a special free, non-contentious procedure, family members and persons with a legitimate interest may apply to a justice of the peace<sup>39</sup> for a certificate of absence by reason of forced disappearance. By March 2008, 699 such certificates had been issued, mostly in respect of persons from Ayacucho, Huánuco and Huancavelica.

41. Despite these efforts and the significant progress achieved, especially in implementing the Collective Reparations Programme, it must be recognized that there is much work to be done on implementing the Comprehensive Reparations Plan.

### **B. Combating impunity; access to justice; due process**

42. Peru considers that the pursuit of judicial protection is a legitimate aspiration of its citizens, and that it entails a constitutional obligation on the part of the State to offer citizens effective judicial protection and, in particular, to guarantee their full enjoyment of human rights.<sup>40</sup> Accordingly, following a period of improper interventions in the justice system,<sup>41</sup> many of them resulting in confusion and impunity, legislative, judicial and administrative measures are now being taken to give all citizens genuine access to justice.<sup>42</sup>

43. The Inter-American Court of Human Rights (IACHR) has handed down several rulings in cases against Peru in which, among other things, it has found a lack of judicial guarantees and due process of law in terrorism trials. It has also called for those responsible for human rights violations to be investigated, prosecuted and punished. In particular, in its decision on the Barrios Altos case, the Court declared the amnesty laws (Acts Nos. 26,479 and 26,492) incompatible with the American Convention on Human Rights and ruled that they were universally devoid of legal effect; in other words, such lack of effect applied to all cases of human rights violations in which they might have been applied, and not only to the Barrios Altos case.<sup>43</sup>

44. The Peruvian Government has, therefore, adopted a raft of highly significant measures, such as sending persons convicted of terrorism and treason in military courts for retrial before the ordinary courts under the rules of due process. As a result, many people have been acquitted and released. According to National Criminal Division data on the sentences handed down between 2003 and 2005, there were 259 acquittals and 451 convictions.

45. The Public Prosecutor's office has also ordered prosecutors in any of the courts that tried cases in which the amnesty laws were applied to request implementation of the rulings of the Inter-American Court of Human Rights.<sup>44</sup>

46. In 2003, 2004, 2005 and 2006, the Attorney-General's Office took various decisions establishing the jurisdiction of high court, supra-provincial court and provincial court prosecutors to try cases of human rights violations.



47. In strict compliance with the provisions of due process and judicial guarantees and the independence of their functions, the courts are currently trying serious crimes against human rights involving holders of high office and numerous members of the Armed Forces. For example, the members of the “Colina Group” are currently on trial, which confirms the State’s determination to combat impunity effectively.

48. In the same vein, the Constitutional Court has also issued rulings of great significance, such as the one bringing anti-terrorism legislation into line with the criteria of the inter-American human rights protection system and, in particular, with those of the Inter-American Court (case No. 010-2002-AI-TC LIMA), on the observance of judicial guarantees and due process. It has also issued numerous rulings, including ones rejecting the validity of the amnesty laws,<sup>45</sup> finding the offence of forced disappearance a continuing offence (case No. 2488-2002-HC/TC), and recognizing the right to the truth (decision No. 0959-2004-HD/TC).

49. Since 2003 some 46 criminal trials proceedings have been instituted for human rights violations, half of them cases brought by the Truth and Reconciliation Commission. In 2007 criminal action was taken in the three cases most extensively investigated by the Truth and Reconciliation Commission: the Sancaypata executions, the events at Castro Castro prison and La Cantuta.

50. The Peruvian Government is aware that there are still several unresolved issues in the fight against impunity. One is the need to set standards that properly criminalize the most serious crimes. Of particular relevance here is the work done by the National Commission for the Study and Application of International Humanitarian Law, a multisectoral body which, in coordination with relevant civil society organizations, has proposed bill No. 01707/2007 on crimes against international human rights law and international humanitarian law.<sup>46</sup> Still under discussion at the Congressional Committee on Justice and Human Rights, the bill is intended to fill the legislative vacuum on war crimes (crimes against international humanitarian law) and classifies the main crimes against humanity and the crime of genocide<sup>47</sup> in a single legal instrument.

### **C. Adoption of the first National Human Rights Plan (2006-2010)**

51. The National Human Rights Plan for 2006 to 2010<sup>48</sup> was prepared in part to fulfil the obligation contracted by Peru at the Vienna World Conference on Human Rights in 1993, in part to comply with policy No. 28 under the National Agreement,<sup>49</sup> and in part to meet the undertakings made by Peru in its application for membership of the Human Rights Council.

52. After the difficult situation the country experienced in the last two decades of the twentieth century, which led to serious violations of human rights and fundamental freedoms, the State recognized the need for a comprehensive document whose implementation would result in more effective promotion, dissemination and defence of human rights in Peru.

53. Acting through the National Human Rights Council, the State launched an unprecedented process of broad consultation, including 18 public hearings preceded by preparatory “pre-hearings”. These were held nationally with the active participation of representatives of public and private institutions and grass-roots social organizations from around the country and involved approximately 2,800 people nationwide, 78 per cent of them from civil society.

54. In the Plan, democracy, justice, peace, development and respect for human rights and fundamental freedoms are treated as interdependent and mutually reinforcing concepts.<sup>50</sup> It sets out to ensure that policies in all sectors incorporate this approach.

55. Although various recommendations contained in the National Human Rights Plan have already been applied, implementation of the Plan has not been problem-free in practice. Not everyone involved is yet aware of the Plan or recognizes it as an everyday work tool.

#### **D. Combating discrimination, inequality and exclusion**

56. As mentioned at the beginning of this report, the Peruvian State is party to international human rights instruments that sanction discrimination, and to some other relevant instruments.<sup>51</sup> In this regard, in order to comply with its international obligations arising from these instruments, Peru has taken a number of measures to eliminate any discriminatory practices and promote equality in form and in substance of all persons under the State's jurisdiction. In the domestic legal framework, discrimination is prohibited on three levels: constitutional,<sup>52</sup> administrative<sup>53</sup> and criminal.<sup>54</sup>

57. One section of the National Human Rights Plan concerns combating discrimination and identifies the more vulnerable sectors of the population - women, indigenous peoples, children and adolescents, the elderly, migrants and people living with HIV/AIDS - with a view to strengthening measures to guarantee their rights. The Plan recommends action to promote a social culture of respect for difference, avoiding violent or degrading treatment on grounds of race, religion, gender or sexual orientation, among others.

58. The National Agreement (Policy No. 11) also highlights the commitment of the State and all political forces to make a priority of the effective promotion of equal opportunities, recognizing that various forms of discrimination and social inequality still exist in Peru.

59. Details of achievements relating to the above-mentioned groups are given below.

##### **1. Women's rights**

60. The following are some of the achievements in this field.

###### **(a) Political participation**

61. Significant progress has been made in terms of domestic legislation. Women's involvement in political life has steadily evolved; under the Municipal Elections Act<sup>55</sup> enacted in 1997, women should comprise at least 25 per cent of lists of candidates. In 2001 this quota was increased to 30 per cent for Congressional elections, while at least 15 per cent must also be representatives of native communities and indigenous peoples. The Elections Act<sup>56</sup> stipulates that lists of candidates for Congressional elections must have no fewer than 30 per cent women, and the same applies to regional elections.<sup>57</sup> Moreover, the Political Parties Act<sup>58</sup> requires that the number of women may not be below 30 per cent in lists of candidates for senior party positions or for elected public office.

