



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under articles 29, paragraph 1, of the  
Convention**

**Reports of States parties due in 2014**

**Peru\***

[Date received: 8 August 2016]

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\* The present document is being issued without formal editing.



## Introduction

1. The Republic of Peru, having adopted the International Convention for the Protection of All Persons from Enforced Disappearance by Legislative Decision No. 29894<sup>1</sup> and ratified it by Supreme Decree No. 040-2012-RE,<sup>2</sup> hereby submits its initial report under article 29 of the Convention, which states that: “Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.”
2. It is noted that paragraph 4 of the aforementioned article provides that the Committee on Enforced Disappearances “may also request States parties to provide additional information on the implementation of this Convention”.
3. The General Directorate of Human Rights, a department of the Ministry of Justice and Human Rights, is responsible for drafting the periodic report submitted to the Committee.<sup>3</sup> Within that department, the Directorate of International Affairs, Promotion and Legislative Alignment performs functions that include “preparing and advising on, as appropriate, the reports required by ... the bodies of international systems for the protection of human rights established under treaties and other international agreements that confer obligations upon the Peruvian State”.<sup>4</sup>
4. The Directorate took into account the guidelines on the form and content of the reports under article 29 to be submitted by States parties to the Convention.<sup>5</sup>
5. The process of drafting this report was carefully planned and participatory, drawing on the cooperation of relevant entities including the executive branch, elements of the judiciary, the Public Prosecution Service and the Military and Police Court, all of whom submitted the information requested by the Ministry of Justice.
6. The final version of the report was approved by the Office of the Deputy Minister for Human Rights and Access to Justice, part of the Ministry of Justice and Human Rights, whose functions include giving final approval to periodic and other reports required by international human rights bodies.<sup>6</sup>

## I. General legal framework

7. The Peruvian Constitution stipulates that treaties concluded by the State and which are in force form part of domestic law.<sup>7</sup> Its Fourth Final and Transitory Provision establishes that the rules governing the rights and freedoms recognized in the Constitution must be interpreted in accordance with the Universal Declaration of Human Rights and the international human rights treaties and agreements ratified by Peru, which is in line with article V of the preliminary title of the Code of Constitutional Procedure.<sup>8</sup>

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<sup>1</sup> Congress of the Republic, Legislative Decision No. 29894 adopting the International Convention for the Protection of All Persons from Enforced Disappearance. *El Peruano* (the country’s official gazette), 6 July 2012.

<sup>2</sup> Ministry of Foreign Affairs, Supreme Decree No. 40-2012-RE ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. *El Peruano*, 16 August 2012.

<sup>3</sup> Ministry of Justice and Human Rights, Supreme Decree No. 11-2012-JUS, Regulations on the Organization and Functions of the Ministry of Justice and Human Rights. *El Peruano*, 20 April 2012, art. 115 (h) and (g).

<sup>4</sup> Supreme Decree No. 11-2012-JUS, art. 120 (a).

<sup>5</sup> United Nations Committee on Enforced Disappearances. Guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention, adopted by the Committee at its second session (26-30 March 2012) (CED/C/2), 8 June 2012.

<sup>6</sup> Ministry of Justice and Human Rights, Supreme Decree No. 11-2012-JUS, art. 16 (g).

<sup>7</sup> Political Constitution of Peru, art. 55. *El Peruano*, 30 December 1993.

<sup>8</sup> Congress of the Republic, Code of Constitutional Procedure, Act No. 28237. *El Peruano*, 31 May 2004. Article V of the preliminary title: “The content and scope of the constitutional rights protected

8. This shows that international instruments are included in the scope of application of the Peruvian Constitution. Similarly, in Case No. 0025-2005-PI/TC and Case No. 0026-2005-PI/TC, the Constitutional Court ruled that international human rights law forms part of the national legal order of Peru.<sup>9</sup>

9. Furthermore, in Case No. 2798-04-HC/TC, the Court indicated that: “The binding obligation arising from the interpretation of human rights means, therefore, that all public activity should allow for the direct application of rules enshrined in international human rights treaties and the jurisprudence of international bodies to which Peru has subscribed.”<sup>10</sup>

10. Consistent with these rulings, the Peruvian State is fully engaged in the ratification of the human rights and international humanitarian law treaties aimed at establishing the obligation to adopt measures to prevent, protect, investigate, sanction and remedy the situation of disappeared persons.<sup>11</sup>

11. The Congress of the Republic, through Legislative Decision No. 30434 (published in the Official Gazette, *El Peruano*, of 14 May 2016) adopted a declaration recognizing the competence of the Committee on Enforced Disappearances, in accordance with article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance.

12. There is evidence that multiple cases of enforced disappearance took place in Peru during the period of violence between 1980 and 2000. According to the specialized forensic team of the Institute of Forensic Medicine of the Public Prosecution Service, some 8,558 cases were recorded during that period.<sup>12</sup> That figure matches the one reported by the Truth and Reconciliation Commission but does not include records that may have been kept by other organizations, which give a higher number.<sup>13</sup>

13. In response, and with a view to meeting its obligations under the Convention to investigate, prosecute and punish those responsible for enforced disappearances, the Peruvian State has set up specialized units within the judiciary and the Public Prosecution Service.

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by processes governed by the present Code should be interpreted in accordance with the Universal Declaration of Human Rights, the human rights treaties, and decisions adopted by international human rights courts established under treaties to which Peru is a party.”

<sup>9</sup> Constitutional Court Judgment of 25 April 2006 handed down in Case No. 0025-2005-PI/TC and Case No. 0026-2005-PI/TC, brought by the Arequipa Bar Association and others; Lima, legal ground 25. Available at <http://www.tc.gob.pe/jurisprudencia/2006/00025-2005-AI%2000026-2005-AI.html> (accessed on 12 May 2013).

<sup>10</sup> Constitutional Court Judgment of 9 December 2004 handed down in Case No. 2798-04-HC/TC (case of Gabriel Orlando Vera Navarrete), Lima, legal ground 8. Available at <http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html> (accessed on 12 May 2013).

<sup>11</sup> International treaties ratified by Peru in relation to the subject matter of this report:

(i) Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of 1949 (adopted by Legislative Decision No. 12412, *El Peruano*, 31 October 1955; instrument of ratification deposited on 5 February 1956; in force for Peru since 15 August 1956);

(ii) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977 (adopted by Legislative Decision No. 25029, *El Peruano*, 23 May 1989; instrument of ratification deposited on 27 June 1989; in force for Peru since 14 January 1990);

(iii) Rome Statute of the International Criminal Court (adopted by Legislative Decision No. 27517, *El Peruano*, 15 September 2001; ratified by Supreme Decree No. 079-2001-RE, *El Peruano*, 9 October 2001; in force for Peru since 1 July 2002);

(iv) Inter-American Convention on Forced Disappearance of Persons, adopted on 9 June 1994 (adopted by Legislative Decision No. 27622, *El Peruano*, 7 January 2002; ratified by Supreme Decree No. 10-2002-RE, *El Peruano*, 23 January 2002; entered into force on 15 March 2002).

<sup>12</sup> Institute of Forensic Medicine, official note No. 1709-2015-MP-FN-IML/JN, 13 May 2015, attached report, p. 1.

<sup>13</sup> Institute of Forensic Medicine, official note No. 1709-2015-MP-FN-IML/JN. The Institute has also indicated that in 2014 it began to develop a pilot plan on the search for disappeared persons, which would be launched in Huánuco, the department with the second highest number of enforced disappearances.

14. As regards reparation for the victims and their family members, the High-Level Multisectoral Commission paid compensation to 1,522 beneficiaries in 2015; between 2011 and 2015, some 78,112 persons were registered in the Central Register of Victims (95 per cent of the total of 82,007 persons).<sup>14</sup>

15. The National Human Rights Plan 2014-2016<sup>15</sup> envisages the following strategic actions: (i) “Design and implement a programme for the prevention of enforced disappearance”; (ii) “Implement a public policy for the search, identification and, where appropriate, restitution of the skeletal remains of disappeared persons”; and (iii) “Draw up a National Plan for Forensic Anthropological Interventions in order to recover the bodies of disappeared persons buried in secret”.

16. At the eleventh morning meeting of its second ordinary session of 2015, Congress approved Bill No. 5290/2015-DP, “Act on the Search for Persons who Disappeared during the Violence of 1980-2000”, the objective of which is to prioritize the humanitarian approach by coordinating and setting out measures related to the search, recovery, analysis, identification and restitution of the human remains of disappeared persons.<sup>16</sup> This legislative initiative was promulgated by the executive on 22 June 2016 and is now fully in force.<sup>17</sup> Ministerial Decision No. 0167-2016-JUS (*El Peruano*, 13 July 2016) established a working group to provide advisory services during the implementation of the Act so as to enable the realization of all necessary actions.<sup>18</sup>

<sup>14</sup> The High-Level Multisectoral Commission was established by Supreme Decree No. 011-2004-PCM to fulfil the objectives of reparation, peace and national reconciliation in the wake of the political violence experienced by Peru between 1980 and 2000. See the follow-up report on the Strategic Institutional Plan of the Ministry of Justice and Human Rights 2013-2017, published in 2015, p. 12. Available at [http://191.98.142.198/docs/PLANES/131/PLAN\\_131\\_2016\\_FINAL\\_INFORME\\_DEL\\_PEI\\_-\\_A%C3%91O\\_2015.PDF](http://191.98.142.198/docs/PLANES/131/PLAN_131_2016_FINAL_INFORME_DEL_PEI_-_A%C3%91O_2015.PDF) (accessed on 6 June 2016).

<sup>15</sup> Ministry of Justice and Human Rights, National Human Rights Plan 2014-2016, adopted by Supreme Decree No. 005-2014-JUS. *El Peruano*, 5 July 2014, pp. 59 and 105-106.

<sup>16</sup> Congress of the Republic, eleventh morning meeting of the second ordinary session of 2015, Bill No. 5290/2015-DP. Available at [http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/F6228081854D2AB505257FC7007D0F56/\\$FILE/AU05290201600603.pdf](http://www2.congreso.gob.pe/Sicr/RelatAgenda/proapro20112016.nsf/ProyectosAprobadosPortal/F6228081854D2AB505257FC7007D0F56/$FILE/AU05290201600603.pdf) (accessed on 6 June 2016).

<sup>17</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016. In addition, Deputy Ministerial Decision No. 0014-2016-JUS of 24 June 2016 made the technical secretariat of the Reparations Board responsible for drafting a technical proposal containing measures that the Ministry of Justice should take to implement the Act (art. 1).

<sup>18</sup> Ministry of Justice and Human Rights, Ministerial Decision No. 0167-2016-JUS establishing the working group tasked with providing advisory services during the implementation of Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 13 July 2016.

Article 2 of the Decision stipulates that the working group shall be made up of representatives of the senior officials of the following public entities and private institutions:

- Ministry of Justice and Human Rights (Chair)
- Public Prosecution Service
- Ombudsman’s Office
- Ministry of Health
- Two representatives of associations of relatives of disappeared persons
- International Committee of the Red Cross

Article 7 of the Decision states that the working group should present a final report describing its contributions to the implementation of Act No. 30470 to the Ministry of Justice and Human Rights.

## II. Information in relation to each substantive article of the Convention

### 2.1 Article 1

17. Article 137 of the Constitution establishes the applicable legal framework for states of exception, namely: (i) state of emergency (disturbance of the peace or internal order, disaster or other grave circumstance affecting the life of the nation); and (ii) state of siege (invasion, external war, civil war or the imminent danger that such circumstances might arise).<sup>19</sup> Neither situation allows for the suspension of core rights, and the regulation establishing the state of exception must specify those rights whose exercise is restricted or suspended.

18. Moreover, article 23 of the Code of Constitutional Procedure<sup>20</sup> indicates that “constitutional processes are not suspended while states of exception remain in force”. “The right not to be subjected to enforced disappearance”<sup>21</sup> is regarded as a right that is protected by the constitutional proceedings of habeas corpus, which is designed to ensure liberty and integrity of the person and the right to life, and to eradicate the concealment and non-disclosure of places of disappearance.<sup>22</sup> In such cases, the judge has a duty to take all necessary steps to find the person subjected to disappearance; the judge may even instruct the judges in the judicial district where the missing person is presumed to have been detained to ascertain whether that person’s freedom was violated and to disclose the name of the officer responsible for ordering or executing any such violation. The judge must also notify the Public Prosecution Service of petitions for habeas corpus so that it may conduct the relevant inquiries.<sup>23</sup>

19. In the event that the enforced disappearance is attributed to a member of the Peruvian National Police or Armed Forces, the judge must also request the alleged aggressor’s hierarchical superior in the area where the disappearance occurred to report within 24 hours on whether a violation did in fact take place, and to disclose the name of the officer responsible for its order or execution.<sup>24</sup>

20. The Human Rights Handbook for Police Officers<sup>25</sup> cites the treaties on enforced disappearance as a source, among others, while the scope of the prohibition of enforced disappearance is explained in the Handbook on International Humanitarian Law and Human Rights for the Armed Forces.<sup>26</sup>

21. A further applicable provision is contained in Legislative Decree No. 665; namely that prosecutors in areas under a state of emergency are authorized to enter police stations, prefectures, military installations and any other detention centres in order to check the status of detainees or persons reported as missing. In the event of non-compliance, the prosecutors must inform the senior prosecutor of the respective judicial district, who must in turn inform the Attorney General of the Nation.<sup>27</sup>

<sup>19</sup> Political Constitution of Peru, art. 137.

<sup>20</sup> Act No. 28237, Code of Constitutional Procedure, art. 23.

<sup>21</sup> Ibid., art. 25.

<sup>22</sup> Constitutional Court Judgment of 23 March 2004, handed down in Case No. 2663-2003-HC/TC, legal ground 6 (f). Available at <http://www.tc.gob.pe/jurisprudencia/2004/02663-2003-HC.html> (accessed on 16 February 2016).

<sup>23</sup> Act No. 28237, Code of Constitutional Procedure, art. 32.

<sup>24</sup> Ibid.

<sup>25</sup> Ministry of the Interior, Ministerial Decision No. 1452-2006-IN of 31 May 2006. *El Peruano*, 12 June 2006, pp. 10-11. Available at [https://www.pnp.gob.pe/normas\\_legales/manual\\_ddhh.pdf](https://www.pnp.gob.pe/normas_legales/manual_ddhh.pdf) (accessed on 16 February 2015).

<sup>26</sup> Ministry of Defence, Deputy Ministerial Decision No. 048-2010/DE/VPD of 21 May 2010, pp. 47, 78, 114, 123-125, 148 and 356. Available at [www.mindef.gob.pe/informacion/documentos/manual\\_ddhh\\_ffaa\\_2010.pdf](http://www.mindef.gob.pe/informacion/documentos/manual_ddhh_ffaa_2010.pdf) (accessed on 6 February 2015).

<sup>27</sup> Legislative Decree No. 665, arts. 1-3. *El Peruano*, 3 September 1991.

## 2.2 Article 2

22. Enforced disappearance is currently punishable under article 320 of the Criminal Code,<sup>28</sup> as follows: “An official or public servant who deprives a person of his or her freedom, by ordering or carrying out actions which result in the duly verified disappearance of that person, shall incur a penalty of not less than 15 years’ imprisonment, as well as disqualification from public office and employment, in accordance with article 36 (1) and (2).”