62. The results of the latest elections (2006) were positive insofar as the gap in political participation between men and women was narrowed. Thirty-six women were elected to Congress, which means women have 30 per cent of the seats, the highest percentage of female representation in Congress in Peru's history.<sup>59</sup>

**(b) Protection from all forms of violence, including sexual violence**

63. Criminal legislation on sex crimes<sup>60</sup> has been amended so that sexual assault, most of whose victims are women, is severely punished, with stiffer penalties for violations of sexual freedom. In January 2007, Act No. 28,963 made it an aggravating circumstance, in cases of rape, to have exploited a relationship based on the hire of services, an employment contract or the provision of services by a domestic worker.

64. Despite the existence of an entire institutional and regulatory apparatus designed to prevent or punish acts of violence against women, the women's emergency centres operated by the Ministry of Women and Social Development continue to record high numbers of complaints both in Lima and in the provinces.

**(c) Equal opportunities between men and women**

65. The second National Equal Opportunities Plan for Women and Men (2006-2010) establishes policies and guidelines involving joint action by the State and civil society. It serves as a guiding framework for implementing actions aimed at eliminating all forms of discrimination between women and men.

66. The recently enacted Equal Opportunities between Men and Women Act<sup>61</sup> is designed to ensure full equality between men and women. It is based on the principles of equality, respect for freedom, dignity, security, human life, and the recognition of Peru as a multicultural and multilingual country.

**(d) Sexual and reproductive health**

67. The Ministry of Health has adopted various official policies and measures to protect reproductive health, regulate family planning and maternal health services, provide information on and access to contraceptive methods, expanding the coverage of Comprehensive Health Insurance to include pregnant women and post-natal mothers, with the main focus on women of limited means living in rural and peri-urban areas.<sup>62</sup> Since 2004 the Ministry of Health has also been implementing a National Health Strategy on Sexual and Reproductive Health.

68. Work on drafting policy documents on the subject has progressed substantially during the period covered by this report. One such document is the Guidance/Counselling Manual on Sexual and Reproductive Health, including a Family Planning Technical Standard, describing the use of the full range of contraceptive methods available in Peru.

69. At the same time, Ministerial Decision No. 453-2006-MINSA seeks to institute a cross-cutting approach to health, based on human rights, gender equality and interculturality. It details the means by which these approaches are incorporated into health policies, plans, programmes and initiatives.

70. While substantial progress has been made in this regard, the Peruvian State is aware that there remain many areas of health where more decisive action is called for, especially in the remotest parts of the country, and that more human and logistical resources need to be allocated.

## **2. Indigenous peoples' rights**

71. For the Peruvian State, the vulnerable situation of the indigenous peoples remains a subject of special concern. Article 89 of the Constitution recognizes that the peasant and indigenous communities have legal existence and status.

72. The State's commitment is demonstrated by the fact that for a decade Peru led the negotiations on the United Nations Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007 by the United Nations General Assembly.

73. Peru is aware that the indigenous peoples are especially vulnerable and marginalized, as was made clear in the final report of the Truth and Reconciliation Commission, which concluded that 75 per cent of the victims of the internal armed conflict were from indigenous communities, including the Quechua and Ashanincas. The Peruvian Government is therefore endeavouring to give indigenous peoples the wherewithal to achieve their development. The following are the main areas of concern.

### **(a) Land title and registration of the peasant and indigenous communities**

74. One of the problems facing the peasant and indigenous communities in respect of territory is the question of land title. Workshops, working groups and round tables have therefore been set up, for both authorities and beneficiaries, in order to promote action on boundary-setting and land demarcation, with special emphasis on border areas.<sup>63</sup> In 2004 and 2005, the Commission for the Formalization of Informal Properties,<sup>64</sup> the body responsible for the Special Land Titling and Rural Cadastre Project, established to oversee environmental clean-up and boundary-setting in indigenous communities awarded 372 titles (1,297,366 hectares) to peasant and indigenous communities.<sup>65</sup>

75. The Peruvian State has ordered natural areas connected with indigenous peoples to be set aside as reserves. This effort with regard to the land issue is embodied in the implementation of the Act on the Protection of Indigenous or Aboriginal Peoples in Isolation or Initial Contact (Act No. 28,736).<sup>66</sup> Under this law, priority is given to protecting the territory of communities that have political and administrative recognition and communities in voluntary isolation and initial contact, which are in the process of preservation, by establishing five territorial reserves for the indigenous peoples who inhabit them.<sup>67</sup>

### **(b) Intercultural bilingual education**

76. Multilingualism is a reality in Peru and is legally protected in the education system by the Intercultural Bilingual Education Act. Peru has a national policy on intercultural bilingual education, with a programme of languages and cultures in education. The institution responsible for implementation is the Ministry of Education, through the Department of Intercultural Bilingual Education.<sup>68</sup> In this regard, as part of the progressive realization of the rights of indigenous peoples, anyone applying for a teaching job in non-university higher education may take the interview in their native language, taking into account their evaluation - in the regional phase - aspects of cultural diversity and multilingualism.

### **(c) Health and environment**

77. The State recognizes that indigenous peoples require a special protection system for their rights, in particular the right to health and a healthy environment, in certain cases that are particularly affected by mining in the areas they live in.

78. In this regard, policy No. 19 under the National Agreement, on sustainable development and environmental management, contains a commitment to institutionalize public and private environmental management in order to protect biodiversity, facilitate the sustainable use of natural resources, safeguard environmental protection and promote sustainable villages and towns, thereby improving the quality of life, especially for Peru's most vulnerable communities and peoples.

79. With the support of the National Environment Council and the Ministry of Energy and Mining, the Peruvian State has implemented an environmental impact assessment system, to ensure public participation, cross-sectoral coordination, and business compliance with the norms and standards of environmental protection.

80. Specifically with regard to the issue of health, there is a National Strategy for the Health of Indigenous Peoples which, among other things, sets out to reduce the health divide, while respecting the cultural norms of the indigenous peoples themselves and taking an intercultural approach to health. A comprehensive plan specifically for the indigenous peoples has also been produced that is intended to meet their health needs, while establishing standards of cultural appropriateness for the services provided and respecting and nurturing health values and practices that diverge from the conventional.

#### **(d) Participation in regional administration**

81. With a view to the advancement of the historically marginalized sectors of society, article 191 of the Constitution establishes quotas for gender representation and for representation of the peasant and indigenous communities and native peoples in regional councils; the same applies to municipal councils. This quota system is one of the mechanisms used by the State to assist groups or sectors subject to discrimination that need such measures to promote and ensure their participation;<sup>69</sup> such preferential treatment can be objectively and reasonably justified. Another key aspect of increasing and improving indigenous peoples' involvement in regional and local public affairs is the introduction of participatory budgeting,<sup>70</sup> a democratic mechanism through which indigenous representatives can present their needs and demands in order to obtain public funds.

### **3. Rights of persons with disabilities**

82. The State has taken various steps to offer people with different capacities special protection, such as the enactment of the General Act on the Protection of Persons with Disabilities.<sup>71</sup> It is intended to establish a legal regime for protection, health care, work, education, rehabilitation, social security and prevention, so that persons with disabilities may achieve social, economic and cultural development integration, in accordance with article 7 of the Constitution.<sup>72</sup> At the international level, Peru was one of the first countries to sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

83. Regulation was strengthened with the establishment of the National Council for the Integration of Persons with Disabilities, a decentralized public agency later integrated into the Ministry of Women and Social Development as the Department for Persons with Disabilities.<sup>73</sup> It is responsible for the National Register of Persons with Disabilities, set up for the registration and accreditation of persons with disabilities, and to register domestic, foreign or international public and private institutions operating and providing services in the disability field. Since it was created in 2000, 43,419 individuals and 239 institutions have been registered.<sup>74</sup>

84. The special attention paid by the State to the situation of persons with disabilities was demonstrated by its proclamation of 2003 as the Year of the Rights of Persons with Disabilities,<sup>75</sup> and of the period 2007 to 2016 as the Decade of Persons with Disabilities in Peru,<sup>76</sup> with the aim of encouraging knowledge and reflection at the national level on a subject that requires all sectors and levels of the State to promote programmes, projects and initiatives aimed at achieving the full inclusion and involvement of people with disabilities in every aspect of society.

**(a) Equal Opportunity Plan for Persons with Disabilities 2003-2007**

85. The Plan contains State policies aimed at generating greater opportunities for participation on an equal footing in order to develop a culture of tolerance and respect for the right and freedom to be different, based on the Constitution's recognition of the dignity of individuals and their fundamental rights in terms of fairness and solidarity.

86. The age limit applied to State health and food programmes for persons with intellectual or physical disabilities has been abolished, so that more people can benefit.<sup>77</sup>

**(b) Citizen participation**

87. At the last general elections, in 2006, the National Election Procedures Office took steps to make it easier for persons with disabilities to vote, including support from the official in charge of each polling station, adaptation of the polling booths to accommodate various types of disability, distribution of Braille ballot papers, availability of wheelchairs, use of special signs in polling stations and hiring of persons with disabilities for various jobs related to the electoral process, both in Lima and in polling stations around the country.<sup>78</sup>

**(c) Inclusive education**

88. Inclusive education is a strategy designed to incorporate people with special educational needs into the ordinary education system, to avoid discrimination against them on grounds of disability.

89. For example, the Ministry of Education has approved rules for enrolling students with special educational needs at inclusive education institutions and in special basic education centres and programmes,<sup>79</sup> thereby promoting the right to education of children with disabilities in the national education system, be it public or private, ordinary or special.

90. The eventual aim was for special basic education centres to tailor their structure and operations to the needs of students with severe or multiple disabilities.<sup>80</sup> In the same vein, the Ministry has promoted the establishment of the Support and Advisory Service for Students with Special Educational Needs, a mobile operational unit to provide guidance and advice to managers and teachers at all levels and at every type of inclusive institution in the educational system.<sup>81</sup>

#### **4. Situation of persons with HIV/AIDS**

91. In Peru, responsibility for action on persons infected with HIV/AIDS lies with the Ministry of Health, supported by a number of national and international governmental and non-governmental organizations, such as the United Nations Development Programme (UNDP), the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the National Multisectoral Health Committee.<sup>82</sup>

92. In 2004 the National Health Strategy for the Prevention and Control of Sexually Transmitted Infections and HIV/AIDS<sup>83</sup> was adopted, describing and regulating appropriate organizational processes in the area of institutional and sectoral management in order to achieve operational objectives related to the culture of health, prevention and control of sexually transmitted infections (STI) and HIV/AIDS, with a focus on equality, law and the exercise of citizenship. One of the major achievements in terms of planning has been the development of the Multisectoral Strategic Plan on STI, HIV and AIDS 2007-2011,<sup>84</sup> whose main objective is to coordinate all efforts to combat the epidemic, covering the regions and all related sectors. The initiative to transfer leadership and responsibility to the regions stems from the need to make the process more sustainable and to make the issue a priority on the public agenda.

93. With regard to awareness campaigns, the stigma of discrimination is being addressed by the State and civil society alike, which are raising awareness of the need to fight to reduce and eradicate it. In December 2007, UNDP - Peru, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Peruvian Press Council launched a nationwide campaign to combat stigmatization and discrimination against people living with HIV. The campaign had significant national and regional impact.<sup>85</sup>

94. Similarly, in labour law, discrimination against people with HIV/AIDS is prohibited. Article 25, paragraph 17, of the General Labour Inspectorate Act, Supreme Decree No. 019-2006-TR, stipulates that discrimination against HIV-positive employees, *inter alia*, is a very serious violation of labour law.

#### **E. Relations with international systems for the protection of human rights**

95. As a demonstration of the State's political will to strengthen its ties with international human rights protection systems, Peru has adopted a raft of measures in compliance with the rulings and recommendations of bodies in the inter-American and universal systems for the promotion and protection of human rights.

96. The first such measure was the adoption in 2001 of Legislative Decision No. 27,401, on the restoration of the full jurisdiction of the Inter-American Court of Human Rights. Further steps were taken to implement the Court's judgements, following public ceremonies of redress,<sup>86</sup> the signing of amicable settlement agreements with the victims or families,<sup>87</sup> and measures to investigate, prosecute and punish those responsible for human rights violations.

97. Another significant development in the inter-American context was the presentation of a comprehensive proposal to the Inter-American Commission on Human Rights, aimed at resolving more than a hundred pending cases. In addition, in March 2002, an Interagency Working Commission was created to follow up the Commission's recommendations; its main task was to investigate cases of forced disappearance and extrajudicial execution and design a comprehensive programme of non-monetary reparations for victims and families.<sup>88</sup>

98. With regard to the universal system, in 2002 Peru extended an open invitation to the special procedures of the Commission on Human Rights (now the Human Rights Council).<sup>89</sup> As mentioned earlier, Peru has signed and ratified a number of international instruments.

99. Despite this progress, the Peruvian State is aware that it faces the challenge of strengthening this relationship and improving the quality of its responses to the international systems for the promotion and protection of human rights.

#### **IV. CHALLENGES IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND ACTION TO MEET THEM**

100. As detailed above, since 2000 Peru had introduced a series of important laws, plans, policies and institutional reforms in the area of human rights. One of the major challenges is to implement these and introduce a human rights perspective at all levels of the State and Peruvian society. There is, it must be admitted, a long way to go. Nevertheless it must be recognized that, since late 2000, the observance of human rights and fundamental freedoms in Peru has been greater than ever. The Peruvian State hopes that the international systems for the promotion and protection of human rights will continue to help Peru to face the challenges described in this report. Since any list of challenges facing Peru would undoubtedly be lengthy (many have been cited in this document), they have been grouped in three broad categories, as follows.