23. Article 46-A of the general part of the Criminal Code also applies; according to this article, criminal responsibility is accompanied by an aggravating circumstance “if the perpetrator takes advantage of his or her status as a member of the Peruvian National Police or Armed Forces, or as a public authority, official or servant, to commit a punishable act or uses weapons for that purpose that have been provided by the State or whose use is authorized on account of his or her status as a public official”.<sup>29</sup> In such cases the judge may increase the maximum sentence established by law for the crime in question by 50 per cent, although the sentence may not exceed 35 years’ imprisonment.

24. When an enforced disappearance is perpetrated in the context of organized crime,<sup>30</sup> Act No. 30077, the Organized Crime Act, is applicable. Such a situation is also subject to the rules and provisions of the New Code of Criminal Procedure, adopted by Legislative Decree No. 957, without prejudice to other special provisions.<sup>31</sup>

25. The Organized Crime Act also stipulates that, in the event of a criminal act being committed by a public servant or official who has abused or taken advantage of his or her position to commit, facilitate or cover up a crime, the judge may increase the sentence by up to one third of the legally established maximum, although the sentence may not exceed 35 years’ imprisonment.<sup>32</sup>

26. Notwithstanding the above, both the judiciary and the Public Prosecution Service have indicated that the current definition of enforced disappearance is not aligned with article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, the Inter-American Convention on Forced Disappearance of Persons, or the Rome Statute of the International Criminal Court.<sup>33</sup> Steps have been taken by both the judiciary and the Constitutional Court to resolve that situation.

27. In particular, the judiciary, at the fifth judicial plenary meeting attended by the judges of the permanent and transitional criminal divisions of the Supreme Court,<sup>34</sup> adopted Plenary Agreement No. 09-2009-/CJ-116 on the criminal jurisprudence relating to enforced disappearance.

<sup>28</sup> Legislative Decree No. 635, Criminal Code. *El Peruano*, 8 April 1991. Book II, title XIV-A “Crimes against humanity”, chapter II “Enforced disappearance”, art. 320.

<sup>29</sup> Congress of the Republic, Act No. 30054 incorporating article 108-A of the Criminal Code, amending articles 46-A, 108, 121 and 367 of the Criminal Code and articles 47, 48 and 53 of the Code of Criminal Enforcement, to prevent and punish crimes against members of the Peruvian National Police or Armed Forces, magistrates of the judiciary or of the Public Prosecution Service, members of the Constitutional Court or authorities elected by popular mandate, art. 2. *El Peruano*, 30 June 2013.

<sup>30</sup> Congress of the Republic, Act No. 30077, Organized Crime Act, art. 3 (18). *El Peruano*, 20 August 2013. The aim of the Act is to establish rules and procedures for investigations, proceedings and punishments related to crimes committed by criminal organizations.

<sup>31</sup> Act No. 30077, art. 4.

<sup>32</sup> *Ibid.*, art. 22 (1) (c).

<sup>33</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 9. Public Prosecution Service, Office of the Coordinator of the National Criminal Prosecutor’s Office and the Supra-provincial Criminal Prosecutors’ Offices, official note No. 290-2015-FSPNC-MP-FN, 18 February 2015. Report No. 290-2015-FSPNC-MP-FN, p. 6.

<sup>34</sup> Ministry of Justice, Supreme Decree No. 017-93-JUS, Single Consolidated Text of the Organic Act on the Judiciary, art. 116. *El Peruano*, 2 June 1993.

28. The Plenary Agreement states that “the gap between the domestic definition of the offence and international standards relates to the definition of the perpetrator and, perhaps, to the description of the fundamental nature of the crime of enforced disappearance”.<sup>35</sup>

29. With regard to the nature of the crime, the Plenary Agreement also refers to the case law of the Inter-American Court of Human Rights and the Constitutional Court, describing it as a “crime of multiple offences, entailing the multiple and continued violation of several fundamental and treaty rights”, and noting that “owing to the manner in which it affects the victim, it is a continuing offence”.<sup>36</sup>

30. Although the Plenary Agreement contains provisions that help clarify the jurisprudence, it is not aligned with the content and scope of the International Convention or the Inter-American Convention on Forced Disappearance of Persons, since it considers that the crime of enforced disappearance can only be committed by those who were public servants or officials in 1991 (the year in which the amended Criminal Code came into force).<sup>37</sup>

31. The Constitutional Court, having reiterated its *ratio decidendi* in Case No. 2798-04-HC/TC and Case No. 4677-2005-PHC/TC, stated in the judgment handed down in Case No. 2488-2002-HC/TC that: “The guarantee of *lex praevia* under the principle of legality is not violated when a criminal provision is applied that had not entered force before the continuing offence was committed, but which is applicable while the offence is still ongoing. In that sense, the fact that the enforced disappearance of persons has not always had a valid legal definition does not raise any impediment to criminal prosecution or to the punishment of those responsible.”<sup>38</sup>

32. The Constitutional Court also ruled that: “While the offence of enforced disappearance of persons was not always in force in the legal order of Peru, that does not prevent the instigation of the corresponding criminal proceedings in relation to acts originating in a detention that occurred before the offence entered into force in the Criminal Code, provided that the ongoing nature of the offence, as witnessed by ignorance of the victim’s whereabouts, persisted until such time as the offence was set forth in the legal order.”<sup>39</sup>

## 2.3 Article 3

33. To comply with international and domestic obligations relating to the investigation, prosecution and punishment of those responsible for crimes of enforced disappearance, a

<sup>35</sup> Fifth judicial plenary meeting of the permanent and transitional criminal divisions of the Supreme Court, Plenary Agreement No. 9-2009-/CJ-116, 13 November 2009, paras. 8-9. Available at [http://scc.pj.gob.pe/wps/wcm/connect/021852804075b96fb5a9f599ab657107/ACUERDO\\_PLENARIO\\_09-2009-CJ-116\\_301209.pdf?OD=AJPERES&CACHEID=021852804075b96fb5a9f599ab657107](http://scc.pj.gob.pe/wps/wcm/connect/021852804075b96fb5a9f599ab657107/ACUERDO_PLENARIO_09-2009-CJ-116_301209.pdf?OD=AJPERES&CACHEID=021852804075b96fb5a9f599ab657107) (accessed on 13 February 2015).

<sup>36</sup> Fifth judicial plenary meeting of the permanent and transitional criminal divisions of the Supreme Court, Plenary Agreement No. 9-2009-/CJ-116, paras. 13-14.

<sup>37</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 10. Cf. Plenary Agreement No. 9-2009-/CJ-116, para. 15 (c).

<sup>38</sup> Constitutional Court Judgment of 18 March 2004, handed down in Case No. 2488-2002-HC/TC (case of Genaro Villegas Namuche), legal ground 26. Available at <http://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html> (accessed on 12 February 2016).

Judgment of 9 December 2004, handed down in Case No. 2798-04-HC/TC (case of Gabriel Orlando Vera Navarete), legal ground 22. Available at <http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html> (accessed on 13 February 2016).

Judgment of 12 August 2005, handed down in Case No. 4677-2005-PHC/TC (case of Juan Nolberto Rivera Lazo), legal ground 7. Available at <http://www.tc.gob.pe/jurisprudencia/2006/04677-2005-HC.html> (accessed on 10 March 2016).

<sup>39</sup> Constitutional Court Judgment of 4 September 2013, handed down in Case No. 02249-2013 PH/TC (case of Juan Fernando Aragón Guibovich), legal ground 6. Available at <http://www.tc.gob.pe/jurisprudencia/2013/02249-2013-HC.pdf> (accessed on 12 February 2015).

specialized human rights subsystem was set up within both the Public Prosecution Service and the judiciary.

34. The Public Prosecution Service approved the creation of the National Criminal Prosecutor's Office and the supra-provincial criminal prosecutors' offices to investigate serious human rights violations, crimes against humanity (including enforced disappearance), genocide and terrorism. This framework comprises: (i) three national criminal prosecutors' offices headquartered in Lima; (ii) four supra-provincial criminal prosecutors' offices in Lima; (iii) two supra-provincial criminal prosecutors' offices in Ayacucho; (iv) one supra-provincial criminal prosecutor's office in Huancavelica, with a branch office in Ayacucho; (v) one provincial prosecutor's office specializing in terrorism and crimes against humanity, in Huánuco; (vi) three provincial criminal prosecutors' offices in Abancay; (vii) one provincial criminal prosecutor's office in Huancayo; and (viii) one supra-provincial prosecutor's office in the Valley of the Apurímac, Ene and Mantaro rivers and Pichari.<sup>40</sup>

35. According to updated information from the Public Prosecution Service, the present caseload of the national and supra-provincial criminal prosecutors' offices, in relation to crimes of enforced disappearance, stands at 75 cases (see annex 1).<sup>41</sup>

36. Three criminal cases concerning enforced disappearance are at the investigation stage; the investigations are being conducted by the supra-provincial criminal prosecutors' offices of Lima (see table in annex 2).

37. Fourteen court cases for the crime of enforced disappearance are pending, while others are at the stage of the oral proceedings (see annex 3).

38. At the national level, the judiciary granted jurisdiction over the crimes set forth in chapters I, II and III of title XIV-A of the Criminal Code to the National Criminal Division, which was also authorized to try ordinary offences constituting human rights violations;<sup>42</sup> the same competence was subsequently attributed to the national criminal courts.<sup>43</sup>

39. The system for the administration of justice in crimes of enforced disappearance consists of the following judicial bodies: (i) the First Criminal Court of Huancayo; (ii) the Second Criminal Court of Huamanga; (iii) the First Transitional Criminal Court of Huánuco (set up to reduce the backlog of cases); (iv) the first, second and third national criminal courts, located in Lima; (v) the National Criminal Division, Panel B (based in Lima); and (vi) the permanent and transitional criminal divisions of the Supreme Court.<sup>44</sup>

40. In terms of the enforcement of international human rights judgments, the Executive Council of the Judiciary created and defined the functions of courts specializing in the enforcement of supranational sentences.<sup>45</sup>

41. Other measures include the adoption by the Office of the President of the Judiciary of Administrative Decision No. 116-2013-P-PJ of 1 April 2013. Article 1 of this decision urges criminal court judges, in the exercise of their judicial independence and subject to the Constitution and existing laws, to impose and enforce, where appropriate, sufficiently

<sup>40</sup> Public Prosecution Service, Office of the Coordinator of the National Criminal Prosecutor's Office and the Supra-provincial Criminal Prosecutors' Offices, official note No. 290-2015-FSPNC-MP-FN, 18 February 2015. Report No. 01-2015-FSPNC-MP-FN, p. 8.

<sup>41</sup> Public Prosecution Service, Office of the Coordinator of the National Criminal Prosecutor's Office and the Supra-provincial Criminal Prosecutors' Offices, official note No. 290-2015-FSPNC-MP-FN, pp. 8-9.

<sup>42</sup> Executive Council of the Judiciary, Administrative Decision No. 170-2004-CE-PJ, 17 September 2004; Administrative Decision No. 136-2012-CE-PJ, 9 July 2012; and Administrative Decision No. 235-2013-CE-PJ, 16 October 2013.

<sup>43</sup> Executive Council of the Judiciary, Administrative Decision No. 060-2005-CE-PJ, 25 July 2012; and Administrative Decision No. 150-2012-CE-PJ, 17 September 2004. Judiciary, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 10, annexes 29-33.

<sup>44</sup> Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 3. The authorities listed under points (i)-(iii) also operate as the national criminal courts of Junín, Ayacucho and Huánuco, respectively.

<sup>45</sup> Executive Council of the Judiciary, Administrative Decision No. 089-2010-CE-PJ, 11 March 2010.



rigorous and severe penalties as warranted by the law and the facts in each case, while giving due consideration, in the name of justice, to the protection of victims' interests.

42. In a similar vein, Administrative Decision No. 254-2014-PJ was adopted, in which all national-level judicial and administrative bodies of the high courts are urged to take all necessary measures, as soon as possible and within the exercise of their competences, to address and swiftly conclude cases within their jurisdiction that were being processed or awaiting resolution in the inter-American human rights system.

## 2.4 Article 4

43. As indicated above, the domestic definition of enforced disappearance as a criminal offence is not in line with the international treaties ratified by Peru; however, the scope of those instruments has been taken into consideration in the country's criminal case law. In this regard, a number of final judgments may be cited:

36.1 In which it is stated that "the crime of enforced disappearance of persons has been established by international treaties approved and ratified by the Peruvian State, meaning that laws must be interpreted in accordance with international treaties and agreements".<sup>46</sup>

36.2 It has been established that this crime "is characterized by its structure and complex *modus operandi*, which implies not only the deprivation of a person's liberty by State agents, but also the systematic concealment of the arrest so that the victim's whereabouts remain unknown; hence the classification of enforced disappearance as a continuing offence, as a result crime, and, essentially, as a special individual offence".<sup>47</sup>

36.3 It is also stated that "the absolute prohibition of enforced disappearance is a peremptory norm (*jus cogens*) that affects core rights".<sup>48</sup>

36.4 Article II of the Inter-American Convention on Forced Disappearance of Persons and article 7 of the Rome Statute of the International Criminal Court are also directly cited in designating the characteristics and structure of the crime of enforced disappearance.<sup>49</sup>

36.5 "It is not necessary for the public official to be requested or summoned to fulfil his or her duty of disclosing the whereabouts or situation of the detainee. The obligation of the public official precedes any such request or summons, and originates at such time as he or she acquires the position of guarantor (having a duty to act to prevent the potential criminal act), which in the case of enforced disappearance occurs when the victim is deprived of his or her liberty, either under normal or arbitrary circumstances. In that moment, the official assumes the institutional commitment to take responsibility for the safety of the detainee in accordance with the rules of due process."<sup>50</sup>

36.5 A further provision holds that "perpetration by organizational means, according to the Supreme Court in the judgment against Alberto Fujimori, requires the presence of assumptions and functional requirements. These would be: (i) the authority to command; (ii) the organization's disengagement from the legal order;

<sup>46</sup> Supreme Court of Justice, Permanent Criminal Division, Appeal for Annulment No. 1566-2013, Lima, 26 August 2013, p. 9, fifth recital. Cf. Judiciary, official note No. 047-2015-DDHH-PJ, 27 February 2015, annex 6.

<sup>47</sup> Supreme Court of Justice, Transitional Criminal Division, Appeal for Annulment No. 1040-2012, Lima, 16 May 2013, p. 7, fifth recital. Cf. Judiciary, official note No. 047-2015-DDHH-PJ, annex 3.

<sup>48</sup> Supreme Court of Justice, Transitional Criminal Division, Appeal for Annulment No. 1514-2013, Lima, 20 November 2013, p. 9, fourteenth recital. Cf. Judiciary, official note No. 047-2015-DDHH-PJ.

<sup>49</sup> Supreme Court of Justice, Permanent Criminal Division, Appeal for Annulment No. 1598-2007, Lima, 24 September 2007, p. 7, fifth recital. Cf. Judiciary, official note No. 047-2015-DDHH-PJ, annex 4.

<sup>50</sup> National Criminal Division, Judgment of 19 November 2013, handed down in Case No. 36-12.

(iii) the fungibility of the immediate perpetrator; and (iv) the perpetrator's demonstrable willingness to commit the act."<sup>51</sup>

## 2.5 Article 5

44. The Criminal Code defines enforced disappearance in title XIV-A, article 320, "Crimes against humanity". It does not refer expressly to the crime being committed as part of a widespread or systematic practice, which would constitute a crime against humanity.