##### **A. Consolidation of the national reconciliation process**

101. As was pointed out by the Truth and Reconciliation Commission in its final report, “reconciliation” is a process of restoring and repairing the bond between Peruvians, a bond that has been destroyed or damaged in recent decades as a result of the outbreak, in a society in crisis, of a violent conflict initiated by the Shining Path (Sendero Luminoso) terrorist group. If this process is to succeed, it is necessary to know the truth about what happened - by recording the acts of violence and explaining their root causes - and then move on to judicial action for reparation and punishment.

102. While substantive institutional and procedural progress has been made thanks to the creation of the Truth and Reconciliation Commission, the establishment and regulation of the Comprehensive Reparations Plan, the creation of the High-level Multisectoral Commission to monitor State action and policies regarding peace, collective reparation and national reconciliation, the work of the Reparations Board and the implementation of programmes by the Ombudsman, among others, these initiatives must now address every aspect of the problem in a manner that meets the expectations of victims and their families.

103. The acts of violence were exacerbated by the deep-seated social inequalities and extreme poverty facing a significant percentage of the population. The Peruvian State is aware of the urgent need to adopt measures to prevent similar situations arising in the future, by changing conditions so as to restore the bond between Peruvians, and making every citizen aware of their responsibility in this process.

104. The process of reconciliation goes beyond the restoration of order. It entails the creation of a new shared space where the full exercise of rights is based upon personal dignity, pluralism, and the right to diversity, solidarity and justice. In this context, it is essential to eradicate social, economic, racial and all other forms of discrimination, for this is one of the major obstacles to progress along the difficult path towards reconciliation.

105. This process must engage society as a whole, including the State, political parties, civil society and other stakeholders, and should be reflected in every sphere of life.



## **B. Combating impunity and reforming the administration of justice**

106. One of the best ways to ensure that the acts of violence and violations of human rights and international humanitarian law that Peru suffered in the late twentieth century are never repeated is to fight impunity by instituting an independent, modern, efficient, transparent, solid, respectable system of administration of justice, a system that is capable of protecting fundamental rights and setting limits on the exercise of power, and which is accessible to every citizen.

107. Several bodies have been assessing the Peruvian justice system, pinpointing the economic, geographical, linguistic and cultural constraints on equal access to justice. Dissatisfaction with the flaws and shortcomings of the judicial service has generated mistrust for some of its officials, despite attempts by the Office for the Supervision of Judges to eradicate any corruption that may persist in the judiciary. This dissatisfaction has frequently pushed people dangerously close to the use of force to resolve their conflicts or meet their needs.<sup>90</sup>

108. There have been several significant attempts in Peru to address this problem. The most recent was the work done by the Special Commission for the Comprehensive Reform of the Administration of Justice,<sup>91</sup> which in 2004 presented a national plan for the overhaul of the administration of justice. Its recommendations included the implementation of a special system of courts and higher courts to prosecute crimes against human rights, as suggested by the Truth and Reconciliation Commission.

109. After numerous proposals and despite the inconsistencies these have generated, there is consensus within the State and civil society on the need to overhaul the justice administration system. Bodies at the highest level of the State are studying the best strategies for ensuring the implementation of the National Plan approved by the Special Commission, given that its low priority on the national agenda, the lack of agreement among the bodies involved (the reform covers not only the judiciary), and the lack of political leadership to carry the reform through, have been major obstacles to achieving an effective reform. The overhaul should cover the specification of functions and jurisdictions regarding the administration of justice, so as to avoid grey areas concerning the jurisdiction for common offences and official misconduct.<sup>92</sup>

## **C. The challenges of development and social exclusion and the need for a human rights-based approach**

110. Peru is in an important phase of economic growth and development thanks to a number of internal and external factors. Investment in the country has not grown as fast for decades. Nevertheless, the least privileged sectors of the country's population do not always see the benefits of this prosperity. Undoubtedly, this is one of the main challenges facing democratic governance in Peru: to demonstrate with facts that the democratic system has a positive effect on the life of every citizen; that, in a democratic system, not only are fundamental freedoms better respected - an invaluable achievement in itself - but people's economic and social rights are also increasingly protected.

111. In order to reduce these gaps, the Peruvian State is implementing a number of national programmes, under the responsibility of different sectors of the Executive. Funding for these programmes was 3.2 million soles in 2007 and 4.5 million soles in 2008.<sup>93</sup> The programmes include:

*“Crecer” (Growing) national strategy.* By 2011, the goal is to diminish by 9 percentage points the number of malnourished 6-year-olds faced with nutritional vulnerability and poverty, using an approach based on rights, the protection of human capital, social

development and shared responsibility and by means of coordinated multisectoral action with funding from the institutional budgets of those sectors. This strategy is now being implemented, reaching 219,000 children in the first phase and 480,000 in the second.

*“Juntos” (Together) programme.* In order to combat chronic child malnutrition and extreme poverty, families are given an incentive payment of 100 soles to spend as they see fit. Recipients must, however, make a commitment to meet certain demands, including enrolling their children in school and regular medical checkups. In 2007, the programme reached 14 departments and benefited 372,918 households.

*Comprehensive Health Insurance.* The aim of this scheme is to protect the health of Peruvians without health insurance, prioritizing the most vulnerable in situations of poverty and extreme poverty. Between January and December 2007, treatment was provided in 21,537,406 cases.

112. These initiatives, taken together with others in the areas of sanitation, construction and employment, and so forth, demonstrate the State’s commitment to boosting Peru’s economic growth while respecting and meeting people’s basic needs. Yet the State is perfectly aware that this is a complex task in a country where a high percentage of the population lives in poverty and extreme poverty.

113. In recent years mining has increased in many parts of the country - often the most depressed areas. In some cases the people living in the vicinity not only fail to notice any benefit but may even feel that the new operations may somehow affect their rights, including their right to a clean and healthy environment. Locally this has generated a number of social conflicts in fairly remote areas where the State is not sufficiently visible. Those directly involved do not always take a human rights approach to solving these problems.

114. To address this issue, action is being taken to create a Ministry of the Environment<sup>94</sup> as soon as possible, in part in order to establish a national system of environmental management and consolidate plans, projects and programmes. The Ministry would take over from the National Environmental Council, the lead agency in national environment policy, in cooperation with other State bodies.<sup>95</sup>

115. Despite these considerable efforts, Peru must work even harder to strike a balance between the policy of promoting private investment and respecting fundamental rights and the environment.

## **V. TECHNICAL COOPERATION: COMMITMENTS AND EXPECTATIONS**

116. As explained earlier, since the beginning of this decade there has been substantive progress in the enjoyment of human rights and fundamental freedoms in Peru. The Peruvian Government is aware of the great challenges it will face in coming years to implement the legislation and policies that have been established, consolidate institutions and establish a culture of human rights in every sphere of society and the State. The inter-American and universal systems for the promotion and protection of human rights have assisted Peru in this process and the Peruvian State is highly appreciative. It hopes that the Human Rights Council and other bodies in the United Nations human rights programme can continue to assist it on its hopeful but as yet unfinished journey.

117. Peru faces several outstanding issues with regard to the universal system, in particular its delay in reporting to some of the treaty bodies. The Peruvian State undertakes to submit its reports as soon as possible. Moreover, Peru is a party to the Optional Protocol to the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which, among other things, foresees the creation of a national preventive mechanism. In this regard, Peru reiterates its commitment to implement an independent mechanism, effective in the prevention of torture in accordance with its obligations under the Optional Protocol. Peru is also committed to continuing to frame policies that favour the promotion, protection and respect of human rights. In particular, it will implement its national human rights action plan, adopted in accordance with the guidelines set out in the 1993 Vienna Programme of Action.

26 March 2008

11 a.m.

*Notes*

<sup>1</sup> Para mayor información ver en la Sección III.A del presente documento.

<sup>2</sup> Esa experiencia propició la aprobación de la Ley 27365 (05/11/2000) que elimina la Reelección Presidencial Inmediata.

<sup>3</sup> Para mayor información ver en la Sección III, párrafos 25 y 26.

<sup>4</sup> Ver resolución CDH 5/1, decisión CDH 6/102 y las directrices contenidas en el documento A/HRC/6/L.24.

<sup>5</sup> Estas garantías del artículo 200 de la Constitución son: la Acción de Hábeas Corpus que vela por el respeto al derecho de libertad individual y derechos conexos, la Acción de Amparo que vela por los demás derechos reconocidos por la Constitución, con excepción de los que protege la Acción de Hábeas Data, la cual comprende el derecho a la información y a la intimidad. En tanto que la Acción de Inconstitucionalidad y la Acción Popular proceden contra las normas con rango de ley que contravengan la Constitución y contra las normas de rango inferior que cometan infracción de la Constitución y de la ley, respectivamente.

<sup>6</sup> Creado con Decreto Supremo 012-86-JUS (06/09/1986), presidido por Justicia e integrado por los sectores de Relaciones Exteriores, Defensa, Interior, Mujer y Desarrollo Humano, Educación, Salud, así como un representante del Poder Judicial y otro del Ministerio Público. La Defensoría del Pueblo y representantes de la sociedad civil participan como instituciones observadoras.

<sup>7</sup> El reglamento vigente fue aprobado por Decreto Supremo 015-2001-JUS (27/04/2001) en el que se considera una Secretaría Ejecutiva que considera 3 órganos: la Dirección de Promoción y Difusión de los Derechos Humanos, la Secretaría Especializada de Gracias Presidenciales, y la Comisión Especial de Seguimiento y Atención de Procedimientos Internacionales.

<sup>8</sup> Proyecto Educativo Nacional al 2021. Propuesto por el Consejo Nacional de Educación y asumido como desarrollo de la décimo segunda política de Estado por el Foro del Acuerdo Nacional. Aprobado como política de Estado por Resolución Suprema 001-2007-ED (06/01/2007).

<sup>9</sup> Tales como el Plan Nacional de Igualdad de Oportunidades entre Hombres y Mujeres (PIO) 2006-2010, el Plan Nacional de Acción por la Infancia y Adolescencia (PNAI) 2002-2010, el Plan Nacional contra la Violencia hacia la Mujer y el Plan de Igualdad de Oportunidades para las personas con Discapacidad. Ministerio de la Mujer y Desarrollo Social (MIMDES).

<sup>10</sup> Las Estrategias Sanitarias son: de inmunizaciones; de enfermedades metaxénicas y otras transmitidas por vectores (malaria, dengue, bartonelosis, entre otras); de infecciones de transmisión sexual y de VIH-SIDA; de tuberculosis; de salud sexual y reproductiva; de enfermedades no transmisibles (hipertensión, diabetes, cáncer, salud renal, entre otras); de accidentes de tránsito; salud de los pueblos indígenas (existe un plan integral orientado a los pueblos indígenas); alimentación y nutrición saludable; salud mental y paz; de salud bucal; de salud ocular y prevención de la ceguera.

<sup>11</sup> Tanto la legislación interna como las disposiciones y lineamientos de la Organización Internacional del Trabajo.

<sup>12</sup> Consta de una Cámara única integrada por ciento veinte congresistas que se eligen por un período de cinco años.

<sup>13</sup> Para desarrollar su labor, el Congreso cuenta con Comisiones ordinarias y especiales como: Comisión de Justicia y Derechos Humanos, Comisión de Mujer y Desarrollo Social, Comisión de Salud, Población, Familia y Personas con Discapacidad, Comisión de Pueblos Andinos, Amazónicos y Afro peruanos, Ambiente y Ecología y Comisión de Educación, Ciencia, Tecnología, Cultura, Patrimonio Cultural, Juventud y Deporte, entre otras.

<sup>14</sup> El Defensor del Pueblo actúa con total independencia en el cumplimiento de sus funciones sin más limitaciones que la Constitución y su Ley Orgánica. Es elegido por el Congreso y entre sus funciones están: la investigación de los hechos o situaciones que, generados por la administración de servicios públicos, pudieran estar afectando los derechos de los usuarios, la elaboración de informes sobre temas de especial trascendencia, la intervención en procesos constitucionales con el fin de defender los derechos humanos y el principio de supremacía constitucional, la promoción de procedimientos administrativos en representación de una o varias personas, para la defensa de los derechos fundamentales y constitucionales, el ejercicio de la iniciativa legislativa, la promoción de la firma, ratificación, adhesión y difusión de tratados internacionales sobre derechos humanos así como la adecuación de la legislación y las prácticas nacionales a lo previsto en dichos tratados, la emisión de pronunciamientos institucionales sobre temas de interés general cada vez que lo considere necesario.

<sup>15</sup> En 1995, el Congreso peruano aprobó la Ley Orgánica de la Defensoría del Pueblo.

<sup>16</sup> Artículo 162 de la Constitución Política del Perú. Cabe mencionar que en 2006 la Defensoría del Pueblo atendió 85,658 casos entre consultas petitorios y quejas.

<sup>17</sup> La Defensoría del Pueblo ha emitido hasta la actualidad 133 informes defensoriales en los que se han tratado diversos temas de trascendencia como: la reforma de la justicia militar en el Perú; derechos humanos y el sistema penitenciario; la aplicación de la anticoncepción quirúrgica y los derechos reproductivos; derechos de sufragio de las personas con discapacidad; libertad de expresión en el Perú; la desaparición forzada de personas en el Perú; ejecuciones extrajudiciales; ceses colectivos irregulares; violencia familiar; balance luego de la Comisión de la Verdad; sistemas de pensiones; pueblos indígenas en situación de aislamiento y contacto inicial; situación de los adolescentes infractores; el estado frente a las víctimas de la violencia, entre otros.

<sup>18</sup> El sistema de administración de justicia comprende: la Corte Suprema, Cortes Superiores, Juzgados Especializados y Mixtos, Juzgados de Paz Letrados y Juzgados de Paz. Existen 29 circunscripciones judiciales con una Corte Superior en cada una de ellas. Las Cortes Superiores cuentan con Salas Superiores Especializadas o Mixtas.