45. While Peru is a State party to the Rome Statute of the International Criminal Court,<sup>52</sup> domestic implementation of the Statute is currently pending.

46. That situation has not prevented either the Constitutional Court or the judiciary from explicitly setting out the scope of crimes against humanity, both in established case law and in ongoing cases.

47. One such example is the judgment handed down by the judicial plenary of the Constitutional Court in Case No. 0024-2010-PI/TC. That judgment defines the scope of a crime against humanity and its relationship to the right to the truth, affirming that "the fundamental right to the truth not only entails the duty of the authorities to investigate acts which constitute crimes against humanity, but also the duty to single out and punish those responsible for committing them, and to compensate, insofar as is possible, the victims and/or their relatives". For that reason, crimes against humanity "cannot go unpunished; in other words, the material perpetrators and their accomplices responsible for human rights violations cannot escape the legal consequences of their acts".<sup>53</sup>

48. The Supreme Court, in its judgment on the Fujimori case,<sup>54</sup> specified that "from what we have heard, it is evident that the acts of murder and grievous bodily harm that are the subject of this trial transcend the strictly individual or common sphere and are fully in keeping with the elements that identify crimes against humanity. The murders and the grievous bodily harm committed in Barrios Altos and La Cantuta are also crimes against humanity."

49. That assessment was endorsed by the Special Criminal Division of the Supreme Court, which stated that "criminal acts, especially those of murder and grievous bodily harm, are fully consistent with the elements that constitute crimes against humanity".<sup>55</sup>

50. Similarly, the National Criminal Division, in Case No. 88-09<sup>56</sup> and Case No. 328-2011,<sup>57</sup> analysed the various criteria that mark the crime of enforced disappearance as a

<sup>51</sup> National Criminal Division, Judgment of 15 December 2014, handed down in Case No. 924-2008.

<sup>52</sup> Legislative Decision No. 27517, adopting the Rome Statute of the International Criminal Court. *El Peruano*, 16 September 2001. Supreme Decree No. 79-2001-RE, ratifying the Rome Statute of the International Criminal Court. *El Peruano*, 9 October 2001.

<sup>53</sup> Constitutional Court Judgment of 21 May 2011 in Case No. 0024-2010 PI/TC, unconstitutionality proceedings brought by 25 per cent of the legal number of members of Congress against Legislative Decree No. 1097, legal ground 60. Available at <http://www.tc.gob.pe/jurisprudencia/2011/00024-2010-AI.html> (accessed on 13 February 2015). Case No. 2488-2002-HC/TC, 18 March 2004, legal ground 5. Available at <http://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html> (accessed on 13 February 2015).

<sup>54</sup> Supreme Court of Justice, Special Criminal Division, Case No. A.V. 19-2001, 7 April 2009, Part III — Criminal Legal Grounds, para. 717, pp. 623-624. Available at [http://historico.pj.gob.pe/CorteSuprema/spe/documentos/P4\\_Fallo.pdf](http://historico.pj.gob.pe/CorteSuprema/spe/documentos/P4_Fallo.pdf) (accessed on 16 February 2015).

<sup>55</sup> Supreme Court of Justice, First Transitional Criminal Division, Appeal for Annulment No. A.V. 19-2001, 30 December 2009, p. 110.

<sup>56</sup> National Criminal Division, Panel A, Case No. 88-09, 23 September 2013, pp. 62-63. Cf. Judiciary, official note No. 047-2015-DDHH-PJ.

<sup>57</sup> National Criminal Division, Panel A, Case No. 328-2011, 21 April 2014, p. 38. Cf. Judiciary, official note No. 047-2015-DDHH-PJ.

crime against humanity, and established penalties commensurate with the seriousness of that crime.<sup>58</sup>

51. Important cases — such as crimes of enforced disappearance — are monitored by the Judicial Observatory, which was inaugurated on 16 February 2012 pursuant to Administrative Decision No. 055-2012-P-PJ of the Office of the President of the Judiciary. The Observatory’s purpose is to keep the Office of the President informed of progress in those cases, so that it can adopt strategies to process them more efficiently.<sup>59</sup>

52. At the time of writing, the Judicial Observatory is monitoring 11 cases linked to crimes of enforced disappearance (including the Cayara, Julcamarca, Chumbivilcas, Rodrigo Franco Command, Acomarca, Fosas de Pucayacu and Putis cases).<sup>60</sup>

## 2.6 Article 6

53. In Peru, the criminal liability of the perpetrator is addressed in article VII of the preliminary title of the Criminal Code,<sup>61</sup> which states that: “Penalties require the criminal liability of the perpetrator to have been established. All forms of strict liability are outlawed.” That principle accords with article 2 (24) (e) and article 139 (3) of the Constitution. Such provisions ensure respect for guarantees of due process for those involved in legal proceedings, as well as the effective judicial protection of victims and respect for the principle of the presumption of innocence.

54. The case law of the Constitutional Court<sup>62</sup> and the Supreme Court<sup>63</sup> rules out any exemption from criminal liability for enforced disappearance on the grounds of performance of duty (Criminal Code, art. 20 (8)).

55. In that regard, article 45 of the Constitution establishes the scope of due obedience, stating that: “The power of the State emanates from the people. Those who exercise it do so with the limitations and responsibilities laid down by the Constitution and the law.”

56. Also on the subject of due obedience, in Case No. 2446-2003-AA/TC the Constitutional Court stated that: “Under the principles of constitutional supremacy and of a social and democratic State subject to the rule of law, those who exercise the power of the State do so with the limitations and responsibilities laid down by the Constitution and the law ... for which reason the existence of duties that are manifestly contrary to fundamental rights or, in general, to constitutionally legitimate aims pursued by the legal order cannot be accepted.”<sup>64</sup>

57. The same criterion was applied in the final judgment handed down by the Second Transitional Criminal Division of the Supreme Court in respect of Appeal for Annulment No. 3198-2008-Lima (case of La Cantuta), which stated that: “The defendants ... claim that they were only carrying out the orders of their superior officers; in this regard, it must be taken into account that obedience to orders given by superiors must be consistent with constitutional principles ... in no circumstances are members of military and similar

<sup>58</sup> National Criminal Division, Panel A, Case No. 88-09, 23 September 2013, pp. 44-49. Cf. Judiciary, official note No. 047-2015-DDHH-PJ.

<sup>59</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 24.

<sup>60</sup> Ibid.

<sup>61</sup> Legislative Decree No. 635, Criminal Code, preliminary title, art. VII. *El Peruano*, 8 April 1991.

<sup>62</sup> Constitutional Court Judgment of 12 December 2012, handed down in Case No. 03224-2010-PHC/TC (case of Julio Salazar Monroe).

<sup>63</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 14. Cf. Permanent Criminal Division, final judgment on Appeal for Annulment No. 1598-2007 (Chuschi case), Lima, 24 September 2007.

<sup>64</sup> Constitutional Court, Case No. 2446-2003-AA/TC, 30 September 2005, legal ground 10. Available at <http://www.tc.gob.pe/jurisprudencia/2005/02446-2003-AA.html> (accessed on 15 February 2015).

organizations ... bound to obey orders with criminal content, since in such cases the law must have priority over authority.”<sup>65</sup>

58. Conversely, article 29 of Legislative Decree No. 1095, which establishes the regulations governing the use of force by the Armed Forces on national territory, takes the superior officer’s responsibility into account, indicating that: “The superior takes due responsibility in the event that he knew that his subordinates had violated the provisions of the present Legislative Decree and its implementing regulations, and did not promptly adopt the preventive or corrective measures at his disposal.”<sup>66</sup>

59. As stated above, it may be concluded that the case law of both the Constitutional Court and the Supreme Court establishes the inadmissibility of due obedience in relation to the crimes committed, in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance. In that sense, it is clear that due obedience shall be inapplicable and shall have no impact in the criminal prosecution of such cases.

## 2.7 Article 7

60. As discussed above, the crime of enforced disappearance is defined in article 320 of the Criminal Code,<sup>67</sup> which prescribes “a penalty of not less than 15 years’ imprisonment, as well as disqualification from public office and employment, in accordance with article 36 (1) and (2)”.

61. Articles 45, 46, 48, 50 and 51 of the Criminal Code shall also be considered in the judicial determination of the penalty. Those provisions relate to attenuating and aggravating circumstances, including the special status of the perpetrator, recidivism, habitual offending and the use of minors in the commission of crimes, as well as circumstances of *concurso ideal* (where a single act is punishable under various provisions) and *concurso real* (where several offences are committed as a result of several acts).<sup>68</sup>

62. Peruvian criminal legislation provides for a minimum of 15 years’ imprisonment and a maximum of 35 years’ imprisonment for the crime of enforced disappearance. These penalties are in conformity with international standards for protection against enforced disappearance.<sup>69</sup>

63. Consideration has also been given — depending on the circumstances of each specific case — to the penalty of disqualification, whereby perpetrators holding the status of public servant may be stripped of their duties and disqualified and prevented from securing any public mandate, position, employment or commission.<sup>70</sup>

64. The average unconditional prison sentence handed down in cases of enforced disappearance currently stands at 15 years.<sup>71</sup> Sentences have been imposed ranging from 6 years’ imprisonment where the defendant was a secondary accomplice and 10 years’ imprisonment in the event of a plea bargain, to 25 years.<sup>72</sup>

65. The average duration for the penalty of disqualification is 5 years. However, the amendment of article 38 of the Criminal Code allowed for this restriction of the rights of

<sup>65</sup> Permanent Criminal Division, Appeal for Annulment No. 3198-2008, 27 April 2009, legal ground 6, p. 14. Cf. Judiciary, official note No. 047-2015-DDHH-PJ.

<sup>66</sup> Legislative Decree No. 1095 establishing the regulations governing the use of force by the Armed Forces on national territory, art. 29. *El Peruano*, 1 September 2010.

<sup>67</sup> Legislative Decree No. 635. Criminal Code, book II, title XIV-A, “Crimes against humanity”, chap. II, “Enforced disappearance”, art. 320. *El Peruano*, 8 April 1991.

<sup>68</sup> Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 17.

<sup>69</sup> *Ibid.*, p. 17.

<sup>70</sup> *Ibid.*, p. 18.

<sup>71</sup> National Criminal Division, Case No. 111-04-Lima and Case No. 149-2009-Lima.

Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 18.

<sup>72</sup> Permanent Criminal Division — Final judgment on Appeal for Annulment No. 1598-2007-Lima, National Criminal Division — Case No. 328-2011; and Second Transitional Criminal Division — Final judgment on Appeal for Annulment No. 3198-2008/Lima (La Cantuta-Salazar Monroe case). In: official note No. 047-2015-DDHH-PJ.

the perpetrator to be extended to 10 years. Such sentences have been imposed by the judicial bodies with jurisdiction to try crimes of enforced disappearance.<sup>73</sup>

66. Attenuating circumstances applied by the judiciary include: the status of subordinate agent, absence of a criminal record, culturally conditioned misunderstanding, sincere confession, plea bargaining in oral proceedings and chronic illness.<sup>74</sup>

67. On the other hand, aggravating circumstances have included: status as head of an organization vested with authority, authority derived from command or office, and a plurality of actors, motives and means that might increase the danger to the life and personal safety of the victim.<sup>75</sup>

## 2.8 Article 8

68. Peruvian criminal legislation does not have a specific provision to the effect that statutory limitations do not apply to crimes of enforced disappearance; however, this does not prevent laws alluding to the prescription of criminal proceedings and penalties from being interpreted in accordance with the standards of the Convention and other international instruments for protection against enforced disappearance.<sup>76</sup>

69. Thus, in accordance with article 86 of the Criminal Code, the limitation period for execution of the sentence<sup>77</sup> “is the same as that which is referred to or established by law for the limitation of criminal proceedings. The period shall be counted from the day on which the judgment becomes final.”

70. Moreover, in Plenary Agreement No. 09-2009-/CJ-116, the judges of the permanent and transitional criminal divisions of the Supreme Court indicated that “the non-applicability of statutory limitations to the crime of enforced disappearance of persons, even where the aforementioned contextual element is absent, is affirmed by article VII of the Inter-American Convention on Forced Disappearance of Persons”.<sup>78</sup>

71. The same paragraph adds that “the rationale for this provision is that the practice of enforced disappearance by public servants or officials constitutes an infringement of State duties linked to respect for the fundamental rights of the person, including the right to recognition as a person before the law”.

72. Taking the above into account, the judiciary has stated that, since statutory limitations are deemed not to apply to either criminal proceedings or the enforcement of sentences arising from the crime of enforced disappearance — given that important legal rights are affected — the crime of enforced disappearance (either as an individual offence or as a crime against humanity) is not subject to statutory limitations and the prohibition of impunity for these crimes is a peremptory norm, or *jus cogens*.<sup>79</sup>

73. In a similar vein, the Constitutional Court, in the sentence handed down in Case No. 0024-2010-PI/TC, indicated that “it does not consider that the future validity of the rule on the non-applicability of statutory limitations in cases of crimes against humanity rests solely on the basis of ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, but rather that a peremptory

<sup>73</sup> Judiciary, National Criminal Division, Panel A, Case No. 328-2011. Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 18.

<sup>74</sup> *Ibid.*, p. 18.

<sup>75</sup> *Ibid.*, p. 18.

<sup>76</sup> *Ibid.*, p. 19.

<sup>77</sup> *Ibid.*, p. 19.

<sup>78</sup> Fifth judicial plenary meeting of the permanent and transitional criminal divisions of the Supreme Court, Plenary Agreement No. 9-2009-/CJ-116 of 13 November 2009, para. 12. Available at [https://scc.pj.gob.pe/wps/wcm/connect/021852804075b96fb5a9f599ab657107/ACUERDO\\_PLENAR\\_IO\\_09-2009-CJ-116\\_301209.pdf](https://scc.pj.gob.pe/wps/wcm/connect/021852804075b96fb5a9f599ab657107/ACUERDO_PLENAR_IO_09-2009-CJ-116_301209.pdf) (accessed on 13 February 2015).

<sup>79</sup> Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, pp. 19-20.

norm prevails whereby statutory limitations are not applicable to such crimes, regardless of the date on which they were committed”.<sup>80</sup>

74. In the event that a judge, either of his or her own motion or on the application of a party, admits a statutory limitation for the crime of enforced disappearance, then the parties (the prosecutor, the injured parties and the civil parties) may contest the decision in accordance with the rules of the Code of Civil Procedure and the New Code of Criminal Procedure. *Amparo* proceedings may also be instituted against decisions affecting fundamental rights — for example, the right to the truth, the duty to state reasons, and the right to effective judicial protection — and might even be brought before the Constitutional Court through appeal proceedings.<sup>81</sup>

## 2.9 Article 9

75. The National Criminal Division and its national criminal courts have jurisdiction to hear cases of enforced disappearance of persons, including those committed outside national territory or on aircraft or ships registered in Peru (according to the territoriality and flag principle) and those in which the person is a national of another State and that State deems it appropriate, in accordance with the provisions of article 1 (2) and article 2 (5) of the Criminal Code.<sup>82</sup>

76. In addition, Legislative Decree No. 957 gave effect to the New Code of Criminal Procedure, of which book VII, section VII, includes articles on cooperation with the International Criminal Court.<sup>83</sup> Specifically, book VII establishes that relations between the Peruvian authorities and their foreign counterparts and the International Criminal Court in the area of international judicial cooperation are governed by the international treaties entered into by Peru and, in the absence thereof, by the principle of reciprocity based on respect for human rights.

77. The judiciary has recorded two cases in which international judicial assistance was requested of other States, regarding the transfer of detainees in response to extradition requests for the crime of enforced disappearance (see annex 4).

## 2.10 Article 10

78. Measures to comply with due process and ensure judicial guarantees in all cases subject to Peruvian criminal jurisdiction are set forth in article 2 (24) and article 139 of the Constitution, articles I, II, V and VII of the preliminary title of the Criminal Code, and article VII of the preliminary title of the New Code of Criminal Procedure.

79. Procedural rules are applicable to both Peruvian and foreign defendants under article 2 (2) of the Constitution, which regulates the right to equality before the law. Any contrary or discriminatory measures by the judge may be the subject of a disciplinary sanction or a petition for a writ of habeas corpus. In the latter instance, the right to equality operates as a constitutional right related to individual freedom.

80. Article IX of the New Code of Criminal Procedure, without distinguishing between Peruvian nationals and foreigners, states that: “Every person has an inviolable and unrestricted right to be informed of his or her rights, to be informed immediately and in detail of the accusations against him or her, and to be assisted by legal counsel of his or her

<sup>80</sup> Constitutional Court Judgment of 21 May 2011 in Case No. 0024-2010-PI/TC, unconstitutionality proceedings brought by 25 per cent of the legal number of members of Congress against Legislative Decree No. 1097, legal ground 68. Available at <http://www.tc.gob.pe/jurisprudencia/2011/00024-2010-AI.html> (accessed on 13 February 2015).

<sup>81</sup> Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 20.

<sup>82</sup> *Ibid.*, p. 21.

<sup>83</sup> Legislative Decree No. 957, New Code of Criminal Procedure. *El Peruano*, 11 January 2008. Book VII comprises articles 508-566 (see in particular article 508) and entered into force pursuant to article 1 of Act No. 28671, amending the entry into force of the Code of Criminal Procedure and setting out supplementary regulations for the process of implementing the New Code (*El Peruano*, January 2006).

choice or, if necessary, by a court-appointed defence counsel from the moment the person is summoned or detained by an authority. Every person also has the right to be given a reasonable time to prepare his or her defence; to conduct his or her own defence; to participate in the evidentiary proceedings on an equal footing; and to use any pertinent means of proof under the conditions stipulated by the law. The exercise of the right to defence shall cover every aspect of the proceedings, in the form and at the time stated by law.”

81. Article 15 of the implementing regulations of the Code of Criminal Enforcement, adopted by Supreme Decree No. 015-2003-JUS,<sup>84</sup> states that the prison administration, in the person of the appropriate prison governor, is responsible for informing the consular authorities or diplomatic mission within 24 hours of the admittance and transfer of foreign inmates.

## 2.11 Article 11

82. The principle of extraterritoriality in the prosecution and punishment of the crime of enforced disappearance and other crimes is incorporated into Peruvian legislation under article 2 (5) of the Criminal Code, which states that “Peru is under an obligation to punish offences in accordance with international treaties”. According to that principle, the Peruvian State is competent to punish criminal acts that are injurious to certain legal rights, especially those that are universally recognized, and which may be committed by any person in any country.<sup>85</sup>

83. Regarding the application by the authorities of the standard of evidence for prosecution and conviction that are no less stringent than those applied in the case of article 9, in cases of active and passive extradition, some extradition treaties signed by Peru with other countries require the submission of evidence of the criminal responsibility of the person being extradited. This is the case, for example, with the treaties signed with Argentina, Brazil, Chile, Ecuador, Guatemala, Italy, Paraguay, the Plurinational State of Bolivia, Spain, the United Kingdom, the United States of America and Uruguay.<sup>86</sup>

84. Moreover, the active and passive extradition requirements are uniform in terms of the submission of the identity documents of the person subject to extradition, regulatory provisions that recognize the principle of dual criminality, and judicial decisions regarding detention, the indictment, the charge, the conviction, etc. Where necessary, this documentation is translated into Spanish, in accordance with article 508 (2) of the New Code of Criminal Procedure.<sup>87</sup>

## 2.12 Article 12

85. In cases of enforced disappearance, the facts are ascertained, guilt is determined and a penalty is decided upon in criminal proceedings that respect the rules of due process, the right to a defence of the person being tried, and the presumption of innocence,<sup>88</sup> among other provisions established in the Peruvian Constitution and related laws.

<sup>84</sup> Ministry of Justice and Human Rights, Supreme Decree No. 015-2003-JUS, adopting the implementing regulations of the Code of Criminal Enforcement, art. 15. *El Peruano*, 11 September 2003.

<sup>85</sup> Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 23.

<sup>86</sup> *Ibid.*, p. 22.

<sup>87</sup> *Ibid.*, p. 24.

<sup>88</sup> New Code of Criminal Procedure, preliminary title, art. II, “Presumption of innocence”: “1. Any person accused of committing a punishable act shall be presumed innocent and treated as such until proven otherwise and he or she is found liable by a court in a final and duly reasoned sentence. This shall require sufficient prosecution evidence, obtained and offered with sufficient judicial guarantees ...”.

86. Also applicable are the provisions set forth in the Code of Criminal Procedure and the New Code of Criminal Procedure (ordinary criminal procedure<sup>89</sup> and common procedure,<sup>90</sup> respectively; these may be designated as “complex” when there are multiple crimes, agents or injured parties, or when dealing with a criminal organization).

87. Injured parties, victims’ relatives and others are entitled to report alleged acts of enforced disappearance to the Peruvian National Police or directly to the Public Prosecution Service (New Code of Criminal Procedure, art. 326). Formal complaints may be lodged by any means. Written complaints must include the complainant’s signature and fingerprint, while records are drawn up in the event of verbal complaints (New Code of Criminal Procedure, art. 328).

88. The Public Prosecution Service may also file a complaint at its own initiative in the event that it has knowledge of criminal wrongdoing. As the authority empowered to bring a criminal prosecution, it will be in charge of the preliminary investigation and, in the case of court proceedings under the rules of the New Code of Criminal Procedure, the preparatory investigation.

89. Independence in the administration of justice is a principle recognized in article 139 (2) of the Constitution, which must be applied in conjunction with article 2 (2) of the Constitution, whereby equal treatment before the law underlies the entire Peruvian legal order, prohibiting any discriminatory treatment on the grounds of origin, race, sex, language, opinion, economic status or any other grounds.

90. In the event that injured parties who report enforced disappearance have doubts over the impartiality of the judge, they may apply for recusal in accordance with the rules laid down in article 26 of the Code of Criminal Procedure and articles 54 and 55 of the New Code of Criminal Procedure.

91. Victims’ relatives are also entitled to file appeals and appeals in cassation (in accordance with the rules of the New Code of Criminal Procedure), as well as appeals, appeals for annulment and legal challenges under the rules of the Code of Criminal Procedure. Should the decision be upheld, the complainant has the right to file a petition for *amparo* against a sentence or decision that violates their rights.<sup>91</sup>

92. Protection measures for witnesses, experts, injured parties and collaborators who give evidence in criminal proceedings are envisaged in title V of the New Code of Criminal Procedure, in accordance with the Third Supplementary and Transitory Provision of Act No. 30077 (see articles 247 to 252).

93. Such measures are applicable by judges and prosecutors when it is reasonable to believe that there is serious danger to the person, freedom or rights of the individual wishing to benefit from protection, his or her spouse, cohabiting partner, ascendants, descendants or siblings. The measures may include police protection, change of residence, concealment of whereabouts and the withholding of identity and personal details during proceedings. For this purpose, courts may adopt numbers or codes, procedures to prevent visual identification, and various technologies. Domicile may be fixed at the competent prosecutor’s office and, where appropriate, permission may be granted for the individual to temporarily reside and work in another country.<sup>92</sup>

<sup>89</sup> Article 1 of the Code of Criminal Procedure, “Stages of criminal proceedings”: “Criminal proceedings are comprised of two stages: the investigation and the trial, which is held in sole instance.”

<sup>90</sup> See New Code of Criminal Procedure, article 5 of the preliminary title and book III: Common Procedure.

<sup>91</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, pp. 25-26.

<sup>92</sup> See also Supreme Decree No. 003-2010-JUS of 13 February 2010, adopting the regulations of the comprehensive protection programme for witnesses, experts, victims and collaborators involved in criminal investigations and proceedings.



94. In cases of enforced disappearance, the judiciary<sup>93</sup> currently applies measures to protect victims, witnesses and others under the rules of the New Code of Criminal Procedure. Previously, the National Criminal Division applied Directive No. 002-2005-P-SN of 31 October 2005, issued pursuant to Act No. 27378 and its implementing regulations, adopted by Supreme Decree No. 020-2001.

### 2.13 Article 13

95. In Peru, under the applicable legislation, the offence of enforced disappearance is not regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Enforced disappearance is covered in article 320 of the Criminal Code, in section XIV-A on crimes against humanity; it therefore does not constitute a political offence that is exempt from prosecution and punishment.<sup>94</sup> Extradition treaties concluded between Peru and other States provide for the refusal of extradition for political offences, pursuant to article 517 (2) (e) of the New Code of Criminal Procedure.<sup>95</sup>

96. Although there is no law establishing that the offence of enforced disappearance constitutes grounds for extradition under the relevant treaties concluded with other States, Peru has repeatedly and consistently granted the extradition of officials accused of enforced disappearance, as indicated above in the section on article 9.<sup>96</sup>

97. Extradition treaties concluded between Peru and other States parties to the Convention do not expressly state that the offence of enforced disappearance shall be grounds for extradition; they simply indicate that extradition shall be granted on the basis of a minimum term of imprisonment. Since the offence in question is punishable by at least 15 years of imprisonment, extradition, whether active or passive, is inevitable.<sup>97</sup>

98. Obstacles to the application of extradition treaties arise where:

(a) It is difficult to corroborate the principle of dual criminality, especially when the offence is covered by a specific law rather than the criminal code of the country where the person sought for extradition is located;

(b) A foreigner is charged with a special offence;

(c) The perpetrator or accomplice is a non-State actor;

(d) The other State uses a different language;

(e) There is no extradition treaty with a given State.<sup>98</sup>

<sup>93</sup> Directive No. 002-2005-P-SPN established measures to give effective protection to collaborators, witnesses, experts and victims in criminal proceedings related to disturbances of the peace and terrorism, as well as crimes against humanity (Criminal Code, title XIV-A, chaps. I, II and III) and ordinary offences that constitute human rights violations.

<sup>94</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 29.

<sup>95</sup> New Code of Criminal Procedure, Legislative Decree No. 957 (*El Peruano*, 29 July 2004):  
“Article 517. Refusal of extradition.

...

2. Likewise, extradition shall not take place:

...

(e) If the offence is exclusively military, anti-religious, political or connected with politics, press-related or opinion-related. The fact that the victim of the offence held public office does not in itself justify characterizing the offence as political. The fact that the person being sought for extradition held public office does not politicize the offence either. The following shall not be considered political offences: acts of terrorism, crimes against humanity and offences for which Peru is obliged under an international treaty to prosecute or extradite.”

<sup>96</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 28.

<sup>97</sup> *Ibid.*, p. 28.

<sup>98</sup> *Ibid.*, p. 28.

99. There have been no cases in which Peru has granted the extradition of persons accused of the crime of enforced disappearance.<sup>99</sup> Nor have there been any situations in which the Convention has served as the sole legal basis for extradition. However, it should be noted that Peru is part of two international systems for the protection of human rights: the universal one and the inter-American one. The Inter-American Convention on Forced Disappearance of Persons has become the international instrument that is usually invoked by the judiciary with regard to the crime of enforced disappearance.

100. As regards the authority that determines whether a person is to be extradited, article 515 of the New Code of Criminal Procedure provides that when the Criminal Division of the Supreme Court issues an advisory decision against extradition, the executive branch is bound by that decision; however, when the advisory decision is in favour of granting or requesting extradition, the final decision is left to the discretion of the executive branch.<sup>100</sup>

101. Lastly, it should be noted that Peru is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was approved by Legislative Decision No. 24815 of 12 May 1988 and for which the instrument of ratification was deposited on 7 July 1988. In this regard, given the close links between enforced disappearance and torture and cruel, inhuman or degrading treatment, as recognized by the Truth and Reconciliation Commission of Peru,<sup>101</sup> in accordance with the Declaration on the Protection of All Persons from Enforced Disappearance,<sup>102</sup> the Human Rights Committee,<sup>103</sup> and the Commission on Human Rights (since replaced by the Human Rights Council),<sup>104</sup> Peru considers that its obligations with respect to extradition in cases of enforced disappearance derive not only from the Convention on Enforced Disappearance but also from the Convention against Torture and other similar international instruments.

## 2.14 Article 14

102. As regards the State's duty to provide legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, it is important to reiterate that book VII, section VII, of the New Code of Criminal Procedure contains provisions on cooperation with the International Criminal Court and foreign authorities. Specifically, it establishes that relations between the Peruvian authorities and their foreign counterparts and the International Criminal Court in the area of international judicial cooperation are governed by the international treaties entered into by Peru and, in the absence thereof, by the principle of reciprocity based on respect for human rights.<sup>105</sup>

103. In Peru, the negotiation of international instruments of this kind is conducted by the Intersectoral Standing Commission, which is responsible for considering and determining the country's position and negotiating draft treaties on matters of international criminal law; it consists of representatives of the Public Prosecution Service, the judiciary, the Ministry of Justice and Human Rights and the Ministry of Foreign Affairs, and is chaired by the latter. During the negotiations, the States draw up a provision on the punishable acts (offences) that give rise to extradition. This provision is drafted in general terms and does

<sup>99</sup> Ibid., p. 28.

<sup>100</sup> Ibid., p. 29.

<sup>101</sup> Truth and Reconciliation Commission, Final Report, vol. VI, fourth section (Human rights crimes and violations), chap. 1: Patterns in the perpetration of human rights crimes and violations, 1.2. Enforced disappearance, p. 59.

<sup>102</sup> Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992, art. 1 (2).

<sup>103</sup> Human Rights Committee, *Fatma Zohra Boucherf v. Algeria* (CCPR/C/86/D/1196/2003), communication No. 1196/2003, eighty-sixth session, 13-31 March 2006, para. 9.2.

<sup>104</sup> Commission on Human Rights, "Civil and political rights, including questions of: disappearances and summary executions", report submitted by Mr. Manfred Nowak, independent expert, E/CN.4/2002/71, fifty-eighth session, 8 January 2002, para. 70.

<sup>105</sup> Ministry of Foreign Affairs, Human Rights Directorate, OF.RE (DDH) No. 2-19-B/63, 18 February 2015, sect. 4.1.2.

not describe the extraditable offences in detail. A provision is also included on the grounds for refusal of a request for extradition.<sup>106</sup>

104. It should be noted that most of the bilateral treaties concluded by Peru in the area of international judicial cooperation on criminal matters (legal assistance, transfer of convicted persons and extradition) are subject to the principle of dual criminality, which means that the criminal act must be considered an offence under the legislation of both the requested State and the requesting State. Without prejudice to the above, and as stated previously, in the absence of a specific international instrument on extradition, requests for extradition are handled on the basis of the principle of reciprocity, in accordance with the provisions of book VII of the New Code of Criminal Procedure,<sup>107</sup> and in full conformity with applicable international law, specifically that which concerns legal assistance and cooperation under the Convention against Torture and other human rights treaties, for the reasons explained in detail above.