<sup>19</sup> La Constitución peruana establece en su artículo 50° que el Consejo Nacional de la Magistratura es un órgano independiente encargado de la selección y el nombramiento, mediante concurso público, de fiscales y jueces.

<sup>20</sup> Mediante Resolución Administrativa 170-2004-CE-PJ de fecha 17 de setiembre de 2004 se crea la Sala Penal Nacional con competencia en derechos humanos.

<sup>21</sup> La Fiscalía Superior Penal Nacional, creada mediante Resolución 1645-2004-MP-FN (22/10/2004), es un ente corporativo que comprende cuatro Despachos Superiores Colegiados con competencia funcional para los casos de Terrorismo, Crímenes de Lesa Humanidad, Violación de Derechos Humanos y delitos conexos. En la actualidad, éstas junto con la antigua Fiscalía Provincial Especializada en desapariciones forzadas y ejecuciones extrajudiciales, suman un número de cinco. Asimismo la Fiscalía especializada en Ayacucho se ha convertido en Fiscalía Supraprovincial. Fortaleciendo ésta función integradora especializada del Subsistema Nacional, con Resolución 1602-2005-MP-FN (11/08/2005) se han incorporado a éste subsistema, Fiscalías provinciales que además de sus carga procesal, son competentes para conocer crímenes de Lesa Humanidad, delitos de violación a los Derechos Humanos y conexos. Con esta resolución se dispuso ampliar la competencia de la Fiscalía Superior Penal Nacional para conocer además, los delitos contra la humanidad previstos en los capítulos I, II, III del título XVI del Código Penal (Genocidio, tortura, desapariciones forzadas) y de delitos conexos.

<sup>22</sup> Art. 202° de la Constitución Política del Perú, Art. 1° Ley Orgánica del Tribunal Constitucional 28301. Sus siete miembros son elegidos por el Congreso de la República por un período de cinco años. Los Magistrados del Tribunal Constitucional no están sujetos a mandato imperativo, ni reciben instrucciones de ninguna entidad. Gozan de inviolabilidad. No responden por los votos u opiniones emitidas en el ejercicio de su cargo. También gozan de inmunidad. No pueden ser detenidos ni procesados sin autorización del Pleno del propio Tribunal, salvo flagrante delito (artículo 13 de la Ley Orgánica del Tribunal Constitucional).

<sup>23</sup> Entre los derechos que no están explícitamente nombrados en la Constitución Política del Perú, pero que son derechos plenamente reconocidos derivados de la obligación estatal de proteger los derechos fundamentales y de la tutela jurisdiccional, son el derecho a la verdad, derecho a prestaciones de salud, derecho a la pensión, derecho al libre desenvolvimiento de la personalidad, entre otros.

<sup>24</sup> El Acuerdo Nacional (2002) representó un gran esfuerzo mediante el cual las autoridades y las principales fuerzas políticas del país elaboraron un documento base para la consolidación democrática y la afirmación de la identidad nacional, entre otros. En ese sentido, está constituido por 31 Políticas de Estado cuyos objetivos, en líneas generales

son, contribuir a la transición y fortalecimiento de la democracia y el estado de derecho, promover la lucha contra la pobreza, elevar la competitividad del país, alcanzar la estabilidad necesaria para lograr un crecimiento con equidad, crear e institucionalizar una cultura de diálogo democrático y generar un crecimiento económico.

<sup>25</sup> El Protocolo Facultativo de la Convención para la Eliminación de Todas las Formas de Discriminación contra la Mujer (CEDAW) (09/04/2001); la Convención Interamericana para la Eliminación de Todas las Formas de Discriminación contra las Personas con Discapacidad (30/08/2001); el Estatuto de Roma que crea la Corte Penal Internacional (10/11/2001); la Convención Interamericana sobre Desaparición Forzada de Personas (13/02/2002); los Protocolos Opcionales a la Convención sobre Derechos del Niño sobre la Participación de Niños en Conflictos Armados y, sobre la Venta de Niños, Prostitución Infantil y Pornografía Infantil (08/05/2002); la Convención sobre la Imprescriptibilidad de los Crímenes de Guerra y de los Crímenes de Lesa Humanidad (11/08/2003); la Convención Internacional sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familias (14/09/2005); el Protocolo Facultativo a la Convención Internacional contra la Tortura y otros Tratos o Penas Cruelles Inhumanos o Degradantes; y la Convención sobre los Derechos de las Personas con Discapacidad (aún no entra en vigor).

<sup>26</sup> Por su importancia intrínseca y por guardar relación con la reforma del sistema de administración de justicia, la lucha contra la impunidad se tratará en una sección aparte. Ello no significa que no se reconozca que la lucha contra la impunidad constituye otro componente esencial del proceso de verdad y reconciliación en el Perú.

<sup>27</sup> Mediante Decreto Supremo 065-2001-PCM (04/06/2001).

<sup>28</sup> Discurso del Presidente de la CVR Dr. Salomón Lerner, en la ceremonia de entrega del Informe Final de la Comisión de la Verdad.

<sup>29</sup> Primera etapa (primer semestre de 2001) se levantó información de campo de 1,938 centros poblados afectados de los departamentos más convulsionados durante el período de mayo de 1980 a noviembre de 2000 (Ayacucho, Apurímac, Huancavelica, Junín, Puno y Huánuco). Segunda etapa (octubre-diciembre 2002) se registraron 934 centros poblados afectados de los departamentos de Ancash, Cajamarca, La Libertad, Piura, Pasco, Lima, Ucayali, San Martín y la provincia de Satipo en Junín. Tercera etapa (primer semestre del 2003) se orientó a nominar a las víctimas de la primera etapa del Censo, de los departamentos de Ayacucho, Apurímac, Huancavelica, Junín, Puno y Huánuco. Cuarta etapa (Censo por la Paz 2006, abril-setiembre de 2006) se orientó a levantar información de aquellos centros poblados afectados donde las anteriores etapas del Censo por la Paz no habían llegado. Se registró información de 2,057 centros poblados afectados de los departamentos de Ayacucho, Apurímac, Cusco, Huancavelica, Pasco, Junín, Huánuco, San Martín y Ucayali. Este trabajo se realizó por encargo de la CMAN (ver Sección III, párrafo 39), en el marco de aplicación del Plan Integral de Reparaciones.

<sup>30</sup> El PIR está compuesto por programas en materia de educación, salud, reparación colectiva, entre otros, considerando como beneficiarios individuales a los familiares de las víctimas desaparecidas o fallecidas, lo cual comprende al cónyuge, conviviente, hijos o padres de la víctima.

<sup>31</sup> Conforme al citado dispositivo legal (Ley 28592), se considera víctima a aquella persona o grupo de personas que hayan sufrido actos u omisiones que violan las normas de derechos humanos, tales como desaparición forzada, secuestro, ejecución extrajudicial, asesinato, desplazamiento forzoso, detención arbitraria, reclutamiento forzado, tortura, violación sexual o muerte así como a los familiares de las personas muertas y desaparecidas durante el período comprendido entre mayo de 1980 y noviembre de 2000. Al respecto, señala expresamente en su artículo 4 que no son consideradas víctimas y por ende no son beneficiarios de los programas a que se refiere la Ley, los miembros de organizaciones subversivas. Este artículo ha suscitado un agudo debate a favor y en contra, lo cual refleja la enorme sensibilidad que aún despierta el capítulo de violencia que vivió el Perú y las diferentes interpretaciones que existen sobre el mismo.