## 2.15 Article 15

105. As regards cooperation between States parties to assist victims of enforced disappearance, it is important to note that Peru is a signatory to the Inter-American Convention on Forced Disappearance of Persons;<sup>108</sup> article XII of this Convention provides that “the States Parties shall give each other mutual assistance in the search for, identification, location, and return of minors who have been removed to another state or detained therein as a consequence of the forced disappearance of their parents or guardians”.

106. Beyond international legal cooperation, the main mechanisms for judicial assistance to victims of enforced disappearance and their families have been implemented at the domestic level, through the involvement of public institutions from various sectors. In addition, the recently adopted Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000<sup>109</sup> provides for a set of measures relating to the search for and recovery, analysis, identification and return of remains of victims of enforced disappearance, including the creation of a National Register of Disappeared Persons and Burial Sites, and a genetic profile databank. These measures are explained in detail in the section on article 24 of the Convention.

## 2.16 Article 16

107. Peruvian law regulates the prohibition of the expulsion, return, surrender or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance, including where, in addition to enforced disappearance, there is a risk of other forms of serious harm to life and personal integrity. Thus, article 517 (3) (d) of the New Code of Criminal Procedure prohibits extradition when it is requested for an offence that is punishable by the death penalty in the requesting State and the latter provides no assurances that the death penalty will not be applicable.<sup>110</sup>

108. In accordance with the above, the Constitutional Court has previously stated that “one of the human rights-based limits on the obligation to extradite concerns the protection of the right to life. In such cases, protection of the right to life becomes a circumstance that

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> This instrument was signed by Peru on 8 January 2001, adopted by Legislative Decision No. 27622 and ratified by Supreme Decree No. 010-2002-RE, issued on 23 January 2002. The instrument of ratification was deposited on 13 February 2002.

<sup>109</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

<sup>110</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 30.

legitimately prevents the State from meeting its obligation to extradite.”<sup>111</sup> On that basis, and with reference to the European Court of Human Rights, the Court concluded that a State would be bound by its international responsibility in cases where there were substantial grounds for believing that the person sought for extradition would be in real danger of being subjected to torture or inhuman or degrading treatment or punishment in the requesting State.<sup>112</sup>

109. Complex situations relating to terrorism, states of emergency or national security do not affect the prohibition of expulsion, return, surrender and extradition in cases where there is a real and imminent danger that the person sought for extradition would be subjected to enforced disappearance or other serious violations of his or her fundamental rights.

## 2.17 Article 17

110. As regards the State’s duty to keep an official register of all persons deprived of liberty, it should be noted that the National Register of Detainees and Persons Sentenced to Imprisonment was set up under Act No. 26295.<sup>113</sup>

111. The National Register is a multisectoral body composed of representatives of the Public Prosecution Service, the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice and Human Rights, the judiciary, the Office of the Ombudsman and the Congress of the Republic. The Public Prosecution Service is responsible for its organization and administration. The role of this decentralized public body is to manage and update a database of information on the identity and location of persons detained by the Armed Forces or the National Police, or by order of the courts; it is also responsible for keeping appropriate statistical records on all stages of the criminal proceedings brought against those subject to investigation, including those sentenced to imprisonment.<sup>114</sup>

112. In addition, Act No. 30250 of 2 October 2014, amending Act No. 26295, establishes that those records should include all young offenders being held in detention by the police, by order of the public prosecutor or by order of the courts, as of 2 April 2015.<sup>115</sup>

113. Meanwhile, it is worth noting that, according to the National Registry of Sentences, 10 sentences were handed down for the crime of enforced disappearance between 2008 and 2013.<sup>116</sup>

114. Peruvian legislation contains a number of provisions that prohibit secret or unofficial detention, for example in the Constitution,<sup>117</sup> the New Code of Criminal Procedure<sup>118</sup> and the Code of Criminal Enforcement.

<sup>111</sup> Constitutional Court, Case No. 02278-2010-PHC/TC, habeas corpus proceedings brought on behalf of Wong Ho Wing, 24 May 2011, fifth recital. Available at <http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html> (accessed on 13 July 2016).

<sup>112</sup> *Ibid.*, eighth recital.

<sup>113</sup> National Register of Detainees and Persons Sentenced to Imprisonment, Chair of the Coordinating Committee, official note No. 295-2015-MP-FN-RENADESPPLE, 13 March 2015, sect. 4.1.1.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 32.

<sup>117</sup> Political Constitution of Peru, art. 2 (24) (f) and (g).

<sup>118</sup> Under article 71 (2) (b) and article 265 (2) of the New Code of Criminal Procedure, if the isolation of a detainee is required for investigation purposes, he or she shall not be prevented from meeting with his or her defence counsel; moreover, such meetings shall not require prior authorization and cannot be prohibited.

In cases of police detention, where no legal decision has been issued, a person shall be deemed to have been caught in the act if he or she: (a) is caught committing the offence; (b) is caught immediately after committing the offence; (c) fled and was identified by the victim or a witness during or immediately after committing the offence, or was identified using an image recorded by audiovisual means, device or equipment, and is found within 24 hours of the offence being committed; (d) is found within 24 hours of the offence being committed with objects or tools associated with the

115. As regards the measures taken to ensure that all persons deprived of liberty are able to communicate with and be visited by their family, counsel or any other person of their choice, it should be emphasized that detainees have the right to inform their families and a lawyer of their choice immediately of their detention or transfer to another prison. They may also communicate regularly, either orally or in writing, and in their own language, with their families, friends, diplomatic representatives and prisoner support organizations and institutions. During such communication, the privacy of the detainee and his or her interlocutors is respected, pursuant to articles 8 and 37 of the Code of Criminal Enforcement.

116. Peru guarantees the right to communication and visits, provided that they are beneficial to the detainee; they must take place in the places, at the times and under the conditions stipulated in the regulations of the Code of Criminal Enforcement, pursuant to article 139 of the latter. In the same way, the detainee has the right to meet with and communicate in private with his or her defence counsel, in an appropriate environment. The prison governor is responsible for ensuring that the exercise of this right is not suspended or restricted, under article 40 of the Code of Criminal Enforcement.

117. As regards specific measures concerning communication between foreign inmates and consular authorities, article 11.9 of the Regulations of the Code of Criminal Enforcement provides that detainees have the right to inform their family or lawyer immediately, within 24 hours, of their detention or transfer to another prison; in the case of foreign detainees, a diplomatic or consular representative should also be informed.<sup>119</sup>

118. In the same vein, article 15 of the above-mentioned regulations provides that “the prison administration, represented by the appropriate prison governor, must inform the consular authorities or diplomatic mission within 24 hours of the admittance or transfer of foreign inmates”. Furthermore, foreign detainees have the right to communicate with and be visited by consular or diplomatic representatives of their country of origin or with persons designated by them; foreign detainees from countries that have no accredited diplomatic or consular representatives in Peru may communicate with the diplomatic representative of the State responsible for his or her interests or, failing that, with

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offence or used to commit it, or with marks on his or her person or clothing that indicate probable commission of or involvement in the offence (pursuant to article 259 of the New Code of Criminal Procedure).

With respect to the conditions under which orders of deprivation of liberty may be issued and the authorities that have the power to issue them, and the provisions requiring prompt notification of and access to lawyers, doctors and family members, article 253 of the New Code of Criminal Procedure guarantees that procedural coercive measures, including detention, are implemented with due regard for fundamental rights and safeguards, the Constitution and the law. They are to be used exceptionally, only as required, and must be in accordance with the principles of proportionality and necessity and based on sufficient evidence. Two types of detention may be ordered by a judge: preliminary judicial detention and pretrial detention.

A judge may issue an order of preliminary judicial detention (New Code of Criminal Procedure, art. 261) at the request of the public prosecutor, without having to follow a specific procedure, after taking into account the investigations carried out by the latter, provided that: (a) the person was not caught in the act but there is reason to believe that he or she committed an offence punishable by over 4 years of imprisonment and might flee to escape justice; (b) the person was caught in the act but escaped arrest; or (c) the person escaped from the first place of detention. In all of these cases, there must be no doubt as to the identity of the person.

In order for a judge to order pretrial detention at the request of the Public Prosecution Service, the following conditions must be fulfilled: (a) there is strong, well-founded evidence that the accused either committed or participated in the commission of an offence; (b) the offence is punishable by over 4 years of imprisonment; and (c) on the basis of the criminal record of the accused and other specific circumstances of the case, it can reasonably be inferred that he or she will attempt to escape justice by fleeing or try to prevent the truth from being established (New Code of Criminal Procedure, art. 268).

Orders of deprivation of liberty are executed by the National Police, who must place the detainee at the disposal of the public prosecutor and the judge within 24 hours.

<sup>119</sup> National Prison Institute, Office of Legal Advice, official note No. 125-2015-INPE/08, 10 March 2015. In: National Prison Institute, official note No. 32-2015-INPE/03, 24 April 2015.

representatives of international organizations (Regulations of the Code of Criminal Enforcement, art. 36).<sup>120</sup>

119. The State guarantees that prisons and other places of deprivation of liberty<sup>121</sup> are accessible to the independent mechanisms and bodies that have been set up to inspect them.<sup>122</sup>

120. In order to guarantee the fundamental right of both pretrial and convicted detainees to integrity of the person, prison health services are responsible for conducting medical examinations of detainees to determine their state of physical and mental health when they enter the prison. Any signs of physical abuse must be reported immediately to the representative of the Public Prosecution Service and the competent judge.<sup>123</sup>

121. With respect to the guarantees ensuring that any person with a legitimate interest may bring proceedings before a court to determine the lawfulness of the deprivation of liberty, article 267 of the New Code of Criminal Procedure provides that a preliminary judicial detention order may be challenged within one day of its issuance, while article 278 of the Code provides that a pretrial detention order may be challenged within three days.<sup>124</sup>

122. As regards up-to-date official registers of persons deprived of liberty, in addition to the National Register of Detainees and Persons Sentenced to Imprisonment, which is described in detail at the start of this section, the National Prison Institute keeps a prison register that contains information on the physical characteristics, criminal record and legal situation of detainees, including those who have been released and those sentenced to deprivation of liberty or a restriction of their rights, to ensure that the legal and administrative provisions on the execution of sentences are properly implemented.<sup>125</sup>

123. Keeping the register of the National Prison Institute is a legal obligation, governed by the terms set out in the Regulations of the Code of Criminal Enforcement.<sup>126</sup>

<sup>120</sup> Ibid.

<sup>121</sup> The regulations of the Code of Criminal Enforcement read as follows:

“Article 33. The President of the Republic, members of Congress and ministers of State, judges of the Public Prosecution Service and the judiciary, the Ombudsman and members of the National Prison Council may, in the exercise of their functions, enter prisons at any time of the day or week, upon presentation of identification.

Diplomatic representatives accredited in Peru, representatives of the International Committee of the Red Cross and non-governmental organizations may enter prisons with prior authorization from the prison governor, the regional director or a member of the National Prison Council, which is obtained through submission of a written request to the relevant prison authority, specifying the reasons for their visit.”

<sup>122</sup> National Prison Institute, Office of Legal Advice, official note No. 125-2015-INPE/08, 10 March 2015. In: National Prison Institute, official note No. 32-2015-INPE/03, 24 April 2015.

<sup>123</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 34.

<sup>124</sup> Ibid., pp. 34-35.

<sup>125</sup> National Prison Institute, Office of Legal Advice, official note No. 125-2015-INPE/08, 10 March 2015. In: National Prison Institute, official note No. 32-2015-INPE/03, 24 April 2015.

<sup>126</sup> Regulations of the Code of Criminal Enforcement:

“Article 45. In every prison, personal records and criminal records shall be kept by the prison registry office.

The personal record of each detainee shall contain a photograph, personal details, a fingerprint, a dental chart, a record of any distinguishing marks or characteristics, and details of any physical disability or impairment.

The criminal record shall contain information on detention orders, sentences, transfers, benefits and freedoms. It shall be classified as active for current detainees and passive for those who have been released; it shall be reactivated if the individual is re-incarcerated.”

“Article 51. Every prison shall keep personal case files on each detainee, containing:

51.1 of the judicial decision providing for imprisonment.

51.2 Copy of the sentence in the case of convicted detainees.

51.3 Personal record.

51.4 Criminal record.

124. The register of the National Prison Institute therefore constitutes an up-to-date official register of persons deprived of liberty, in conformity with the provisions of the Convention.

125. The judiciary also has a National Judicial Registry, which includes the National Registry of Sentences and the National Registry of Warrants. The first records information on detainees who have been sentenced; the second keeps a record of detention orders, arrest warrants and exit bans on persons charged with a criminal offence. These registries are decentralized bodies of the Judicial Services and Receipts Directorate of the judiciary. The information that they issue is classified and can be accessed only by authorized institutions.<sup>127</sup>

## 2.18 Article 18

126. With respect to the right of any person with a legitimate interest to access information on persons deprived of liberty, it should be noted that the National Registry of Sentences issues criminal record certificates, for judicial purposes at the request of judicial bodies and for administrative purposes at the request of the person concerned or his or her representative, subject to fulfilment of the requirements stipulated in the Registry's Consolidated Text on Administrative Procedures.<sup>128</sup>

127. As regards restrictions affecting the exercise of the right of any person with a legitimate interest to access the above-mentioned information, in principle, all civil servants of the judiciary must provide information at the request of any person with an interest, without requiring a reason, pursuant to article 2 (5) of the Constitution and Act No. 27806 on transparency and access to public information.<sup>129</sup>

128. However, there are restrictions when the requested information is secret, confidential or classified, under the provisions of articles 15, 15-A and 15-B of the aforementioned Act. Information on sentences and warrants is classified and, as such, can only be requested by authorized institutions, the accused or their families, on the basis of the right of defence and because the information concerns them directly.<sup>130</sup>

129. In this connection, the National Prison Institute, through Directive No. 002-2014-INPE-OSI on the generation of and access to public information (adopted by Presidential Decision No. 183-2014-INPE/P of 15 May 2015), standardized the procedures and defined the responsibilities relating to the handling of requests for public information generated or managed by the National Prison Institute and its decentralized bodies. It also established arrangements for the publication and updating of information on the transparency website

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51.5 Report of the medical examination conducted when the person entered the prison and a summary of his or her medical history.

51.6 Report of the prison's technical body on the treatment of detainees regarding the category to which the detainee is assigned.

51.7 Record of the judicial proceedings.

51.8 Record of conduct and disciplinary sanctions.

51.9 Outcomes of the assessments carried out by the experts of the technical body on the treatment of detainees.

51.10 Outcomes of educational, work-related, recreational, religious and other activities.

51.11 Decisions on transfer, where applicable.

51.12 Copies of any release orders.

51.13 Any other documents deemed necessary by the administration.

The prison registry office and the prison records supervisor are responsible for keeping all files up to date with the relevant documents. A copy shall be provided to the detainee at his or her request, excluding the information mentioned in paragraph 51.9."

<sup>127</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, pp. 34-35, annexes 75, 76 and 77.

<sup>128</sup> Ibid., p. 35.

<sup>129</sup> Ibid., p. 36.

<sup>130</sup> Ibid., p. 36.

and measures and responsibilities relating to the updating of the website and intranet of the National Prison Institute.<sup>131</sup>

130. Lastly, as regards current legislation protecting persons who request access to information, and those who participate in investigations, from any ill-treatment, intimidation or sanction, and existing protection mechanisms, article IX of the preliminary section of the New Code of Criminal Procedure safeguards the right of defence of the accused and the victim's rights to information and to participate in the proceedings; the public authorities have a duty to protect them and to treat them in accordance with their status. Similarly, articles 247 to 252 of the New Code of Criminal Procedure provide for measures to protect witnesses, experts, victims and judicial officials in cases where there is reason to believe that there is a serious threat to the person, freedom or property of the individual seeking protection or his or her spouse, partner, ascendants, descendants or siblings.<sup>132</sup>

## 2.19 Article 19

131. In their efforts to identify the persons who were subjected to enforced disappearance during the terrorist violence of 1980-2000 and return their remains to their families, the Institute of Forensic Medicine and the Public Prosecution Service take specific measures to protect the genetic data of victims of enforced disappearance and to ensure that it is used solely for the purposes of search and identification.

132. The Institute of Forensic Medicine of the Public Prosecution Service has a molecular biology and genetics laboratory in Lima and a special laboratory in Ayacucho for the pretreatment, extraction and quantification of DNA from skeletal remains; once those steps have been completed, in order to avoid contamination the genetic material is returned to the central laboratory in Lima, where an analysis is conducted and an initial report is drawn up.<sup>133</sup>

133. In addition, without prejudice to the powers of the Public Prosecution Service and other public and private entities, article 9 of Act No. 30470 on the search for disappeared persons provides that, during the forensic investigation instigated from a humanitarian perspective by the Ministry of Justice and Human Rights, the biological samples obtained from families of disappeared persons should be used only for search purposes, subject to the family's prior and informed consent. Accordingly, all data in the National Register of Disappeared Persons and Burial Sites, ante-mortem records, post-mortem analyses and any personal information databases used are processed in conformity with Act No. 29733 on the protection of personal data (Act No. 30470 on the search for disappeared persons, art. 14)<sup>134</sup>

## 2.20 Article 20

134. As regards national measures to restrict access to information on persons deprived of liberty, it should be noted that the confidentiality of investigations is governed by article 324 of the New Code of Criminal Procedure. Paragraph 1 of this article states that investigations are confidential and may be accessed only by the parties, directly or through lawyers duly authorized by order of the courts; the parties may obtain a copy of the proceedings at any time.

<sup>131</sup> National Prison Institute, Office of Legal Advice, official note No. 125-2015-INPE/08, 10 March 2015. In: National Prison Institute, official note No. 32-2015-INPE/03, 24 April 2015.

<sup>132</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 36.

<sup>133</sup> Public Prosecution Service, Office of the Coordinator of National and Supra-provincial Criminal Prosecution Services, official note No. 290-2015-FSPNC-MP-FN, report No. 01-2015-FSPNC-MP-FN, 20 February 2015, p. 7.

<sup>134</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.



135. Paragraph 2 states that the public prosecutor may order that some proceedings or documents be kept confidential for a period of no more than 20 days, which may be extended for another 20 days by the judge responsible for the preliminary investigation, if their transmission would hinder the investigation. The parties must be notified of any such order issued by the public prosecutor.

136. With regard to guaranteeing the right of any person with a legitimate interest to a prompt and effective judicial remedy as a means of obtaining information without delay, the New Code of Criminal Procedure provides that the parties may request a rights protection hearing before the judge if they consider that their right to information has not been respected. In such cases, the judge responsible for the preliminary investigation issues a decision on measures to be taken to remedy the situation, under article 71 (4) of the New Code of Criminal Procedure.

137. In any event, constitutional proceedings of habeas data or habeas corpus may be initiated in cases where the right to information relating to personal freedom is deemed to have been violated.<sup>135</sup>

138. Furthermore, pursuant to article 207 of Act No. 27444 on administrative procedure, the parties concerned may have recourse to administrative remedies such as reconsideration, appeal and judicial review of the facts when faced with a refusal to provide information on persons deprived of liberty.<sup>136</sup>

## 2.21 Article 21

139. As regards reliable verification of the release of a person, the judiciary, through its criminal court judges and their decisions (sentences and orders), requires the immediate release of detainees if they have been acquitted or if their detention order has been replaced by an order to appear in court, or if the maximum period of detention has elapsed without a judgment having been handed down. A judicial decision of this kind must be implemented without delay by the National Prison Institute.

140. A convicted prisoner may be released by judicial order when his or her full sentence has been served, subject to prior notification by the National Prison Institute, the prisoner or his or her defence counsel, in accordance with article 19 of the Code of Criminal Enforcement. If there is any delay in the release of the detainee, constitutional proceedings of habeas corpus may be brought against those responsible (Code of Criminal Procedure, arts. 25 and 28) and complaints filed against them for abuse of authority (Criminal Code, art. 376).<sup>137</sup>

141. Once constitutional proceedings of habeas corpus have been initiated for failure to release a prisoner or detainee, the criminal court judge is responsible for overseeing the matter and taking appropriate measures to end the violation or threat of violation of the fundamental right to personal liberty.<sup>138</sup>

## 2.22 Article 22

142. Peruvian law guarantees to any person deprived of liberty or any other person with a legitimate interest the right to bring proceedings before a court. Thus, article 25 of the Code of Constitutional Procedure provides for the initiation of constitutional proceedings of habeas corpus in response to actions or omissions that threaten or violate rights pertaining to personal liberty, including the right to release of a detainee or convicted prisoner whose freedom has been ordered by a judge (para. 14); the right to due process in the context of

<sup>135</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, p. 36.

<sup>136</sup> National Register of Detainees and Persons Sentenced to Imprisonment, Chair of the Coordinating Committee, official note No. 295-2015-MP-FN-RENADESPPLE, 13 March 2015, sect. 4.1.4.

<sup>137</sup> Office of the President of the Judiciary, Advisory Board, official note No. 047-2015-DDHH-PJ, 27 February 2015, pp. 37-38.

<sup>138</sup> *Ibid.*, p. 38.

proceedings or detention (para. 15); the right not to be subjected to enforced disappearance (para. 16); the right of a detainee or prisoner to enjoy reasonable, proportional treatment, as regards the manner and conditions in which their detention order or sentence is executed (para. 17); and other rights relating to personal liberty, as detailed in the first section of this report.

143. Meanwhile, failure to record the deprivation of liberty of an individual is punishable by the administrative sanctions provided for in article 50 of the Act on Careers in the Public Prison Service, which include suspension and dismissal. Furthermore, article 377 of the Criminal Code provides that: “Any public servant who unlawfully omits or refuses to fulfil or delays the fulfilment of any of his or her responsibilities shall be sentenced to imprisonment of no more than 2 years and to a fine of 30-60 day-fine units.”<sup>139</sup>

144. There is therefore provision for both criminal and administrative or disciplinary sanctions to punish any failure to record cases of deprivation of liberty, refusal to provide information and the provision of inaccurate information.

## 2.23 Article 23

145. In accordance with article 44 of the Constitution,<sup>140</sup> which establishes that the State has a duty to guarantee that human rights are fully respected, Act No. 27741<sup>141</sup> provides that the Constitution, human rights law and international humanitarian law must be systematically and continuously disseminated and taught at all levels of civil and military education, higher education, university education and non-university education. The courses must cover the full implementation of and strict compliance with international treaties and conventions, as well as the protection of fundamental rights in the national and international spheres.

146. Under this policy, Peru adopted the National Plan for Education on Fundamental Rights and Duties for the period up to 2021, which was approved by Supreme Decree No. 010-2014-JUS (*El Peruano*, 12 December 2014); the National Plan concerns all levels of education, covers human rights, fundamental duties and international humanitarian law, and is consistent with the principles of the rule of law enshrined in the Constitution and with the national and international legal obligations of Peru.

147. The following training and awareness-raising measures have been implemented in connection with human rights and international humanitarian law (including the principles and provisions of the Convention), taking into account the responsibilities of each entity.

### National Prison Institute

148. The National Prison Institute provides training, mainly on prison standards, for prison security staff before they take up their post, at the National Centre for Criminology and Prison Studies. It also provides training on human rights, the use of force and conflict resolution techniques.

149. In 2014, a total of 4,067 members of staff from prisons around the country, including both security and administrative personnel, attended training workshops on best practices in prisons in the area of human rights. The workshops were led by human rights instructors from the National Prison Institute, in coordination with the International Committee of the Red Cross and the non-profit association Comisión de Derechos Humanos (Human Rights Commission). The workshops covered themes such as conflict management, the absolute prohibition of torture, human rights in the prison environment, security and the use of force, anger management, and other topics that are particularly

<sup>139</sup> National Prison Institute, Office of Legal Advice, official note No. 125-2015-INPE/08, 10 March 2015. In: National Prison Institute, official note No. 32-2015-INPE/03, 24 April 2015.

<sup>140</sup> Political Constitution of Peru, art. 44: “The State has a fundamental duty to: ... guarantee the full enjoyment of human rights.”

<sup>141</sup> Congress of the Republic, Act No. 27741 establishing a human rights education policy and creating a national plan for human rights education. *El Peruano*, 29 May 2002.

important to National Prison Institute staff in their work with prisoners throughout the country.<sup>142</sup>

### **Reparations Council**

150. The task of the Reparations Council is to identify by name the victims of the violence between May 1980 and November 2000 and to record them in the Central Register of Victims, in accordance with Act No. 28592 and its implementing regulations (Supreme Decree No. 015-2006-JUS), to ensure that once they have been identified and included in the Register, they can obtain appropriate redress from the relevant institution, namely the High-Level Multisectoral Commission responsible for monitoring State action and policies regarding peace, collective reparation and national reconciliation.

151. In its efforts to identify victims and their families, the Reparations Council has developed strategies for outreach to potential victims; one of these strategies was to work together with local regional governments, on the basis of cooperation agreements, to provide training for municipal staff.

152. The Central Register of Victims conducts monthly training sessions (12 per year). A total of 54 registrars received training in 2014. The training covers the work of the Central Register of Victims, data-collection methodology and registration criteria, which are governed by the registration regulations of the Central Register of Victims, pursuant to Act No. 28592 establishing the Comprehensive Reparations Plan, and its implementing regulations (Supreme Decree No. 015-2006-JUS).

153. For the purposes of this report, it is worth highlighting that the training contains a special chapter on interviews with the families of victims of enforced disappearance, the information to be collected and guidance on the proceedings that they are initiating.<sup>143</sup>

### **High-Level Multisectoral Commission responsible for monitoring State action and policies regarding peace, collective reparation and national reconciliation**

154. The main task of the High-Level Multisectoral Commission<sup>144</sup> is to steer the development of national policy on redress and to coordinate, supervise and monitor the implementation of the Comprehensive Reparations Plan, in accordance with the provisions of Act No. 28592 and its implementing regulations (Supreme Decree No. 015-2006-JUS). The regulations establish the mechanisms, methods and procedures by which victims of the violence between May 1980 and November 2000 are able to access the programmes set out in the Plan. It also fulfils a standard-setting role by establishing the principles, approaches, objectives, policies and steps that guide State action on redress at the three levels of government: national, regional and local.

155. As regards training and awareness-raising on themes covered by the Convention, it is worth mentioning various initiatives organized by the High-Level Multisectoral Commission. In 2012, for example, conferences were organized on the theme of working towards reconciliation after the violence; they were an opportunity to analyse the various human rights violations that occurred during the violence of 1980-2000 and to look at how such violations are addressed in national and international legislation for the protection of human rights. These conferences were attended by national and local officials, civil servants, members of organizations representing victims of the violence, and members of

<sup>142</sup> National Prison Institute, Prison Security Directorate, official note No. 432-2015-INPE/14, 20 March 2015. In: National Prison Institute, official note No. 032-2015-INPE/03, 24 April 2015.

<sup>143</sup> Reparations Council, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>144</sup> The High-Level Multisectoral Commission is composed of eight government representatives (from the ministries of education, defence, health, economic affairs and finance, labour and job creation, the interior, justice and human rights, and women and vulnerable groups) and four civil society representatives (the National Coordinator for Human Rights, the National Council of Professional Associations, the National Assembly of Rectors and the Asociación Nacional de Centros, an association of NGOs).

the general public. They took place in various regions, including Cusco, Apurímac, Junín, Huánuco, Ayacucho and Ancash.

156. In November 2014, a workshop was organized in Ayacucho for public prosecutors, the Regional Health Directorate and the Public Defence Service on the role of the various authorities responsible for providing support, including legal advice and psychosocial assistance, to the families of disappeared persons. Similarly, on 2 July 2015, a workshop on searching for disappeared persons was held in Huánuco for the actors involved in that process, such as public prosecutors, the team of forensic experts, health professionals and organizations representing victims.<sup>145</sup>

### Ministry of Defence

157. According to the Act on the Organization and Functions of the Ministry of Defence<sup>146</sup> and its implementing regulations,<sup>147</sup> the defence sector is specifically responsible for “ensuring that compulsory training on fundamental rights and constitutional procedure is provided in defence sector training centres”.

158. More specifically, training on human rights and international humanitarian law is provided by the sector’s academic bodies such as the Centre for International Humanitarian Law and Human Rights of the Ministry of Defence.<sup>148</sup> It is also provided by training colleges for officers, technical staff and non-commissioned officers of the Armed Forces, the Joint Training College of the Armed Forces, and the Army Training College. These entities, among others, are responsible for organizing and conducting training courses for the Armed Forces and for staff of State institutions at the national and decentralized levels.

159. In the same vein, the Chief of the Armed Forces Joint Command<sup>149</sup> is responsible for “ensuring awareness of and compliance with national and international regulations and agreements signed by the State relating to international human rights law and international humanitarian law”.

160. Other instruments for training in human rights and international humanitarian law include:

- (a) Manual on International Humanitarian Law and Human Rights for the Armed Forces;<sup>150</sup>
- (b) Directive No. 001 MINDEF/CEA-DIH, adopted by Ministerial Decision No. 536-2004-DE-SG<sup>151</sup> (5 May 2004), which provides for the integration of international humanitarian law into military doctrine and training;
- (c) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- (d) Code of Conduct for Law Enforcement Officials.

<sup>145</sup> High-Level Multisectoral Commission, e-mail communication, 26 November 2015.

<sup>146</sup> Legislative Decree adopting the Act on the Organization and Functions of the Ministry of Defence, Legislative Decree No. 1134 (*El Peruano*, 10 December 2012), art. 6 (19).

<sup>147</sup> Ministry of Defence, Regulations on the Organization and Functions of the Ministry of Defence, Supreme Decree No. 006-2016-DE (*El Peruano*, 7 June 2016), art. 7.2 (t).

<sup>148</sup> *Ibid.*, arts. 48 (m), 52 (a) and (d), and 90.

<sup>149</sup> Legislative Decree No. 1136 on the Armed Forces Joint Command (*El Peruano*, 10 December 2012), art. 7 (28).