<sup>32</sup> Mediante Decreto Supremo 015-2006-JUS (05/07/2006).

<sup>33</sup> Los objetivos del PIR son reconocer y acreditar la calidad de víctimas de quienes sufrieron la violación de sus derechos humanos durante el período de violencia; implementar acciones para la restitución y ejercicio pleno de los derechos ciudadanos de las víctimas del proceso de violencia; contribuir a la recuperación de las condiciones, capacidades y oportunidades de desarrollo personal perdidas por las víctimas como consecuencia del proceso de violencia y reparar o compensar los daños humanos, sociales, morales, materiales y económicos causados por el proceso de violencia en las personas, familias, comunidades y poblaciones indígenas afectadas.

<sup>34</sup> El CR está integrado por seis miembros provenientes del sector empresarial, sociedad civil y Fuerzas Armadas.

<sup>35</sup> Comisión Interamericana de Derechos Humanos.

<sup>36</sup> Informe Anual del Consejo de Reparaciones (2007).

<sup>37</sup> Dentro de sus funciones pueden resaltarse las siguientes: Diseñar la política nacional de paz, reconciliación y reparación colectiva para su posterior aprobación por el Consejo de Ministros; coordinar el cumplimiento de las políticas públicas específicas para el cumplimiento de los objetivos de paz, reconciliación y reparación colectiva; promover la cooperación y la colaboración de la sociedad civil en el logro de los objetivos de paz, reconciliación y reparación colectiva y establecer y mantener vinculaciones con organismos internacionales de derechos humanos con la finalidad de procurar cooperación técnica internacional.

<sup>38</sup> El Nuevo Sol se cotiza a 2.85 soles por dólar americano en promedio.

<sup>39</sup> Los efectos de esta declaración son los mismos que los de la declaración judicial de muerte presunta.

<sup>40</sup> Artículo 43 de la Constitución Política del Perú de 1993.

<sup>41</sup> Con el retorno de la democracia se emitieron las Leyes 27362 y 27367, que dejan sin efecto la homologación de los magistrados provisionales en el Poder Judicial y el Ministerio Público y, desactiva las Comisiones Ejecutivas del Poder Judicial y del Ministerio Público creadas a instancia del Poder Ejecutivo.

<sup>42</sup> El Acuerdo Nacional ya citado estableció en su Política de Estado 28 la “Plena Vigencia de la Constitución y de los Derechos Humanos y Acceso a la Justicia e Independencia Judicial”.

<sup>43</sup> Dichos pronunciamientos fueron realizados en las sentencias de fondo y de interpretación de sentencia emitidas en el Caso Barrios Altos el 14 de marzo y el 3 de septiembre de 2001 respectivamente.

<sup>44</sup> Resolución de Fiscalía de la Nación 815-2005-MP-FN (18/04/2005).

<sup>45</sup> Entre los fallos sobre la no aplicación de las leyes de amnistía destacan: Villegas Namuche (18/03/2004), Vera Navarrete (09/12/2004) y Martín Rivas (29/11/2005) entre otras.

<sup>46</sup> El proyecto de ley recoge el proyecto preparado por la Comisión Especial Revisora de Código Penal creada por Ley 27837. Dicha Comisión estuvo encargada de revisar el Código Penal, las normas modificatorias y la adecuación a los delitos previstos en el Estatuto de Roma de la Corte Penal Internacional y demás instrumentos internacionales pertinentes.

<sup>47</sup> El Perú respalda la plena vigencia del Estatuto de Roma y por tanto, consciente de la necesidad de brindar las facilidades necesarias a la Corte Penal Internacional para el desempeño de sus funciones, introdujo en el nuevo Código Procesal Penal (2004) normas relativas a Cooperación Judicial Internacional con mención expresa a la cooperación con la Corte Penal Internacional.

<sup>48</sup> Aprobado mediante Decreto Supremo 017-2005-JUS publicado el 11 de setiembre de 2005.

<sup>49</sup> Mediante ésta el Estado se compromete a adoptar medidas legales y administrativas para garantizar la vigencia y difusión de la Constitución, afianzando el respeto irrestricto a los derechos humanos y asegurando la sanción a los responsables de su violación.

<sup>50</sup> Por consiguiente el PNDH está guiado por el principio rector del consenso social: adoptado con carácter de política de Estado que trasciende la acción limitada de un gobierno; refleja el compromiso ético político del Estado para que su formulación e implementación sea de carácter participativo; asume como marco de referencia los compromisos internacionales derivados de las normas internacionales y de los tratados de derechos humanos y de derecho internacional humanitario ratificados por el Perú así como las normas constitucionales; toma en cuenta las recomendaciones formuladas por los distintos mecanismos del Sistema Internacional de promoción y protección de los derechos humanos; asume como marco de referencia político ético los componentes del Acuerdo Nacional y las conclusiones y recomendaciones contenidas en el Informe Final de la Comisión de la Verdad y Reconciliación; nace del reconocimiento y respeto del carácter pluricultural, multiétnico y plurilingüe del Estado y la Nación peruana.

<sup>51</sup> La Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, la Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer, la Convención sobre los Derechos de las Personas con Discapacidad, el Convenio 111 de la OIT relativo a la Discriminación en Materia de Empleo y Ocupación, la Convención relativa a la Lucha contra las Discriminaciones en la Esfera de la Enseñanza, la Convención Internacional sobre la Represión y Castigo del Crimen del Apartheid, el Convenio 169 de la OIT sobre Pueblos Indígenas y Tribales en Países Independientes, la Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer (Convención Belem Do Pará), entre otros.

<sup>52</sup> El inciso 2 del artículo 2 de la Constitución señala que: “Toda persona tiene derecho a la igualdad ante la ley. Nadie debe ser discriminado por motivo de origen, raza, sexo, idioma, religión, opinión, condición económica o de cualquiera otra índole”. Asimismo, se indica en el inciso 19 del mismo artículo el derecho: “A su identidad étnica y cultural (...)”

<sup>53</sup> Cabe destacar, por ejemplo la Ley 27049, Ley que precisa el derecho de los ciudadanos a no ser discriminados en el consumo (28/12/1998), con la que se busca proteger los intereses económicos de los ciudadanos, mediante el trato equitativo y justo en toda transacción comercial. Toda persona que sienta que su derecho como consumidor ha sido afectado puede recurrir a la Comisión de Protección al Consumidor del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI).

<sup>54</sup> Las sanciones penales por actos de discriminación se detallan en el artículo 323 del Código Penal que señala, además como agravante, que el acto sea cometido por funcionarios públicos.

<sup>55</sup> Ley 26864, Ley de Elecciones Municipales (26/09/1997).