<sup>150</sup> Ministry of Defence, Deputy Ministerial Decision No. 048-2010/DE/VPD, 21 May 2010. Available at [http://www.mindef.gob.pe/informacion/documentos/manual\\_ddhh\\_ffaa\\_2010.pdf](http://www.mindef.gob.pe/informacion/documentos/manual_ddhh_ffaa_2010.pdf) (accessed on 6 July 2016).

<sup>151</sup> Ministry of Defence, Adoption of Directive No. 001 MINDEF/CEA-DIH for the integration of international humanitarian law into military doctrine and training, Ministerial Decision No. 536-2004-DE-SG (5 May 2004).

161. According to information provided by the Centre for International Humanitarian Law and Human Rights of the Ministry of Defence, the following courses have been included in its training programme:

- (a) Basic course on human rights and international humanitarian law (more detail provided in annex 1):
  - (i) Two courses for officers of the Armed Forces and professionals;
  - (ii) Two courses for junior staff of the armed forces;
- (b) One advanced course for officers of the armed forces and professionals;
- (c) One advanced course for technical staff, non-commissioned officers and naval officers of the Armed Forces;
- (d) Special events:
  - (i) 12 workshops in various parts of the country;
  - (ii) One course for judges and public prosecutors;
  - (iii) One South American course on international humanitarian law and human rights (South American Defence Council of the Union of South American Nations and Centre for International Humanitarian Law and Human Rights).

162. To date, since its creation, the Centre has provided training for 10,940 individuals, including civil and military personnel from the defence sector, judges and public prosecutors.<sup>152</sup>

### **Military and Police Court**

163. The Military and Police Court has a Centre for Advanced Studies in Military Justice, which regularly provides training for military and police judges and selected civilian lawyers. To date, nine first-level courses and one second-level course have been held, for a total of 400 participants. These courses cover constitutional and criminal justice issues relating to crimes against humanity, including, of course, the crime of enforced disappearance.<sup>153</sup>

164. In addition, a large number of military and police judges and prosecutors have taken the basic and advanced courses on international humanitarian law at the Centre for International Humanitarian Law and Human Rights of the Ministry of Defence. Many have also completed the Miguel Grau course on that subject, which is run by the National Commission for the Study and Application of International Humanitarian Law.<sup>154</sup> So far, around 800 persons, including officials at all three levels of Government, members of the Armed Forces and National Police officers, have attended a Miguel Grau course (10 annual courses, 1 macroregional and 5 decentralized).

165. From 2011 to 2014, the Military and Police Court organized a number of international events on themes related to military justice, human rights, international humanitarian law and operational law.<sup>155</sup>

<sup>152</sup> Ministry of Defence, Centre for International Humanitarian Law and Human Rights, official note No. 302-2015-MINDEF/VPD/CDIH Y DDHH/C/04, 12 May 2015.

<sup>153</sup> Military and Police Court, official note No. 194-2015-FMP/SG, 18 May 2015, third section.

<sup>154</sup> Ibid.

<sup>155</sup> These included: (i) From 26 to 28 April 2011, the Fifth International Conference on International Humanitarian Law and Military Law was held in Lima, with representatives of 19 States from around the world; (ii) From 2 to 4 December 2013, the First Inter-American Forum on Military Justice and International Humanitarian Law was held, with representatives of 9 States; (iii) From 1 to 4 August 2014, the Second Inter-American Forum on Military Justice and Operational Law was held, with representatives of 12 States, and Peru took over the leadership of the technical secretariat of the Forum for two years. Cf. Military and Police Court, official note No. 194-2015-FMP/SG, 18 May 2015, fourth section.

### Ministry of the Interior

166. One of the roles of the Office of the Deputy Minister for Internal Order of the Ministry of the Interior<sup>156</sup> is to “propose and conduct activities for the promotion and protection of human rights”. In addition, pursuant to the regulations on the organization and functions of this sector, the Directorate of Fundamental Rights for Governance, which is part of the General Directorate for Democratic Security,<sup>157</sup> is responsible for designing and implementing human rights training and education programmes within the sector.<sup>158</sup>

167. It is also worth noting Directive No. 02-2009-DIREUD-PNP-SUBDACA/SEC, which contains guidelines for the promotion of education and awareness-raising on international humanitarian law as it applies to the police, in the Peruvian national police training system.<sup>159</sup>

### Institute of Forensic Medicine

168. Lastly, it should be highlighted that in December 2013, with the support of the International Committee of the Red Cross delegation for Bolivia, Ecuador and Peru, a workshop was organized on social criminology approaches to the study of patterns in cases of enforced disappearance. The workshop was primarily aimed at anthropologists of the specialized forensic team of the Institute of Forensic Medicine and the forensic medicine divisions outside the capital. As a result of that training, in 2014, investigations into cases of enforced disappearance were launched at the request of the third provincial criminal prosecution service for human rights and terrorism cases in Huancayo, Junín. The techniques learned at the workshop were applied and tested during those investigations.<sup>160</sup>

## 2.24 Article 24

### Broad definition of “victim”

169. The broad definition of “victim” set out in the Convention, which refers to the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance, is reflected in Peruvian legislation. For example, under article 2 (b) and (c) of the recently promulgated Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000, the notion of victim includes disappeared persons and their families, taking into account the sociocultural context of those who belong to native, peasant or indigenous communities.<sup>161</sup>

170. Similarly, in the registration regulations of the Central Register of Victims of the Reparations Council, the term “victim” and the criteria for inclusion in the Register are defined in conformity with the Convention.<sup>162</sup>

<sup>156</sup> Act on the Organization and Functions of the Ministry of the Interior, adopted by Legislative Decree No. 1135. *El Peruano*, 10 December 2012.

<sup>157</sup> Ministry of the Interior, Adoption of the Regulations on the Organization and Functions of the Ministry of the Interior, Supreme Decree No. 002-2012-IN (*El Peruano*, 25 June 2012), art. 100 (c): “The General Directorate for Democratic Security is responsible for proposing, implementing and monitoring public policy on human rights and community relations, in collaboration with the relevant lead agencies, within the scope of the home affairs sector ... (c) Developing training programmes on human rights, and prevention and management of social conflicts.”

<sup>158</sup> Supreme Decree No. 002-2012-IN, art. 103 (b).

<sup>159</sup> Ministry of the Interior, adopted by Directorate Decision No. 2105-2009-DIREUD PNP/SDACA, 30 December 2009.

<sup>160</sup> Institute of Forensic Medicine, official note No. 588-2015-MP-FN-IML-JN, attached report, pp. 5-6, 23 February 2015.

<sup>161</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

<sup>162</sup> The relevant articles of the regulations on registration in the Central Register of Victims read as follows:

“Article 1. General definition of victims.

### Right to know the truth and the fate of the disappeared person

171. With respect to mechanisms guaranteeing the right to know the truth regarding the circumstances of the enforced disappearance and the fate of the disappeared person, it should be noted that article 1 of Act No. 30470 on the search for disappeared persons states that the purpose of the Act is to promote a humanitarian approach to the search for persons who disappeared, providing for a coordinated set of measures relating to the search for and recovery, analysis, identification and return of human remains.<sup>163</sup>

172. Furthermore, article 3 of the Act specifically recognizes that families have the right to know the truth regarding the circumstances of the enforced disappearance, the situation of the disappeared person, including his or her location, or, in the event of death, the circumstances of the death and the place of burial. This is without prejudice to the State's duty to conduct an effective, exhaustive and impartial investigation into the circumstances of the disappearance.

173. In accordance with the purpose of Act No. 30470, the Central Register of Victims has responded promptly to requests for information submitted by the judicial authorities. Both the National Police and the Public Prosecution Service, through the offices of its criminal prosecutors, have requested information on victims of enforced disappearance from the Reparations Council in order to obtain reliable material for their investigations, which, once completed, will allow the events and circumstances of the disappearance to be considered by the courts.

174. Similarly, criminal court judges have submitted requests for certified copies of registration applications and supporting documents, for the prosecution of cases of enforced disappearance involving victims registered in the Central Register of Victims or for

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For the purposes of these regulations, 'victim' shall mean any persons or groups of persons who, as a result of the violence, suffered human rights violations that are recognized in the applicable laws in accordance with the criteria established in Act No. 28592.

...

Article 12. Victims of enforced disappearance.

12.1 For the purposes of these regulations, 'enforced disappearance' shall mean any deprivation of liberty of a person that can be attributed to members of subversive organizations or State officials, followed by a lack of information or refusal to acknowledge the deprivation of liberty or to provide information on the whereabouts of the person, thereby preventing the exercise of the appropriate legal remedies or procedural mechanisms, for as long as that situation remains unchanged. This definition shall also cover cases of enforced disappearance where it has been established with certainty, one way or another, that the victim has died, even though his or her remains have not been found or identified.

12.2 Criteria. In such cases, it is particularly important for there to be documentary evidence of the prior existence of the person and for his or her disappearance to have been reported at least once to the competent authority or to the equivalent authority at the time of the events. It is also necessary to obtain a sworn statement from witnesses.

...

Article 24. Families of victims of enforced disappearance.

24.1 Definition. This category shall include members of the family of the victim of enforced disappearance as defined in article 4 of these regulations.

24.2 Criteria: For the purposes of verification, it shall be sufficient to provide a valid identity document of the family member and a birth certificate.

24.3 Documents required. The following documents must be attached to the case file: (i) A copy of the identity document, birth certificate or baptism certificate of each member of the victim's family or, in the case of a spouse, a copy of the marriage certificate or a sworn statement attesting to cohabitation; (ii) A sworn statement by the applicant confirming his or her direct family ties with the victim."

Cf. High-Level Multisectoral Commission, e-mail communication, 20 February 2015. Reparations Council, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>163</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

ongoing proceedings relating to the crime of enforced disappearance. In such cases, the Central Register of Victims has cooperated with the judicial authorities by providing the information requested immediately.<sup>164</sup>

**Right of victims to be informed of the investigation and to participate in the proceedings, and the provision of legal aid to victims**

175. In addition to the rights, guarantees and instruments for the effective protection of families of disappeared persons provided for by the New Code of Criminal Procedure,<sup>165</sup> the right of such families to participate in investigations and proceedings is also recognized, including their right to request a hearing before the judges in cases where the crime of enforced disappearance is being investigated, so that they can give evidence, and the right to submit their testimony in writing.<sup>166</sup>

176. As part of the procedure followed by the Central Register of Victims, registration applicants and their families present evidence — which may be supplemented by sworn statements — not only to provide additional material for evaluation purposes but also to update the database of the Central Register of Victims, so that it has access to valuable information when making decisions about redress.

177. Thanks to the support mechanisms provided, families and applicants are able to request information, submit documents and seek advice or guidance by telephone, in person or by e-mail.

178. It is worth highlighting that under article 5 (d) of Act No. 30470, one of the responsibilities of the Ministry of Justice and Human Rights is to promote and support the participation of family members in the search for disappeared persons.<sup>167</sup>

179. Furthermore, the General Directorate of the Public Defence Service of the Ministry of Justice and Human Rights provides free legal assistance in order to protect the rights of victims of enforced disappearance and their families. Pursuant to Directorate Decision No. 122-2013-JUS/DGDPAJ of 9 September 2013, public defenders specialized in human rights were appointed in the departments of Apurímac, Ayacucho and Huancavelica to provide technical and legal services in defence of victims of human rights violations, including enforced disappearance.

180. In 2014, public defenders from the General Directorate of the Public Defence Service provided legal assistance to 14 victims of enforced disappearance or members of victims' families in proceedings dealing with, for example, claims for civil damages or the regularization of death certificates (see annex 6).<sup>168</sup>

<sup>164</sup> Reparations Council, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>165</sup> Examples include: (i) The recognition of associations that defend collective or general interests (such as human rights organizations) as victims (art. 94.4); (ii) The right of victims to participate in criminal proceedings (art. IX.3); (iii) The right to information regarding the progress and outcome of an investigation (art. 95.1 (a)); (iv) The right to be heard before any decision affecting one's interests is taken (art. 95.1 (b)); (v) The right to fair treatment and to preservation of identity (art. 95.1 (c)); and (vi) The right to give evidence (art. 104) and the right to be involved in the fact-finding investigation (art. 105).

In this regard, it should be noted that the regulations governing the Comprehensive Reparations Plan provide for the exemption of such organizations from administrative fees. Cf. Reparations Council, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>166</sup> Reparations Council, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>167</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

<sup>168</sup> General Directorate of the Public Defence Service and Access to Justice, report No. 014-2015-JUS/DGDPAJ, 18 May 2015, p. 5.



181. Victims of enforced disappearance and members of victims' families who required legal advice in 2014 were mainly aged 60 or over (see annex 7).<sup>169</sup>

182. Moreover, the victims of enforced disappearance and members of victims' families who required legal advice in 2014 were mainly women (see annex 8).<sup>170</sup>

183. In 2015, those who received assistance in the field of criminal justice were mainly between 70 and 79 years old (see annex 9).<sup>171</sup>

184. In addition, district-level directorates throughout the country are running campaigns to raise awareness of the free legal aid services provided by the Ministry of Justice and Human Rights, to ensure that victims of enforced disappearance and their families feel supported by the State and receive the legal advice they need in order to effectively exercise their right to justice and redress.<sup>172</sup>

### **Mechanisms and procedures for the search for missing persons and the return of remains**

185. As mentioned above, the purpose of Act No. 30470 is to focus on taking a humanitarian approach to the search for persons who disappeared during the violence of 1980-2000. It provides for the coordination of measures on the tracking, recovery, analysis, identification and return of human remains (art. 1). It places particular emphasis not only on the search process itself but also on ensuring that the process includes the identification and return of human remains and the provision of psychosocial, financial and logistical support for families (art. 2).

186. Specifically, article 5 (b) of the Act establishes that the Ministry of Justice and Human Rights is responsible for formulating and implementing a national plan on tracking disappeared persons in coordination with the relevant agencies. In addition, the Act provides for coordination between the Ministry of Justice and the Ministry of Health to help with the emotional recovery and social rehabilitation of the families of disappeared persons through the provision of culturally relevant support in the appropriate language (art. 11). The Act also establishes that, when corpses or human remains are returned, the Ministry of Justice and Human Rights must provide and transport the coffins, arrange for the relatives' transportation, food and accommodation where necessary, and ensure that funeral ceremonies and rites are carried out in accordance with the customs and traditional ways of the families or their community (art. 12). These measures were already in place prior to the entry into force of the Act.

187. The Public Prosecution Service, in its Decision No. 1694-2009-MP-FN, adopted Directive No. 007-2009-MP-FN, which regulates the investigations of the Public Prosecution Service into the location of sites containing human remains and their connection to serious human rights violations.<sup>173</sup> The Directive also serves a humanitarian purpose. Once a public prosecutor is made aware of a site that allegedly contains human remains, he or she immediately launches an investigation.

188. Based on the information provided by the Institute of Forensic Medicine during the investigation by the supra-provincial criminal prosecutors' offices, the judge requests the involvement of the specialized forensic team, which initiates the forensic investigation (see annex 5).

189. It should be noted that in November 2012, with a view to helping identify disappeared persons, the executive secretariat of the High-Level Multisectoral Commission signed an inter-agency cooperation agreement with the Public Prosecution Service under which 1.1 million soles were transferred to the Service.<sup>174</sup> These resources were used to

<sup>169</sup> Ibid., p. 5.

<sup>170</sup> Ibid., p. 6.

<sup>171</sup> Ibid., p. 6.

<sup>172</sup> Ibid., p. 6.