<sup>56</sup> Ley 26859, Ley Orgánica de Elecciones la cual fue modificada por la Ley 27387 (27/12/2000).

<sup>57</sup> Ley 27683, Ley de Elecciones Regionales (25/03/2002).

<sup>58</sup> Ley 28094, Ley de Partidos Políticos (01/11/2003).

<sup>59</sup> Informe Anual 2006 de la Coordinadora Nacional de Derechos Humanos (CNDDHH).

<sup>60</sup> Ley 28963 que modifica el artículo 170 del Código Penal (05/04/2006).

<sup>61</sup> Ley 28983, Ley de igualdad de Oportunidades entre mujeres y hombres (12/03/2007).

<sup>62</sup> Décimo Informe Anual de la Defensoría del Pueblo (enero-diciembre 2006).

<sup>63</sup> Realizados por el MIMDES a través de su órgano especializado la Dirección General de Pueblos Originarios y Afroperuanos.

<sup>64</sup> El Organismo de Formalización de la Propiedad Informal (COFOPRI) es el ente rector de diseñar de manera integral la formalización de la propiedad a nivel nacional.

<sup>65</sup> Instituto Nacional de Estadística e Informática (INEI). Compendio Estadístico Anual 2006.

<sup>66</sup> Ley No. 28736, Ley para la Protección de Pueblos Indígenas u Originarios en situación de aislamiento y en situación de contacto inicial de fecha 24 de abril de 2006.

<sup>67</sup> Por mandato de Ley se encuentran en proceso de categorización, acorde a lo que ordena el Decreto Supremo 2008-2007-MIMDES, Reglamento de la Ley para la Protección de Pueblos Indígenas u Originarios en Situación de Aislamiento o Contacto Inicial publicada el 05 de octubre de 2007.

<sup>68</sup> Ministerio de Educación del Perú.

<sup>69</sup> Informe de la Defensoría del Pueblo “La Cuota de Género en el Perú: Supervisión de las Elecciones Regionales y Municipales Provinciales 2006”.

<sup>70</sup> El Presupuesto Participativo es un instrumento de política y a la vez de gestión, a través del cual las autoridades regionales y locales, así como las organizaciones de la población debidamente representadas, definen en conjunto, el destino de los recursos, teniendo en cuenta los Objetivos del Plan de Desarrollo Estratégico o Institucional.

<sup>71</sup> Ley 27050, Ley General de la Persona con Discapacidad (18/12/1998).

<sup>72</sup> El artículo 7 de la Constitución Política del Perú establece que “La persona incapacitada para velar por sí misma a causa de una deficiencia física o mental tiene derecho al respeto de su dignidad y a un régimen legal de protección, atención, readaptación y seguridad”.

<sup>73</sup> Mediante Decreto Supremo 006-2007-MIMDES (publicado el 22 de junio 2007) que modifica el Reglamento de Organización y Funciones del MIMDES.

<sup>74</sup> Registro Nacional de Personas con Discapacidad - Octubre 2007.

<sup>75</sup> Decreto Supremo 049-2002-PCM (07/06/2002).

<sup>76</sup> Decreto Supremo 015-2006-MIMDES (publicado el 13/12/2006).

<sup>77</sup> Ley 2775, Ley que elimina la Discriminación de las Personas con Discapacidad por Deficiencia Intelectual y/o Física en Programas de Salud y Alimentación a cargo del Estado (07/06/2002).

- <sup>78</sup> Informe Anual 2006 de la Coordinadora Nacional de Derechos Humanos (CNDDHH).
- <sup>79</sup> Mediante Resolución Ministerial 0054-2006-ED (31/01/2006).
- <sup>80</sup> Mediante Resolución Directoral 0354-2006-ED (publicada el 01 de junio de 2006).
- <sup>81</sup> Informe Anual 2006 de la Coordinadora Nacional de Derechos Humanos (CNDDHH).
- <sup>82</sup> La Coordinadora Nacional Multisectorial en Salud (CONAMUSA) es un organismo de coordinación constituido por representantes del Estado, la cooperación internacional bilateral y multilateral, la sociedad civil y las organizaciones de personas directamente afectadas por el VIH/SIDA, Tuberculosis y Malaria en el país.
- <sup>83</sup> Resolución Ministerial 771-2004-MINSA (27/07/2004).
- <sup>84</sup> Aprobado con el Decreto Supremo 005-2007-SA (publicado 03 de mayo de 2007).
- <sup>85</sup> Para mayor información ver web: [www.pnud.org.pe](http://www.pnud.org.pe)
- <sup>86</sup> Casos Barrios Altos, Durand y Ugarte, Luis Alberto Cantoral Benavides, Yehude Simon, Leonor La Rosa, Mariela Barreto, General Rodolfo Robles, indultados inocentes, entre otros.
- <sup>87</sup> Casos Barrios Altos, Durand y Ugarte, Leonor La Rosa, Mariela Barreto, entre otros.
- <sup>88</sup> La Comisión Interinstitucional estuvo conformada por representantes de los sectores de Justicia (quien la presidió), Defensa, Interior, MIMDES (entonces PROMUDEH), Salud, Educación, Relaciones Exteriores, Poder Judicial, Ministerio Público, así como por representantes de la sociedad civil y de la Asociación de Familiares de Desaparecidos.
- <sup>89</sup> A la fecha se ha recibido la visita de los Relatores Especiales de Vivienda, Salud (en dos oportunidades) y Migrantes. Así como del Grupo de Trabajo sobre Mercenarios.
- <sup>90</sup> Extraído de “De la Exclusión a la Confianza mediante el Acceso a la Justicia”. PNUD-MINJUS, julio de 2001 y, del Informe Defensorial 109, noviembre de 2006.
- <sup>91</sup> Creada con Ley 28083 (04/10/2003) con representantes del Estado y la sociedad civil.
- <sup>92</sup> El 11 de enero de 2008 se publicó la Ley 29182, Ley de Organización y Funciones del Fuero Militar Policial que generó debate y preocupación. Sectores de la sociedad civil consideran que esta ley contraviene sentencias del tribunal constitucional sobre la materia. Se espera que la controversia se resuelva por los cauces democráticos e institucionales establecidos.
- <sup>93</sup> Declaraciones del Presidente del Consejo Directivo del Programa Juntos, señor Iván Hidalgo, a la Revista Caretas 2019 (19/03/2008).
- <sup>94</sup> La Resolución Ministerial N° 025-2008-PCM dispuso la creación de un Grupo de Trabajo Multisectorial a fin de presentar una propuesta para un Ministerio del Ambiente.
- <sup>95</sup> Dirección General de Asuntos Ambientales Energéticos y Dirección General de Asuntos Ambientales Mineros del Ministerio de Energía y Minas, Instituto Nacional de Recursos Naturales (INRENA), adscrito al Ministerio de Agricultura, Dirección General de Salud Ambiental (DIGESA) del Ministerio de Salud, Servicio Nacional de Sanidad Agraria (SENASA) del Ministerio de Agricultura, las Direcciones Generales de Medio Ambiente de los Viceministerios de Industria y de Pesquería del Ministerio de la Producción.

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