<sup>173</sup> Public Prosecution Service, Directive No. 007-2009-MP-FN, adopted by Attorney General Decision No. 1694-2009-MP-FN, 23 November 2009.

<sup>174</sup> High-Level Multisectoral Commission, e-mail communication, 26 November 2015.

purchase the necessary reactive agents and DNA testing supplies to process and identify skeletal remains. Analyses were then carried out in a number of cases (e.g. in Santa Bárbara, Raccaya Umasi, Chungui and Cabitos), in coordination with the supra-provincial criminal prosecutors' offices of Ayacucho, Huancavelica, Junín and Huánuco.

190. In addition, the specialized forensic team is putting into effect strategies for large-scale forensic operations in order to ensure that the recovery and identification of disappeared persons is conducted in an orderly and systematic manner. The plan consists in:

(a) Processing cases by region, province, district and village. Once cases are known, a group of experts is appointed to carry out the preliminary investigation, i.e. ante-mortem files, research into the context of the disappearance, an accessibility study on the exhumation site and other details on each case in the same district or province;

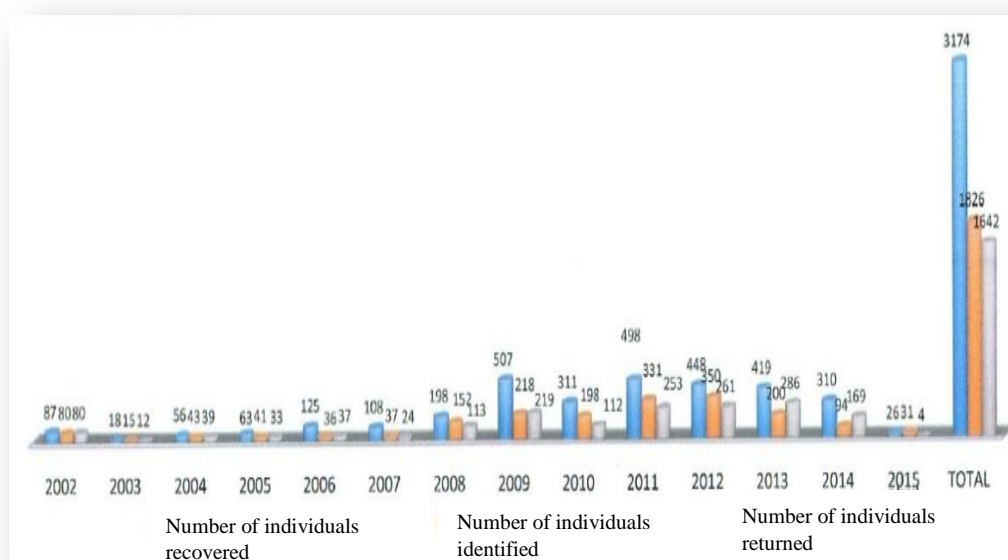
(b) Based on the data obtained, devising strategies to recover (exhume) the skeletal remains and related elements; a single judicial procedure covers various cases located in the same geographical area;

(c) Conducting laboratory analyses in the forensic research laboratory in Ayacucho, in the case of Ayacucho and Huancavelica, or in the facilities of the forensic medicine divisions for the rest of the country.<sup>175</sup>

191. According to information provided by the Office of the Coordinator of the National Criminal Prosecutor's Office and the Provincial and Supra-provincial Criminal Prosecutors' Offices, the specialized forensic team and the Institute of Forensic Medicine are responsible for keeping a record of investigations in cases where exhumations have been carried out and also a record of remains that have been either identified or returned to the family, with a view to measuring the progress achieved in the search for disappeared persons within the framework of planned regional operations.<sup>176</sup> Over the years, the search for and return of remains has been carried out by the specialized forensic team as shown below.<sup>177</sup>

Figure 1

**Procedures carried out by the specialized forensic team, 2002 to April 2015**



Source: Institute of Forensic Medicine.

<sup>175</sup> Institute of Forensic Medicine, official note No. 1709-2015-MP-FN-IML-JN, 13 May 2015. Confidential report: Comments on the "Report on the measures taken in relation to the International Convention for the Protection of All Persons from Enforced Disappearance", initial report of Peru, p. 7.

<sup>176</sup> Ibid., p. 3.

<sup>177</sup> Ibid., annexes.

Table 1  
**Procedures carried out by the specialized forensic team, 2002 to April 2015**

<i>Year</i>	<i>No. of individuals recovered</i>	<i>No. of individuals identified</i>	<i>No. of individuals returned</i>
2002	87	80	80
2003	18	15	12
2004	56	43	39
2005	63	41	33
2006	125	36	37
2007	108	37	24
2008	198	152	113
2009	507	218	219
2010	311	198	112
2011	498	331	253
2012	448	350	261
2013	419	200	286
2014	310	94	169
2015	26	31	4
<b>Total</b>	<b>3 174</b>	<b>1 826</b>	<b>1 642</b>

*Source:* Institute of Forensic Medicine.

192. Until 2006, the Ombudsman's Office assisted the specialized forensic team in its investigations whenever the work took place in accessible locations and did not last more than three days. However, the Office no longer provides this assistance owing to budget constraints. There is nonetheless ongoing interaction between the specialized forensic team and the Office of the Deputy Ombudsman for Human Rights and Persons with Disabilities, as a result of which all requests by relatives that are channelled through the Ombudsman's Office are processed. All the Office's reports, since it began to report on the forensic activities of the specialized forensic team, show that the team has gradually become more efficient and that its work is conducted in line with the relevant international standards.<sup>178</sup>

#### **Protocols and other measures related to the search for missing persons**

193. As mentioned, Directive No. 007-2009-MP-FN has been adopted and regulates the investigations of the Public Prosecution Service into the location of sites containing human remains and their connection to serious human rights violations. It establishes the obligation of the prosecution service to initiate investigations into such cases as soon as an alleged site with human remains is brought to its attention.

194. According to the Institute of Forensic Medicine, all the stages of forensic investigations are carried out in accordance with protocols that meet international standards. It should be noted that, since its establishment, the specialized forensic team has focused on aligning its work with international rules and standards, on the advice of external partners and in view of the scientific and technical development of its staff.

195. Thus, various elements of the 1991 United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol) have been studied, analysed and incorporated into the Institute's work. "The missing and their families", a report drafted by the International Conference of Governmental and Non-Governmental Experts, which met under the auspices of the International Committee of the Red Cross in Geneva from 19 to 21 February 2003, and the "Guidelines for international forensic bio-archaeology monitors of mass grave

<sup>178</sup> Ibid., pp. 2-3.

exhumations” (Skinner, Alempijevic and Djuric-Srejjic, 2003, in *Forensic Science International*) have also been taken into account.<sup>179</sup>

196. In the specialized forensic team’s first years of activity, another reference tool for national consultations was the Manual on the Effective Investigation of Mass Graves in Peru (May 2002), prepared by the Ombudsman’s Office and the Peruvian Forensic Anthropology Team.<sup>180</sup>

197. More recently, the team has been basing its work on the recommendations contained in the “International consensus on principles and minimum standards for psychosocial work in search processes and forensic investigations in cases of enforced disappearances, arbitrary or extrajudicial executions”. It is currently involved in a round table on the search for missing persons, held in Peru under the auspices of the International Committee of the Red Cross.<sup>181</sup>

198. Efforts are being made to systematize information on burial sites and deaths related to cases of disappearance.

199. The Institute of Forensic Medicine classifies burial sites as follows: individual graves, mass graves, tombs, funeral niches and unburied remains. According to the Institute, the specialized forensic team has data on every forensic investigation related to serious human rights violations.

200. Every case is given a criminal investigation number, which can be used to find all the relevant forensic information, including the type of burial site and the number of people interred at each site. The specialized forensic team is responsible for periodically updating the database.<sup>182</sup> The above is without prejudice to the work of the National Register of Disappeared Persons and Burial Sites provided for in title III of Act No. 30470,<sup>183</sup> which states that once a burial site has been located, it must be registered, along with as much data as is necessary to determine its size and demarcation, and that all necessary protection measures must be taken to ensure that the burial site is not disturbed or destroyed in any way.

#### **DNA database and storage of genetic material**

201. The specialized forensic team of the Institute of Forensic Medicine is working to bring together all information on missing persons in a computer tool called the AMPM database. The objective is to enter existing data on missing persons nationwide as collected by the various institutions and organizations involved in the search for missing persons. The database is currently being restructured and improved under an agreement reached between the Public Prosecution Service and the International Committee of the Red Cross.<sup>184</sup> In addition to the AMPM database, the specialized forensic team keeps a yearly archive of all the expert reports it has made, as well as a summary table of the most relevant information on the work begun in 2003 and a large photographic and video archive that amply illustrates the team’s work so far.<sup>185</sup>

202. According to the Institute of Forensic Medicine, when exhumed skeletal remains cannot be identified from dental records or by using forensic anthropology techniques, the experts request a DNA test to establish the person’s identity. Where identification is not possible through DNA testing, unidentified remains are preserved in the skeletal remains

<sup>179</sup> Ibid., p. 5.

<sup>180</sup> Ibid., p. 5.

<sup>181</sup> Ibid., p. 5.

<sup>182</sup> Ibid., p. 7.

<sup>183</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

<sup>184</sup> Institute of Forensic Medicine, official note No. 1709-2015-MP-FN-IML-JN, 13 May 2015.

Confidential report: Comments on the “Report on the measures taken in relation to the International Convention for the Protection of All Persons from Enforced Disappearance”, initial report of Peru, p. 3.

<sup>185</sup> Ibid., p. 7.

storeroom of the forensic research laboratory in Ayacucho or the specialized forensic team's storeroom in Lima.

203. In keeping with the above, the Third Final Complementary Provision of Act No. 30470 mandates the development of a genetic databank in which to store the genetic profiles of missing persons and their relatives, in cooperation with the National Register of Disappeared Persons and Burial Sites, which is also established by the Act.<sup>186</sup>

### **Procedures for obtaining compensation and reparation**

204. As mentioned in the section on article 23, the High-Level Multisectoral Commission, which is made up of representatives of the State and civil society, is the lead agency for the design of a national policy on reparations. It also ensures the coordination, oversight and monitoring of the implementation of the Comprehensive Reparations Plan (Act No. 28592) and its implementing regulations (Supreme Decree No. 015-2006-JUS), which lay down the mechanisms, conditions and procedures for victims of the violence of May 1980 to November 2000 to access the programmes set out in the Plan. As a technical and standard-setting instrument, the Plan also lays down the principles, approaches, objectives, policies and actions that guide the Government's work on reparation at the national, regional and local levels.<sup>187</sup>

205. So far, 214,109 people have been registered in the first volume of the Central Register of Victims (individual victims) and 5,712 campesino or native communities and 56 displaced groups have been registered in the second volume (native communities, campesino communities and displaced groups affected by the violence). Of the individuals registered in the first volume, 36,143 victims and 90,342 relatives of deceased or disappeared victims have had their right to financial reparation recognized.<sup>188</sup>

206. Ministerial Decision No. 184-2011-PCM, as amended by Ministerial Decision No. 149-JUS-2012, establishes the procedures and conditions of payment under the Financial Reparations Programme, which is part of the Comprehensive Reparations Plan and was designed as an administrative form of redress to provide financial compensation to people affected by the violence of 1980-2000 who are currently registered in the Central Register of Victims and who fall into one of the following categories:

- (a) Direct relative of a deceased victim (murder or extrajudicial execution) who is registered in the Central Register of Victims;
- (b) Direct relative of a victim of enforced disappearance who is registered in the Central Register of Victims;
- (c) Victim of sexual violence;
- (d) Living with a permanent physical or psychological disability that is a direct consequence of an event linked to the violence of 1980-2000.

207. The procedure begins with the submission of the list of potential beneficiaries of the Financial Reparations Programme to the executive secretariat of the High-Level

<sup>186</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

<sup>187</sup> "Reparations" here refers to the actions taken by the State to support victims of the violence between 1980 and 2000. They are expressly designed to recognize the status of victim and aim at securing victims' access to justice, the restitution of their rights, treatment for the sequelae of the human rights violations they experienced, and financial and non-financial compensation, specific or symbolic, for the harm suffered. The Comprehensive Reparations Plan covers the following programmes:

- Financial Reparations Programme
- Health Reparations Programme
- Education Reparations Programme
- Symbolic Reparations Programme
- Civil Rights Restitution Programme
- Programme for the Promotion and Facilitation of Access to Housing
- Collective Reparations Programme

<sup>188</sup> Reparations Board, information updated on 31 October 2015, e-mail communication, 25 November 2015.

Multisectoral Commission. The list is submitted by the Reparations Board, which manages the Central Register of Victims. The executive secretariat checks the information against the National Registry of Identification and Civil Status and draws up a draft list of beneficiaries that is submitted to the Ministry of Justice and Human Rights for adoption by ministerial decision. The ministerial decision approves not only the list of beneficiaries but also the amount of compensation to be paid to each beneficiary, subject to previously ascertained budgetary capacity. The payment is deposited in accounts opened with the National Bank.<sup>189</sup>

208. Between 2011 and 2014, financial compensation was awarded under the programme to 76,590 beneficiaries, for a total amount of 253,589,133 soles. Of these beneficiaries, 16,397 were relatives of victims of enforced disappearance; this group received a total of 55,312,289 soles.<sup>190</sup>

209. As for the Collective Reparations Programme,<sup>191</sup> as at June 2015, the State had allocated 251,046,850 soles, thereby funding a total of 2,120 production infrastructure projects and projects to improve basic services in 2,095 population centres affected by the violence.<sup>192</sup>

210. As can be seen, the type of reparation provided to victims is mainly of a financial nature and is intended to compensate, in part, for the harm suffered by the persons concerned. However, it is not merely financial: as part of a comprehensive approach, the compensation also comes with other reparation measures provided for in the Comprehensive Reparations Plan, including reparations in the areas of health and education, the restitution of civil rights, and symbolic reparations (e.g. public apologies).

211. Regarding health reparations,<sup>193</sup> pursuant to Act No. 28592, the Mental Health Department of the Ministry of Health has been running the Health Reparations Programme since 2005.<sup>194</sup> This ensured that the State extended coverage of the Comprehensive Health Insurance System,<sup>195</sup> including physical and mental health services, to victims of the violence. In addition, health objective No. 6 of the Coordinated National Health Plan 2007-2020<sup>196</sup> is to “improve the population’s mental health as a fundamental human right and an indispensable component of comprehensive health and human development”. The goal is to improve the mental health of 70 per cent of those affected by the violence of 1980-2000 through intersectoral work and the creation of social support networks.<sup>197</sup>

212. As mentioned, the strategies designed by the State to provide optimal health services to the victims of the violence, including the relatives of disappeared persons, include the

<sup>189</sup> High-Level Multisectoral Commission, e-mail communication, 20 February 2015.

<sup>190</sup> High-Level Multisectoral Commission, presentation before the United Nations Working Group on Enforced or Involuntary Disappearances, e-mail communication, 9 June 2015.

<sup>191</sup> The Collective Reparations Programme is designed to contribute to the reconstruction of the social, institutional, material, economic and production capital of rural and urban communities affected by the violence. The Programme consists in providing up to 100,000 soles (approximately US\$ 35,336) to each project selected by the population centres affected by the violence. The local government of the jurisdiction in which the given population centre is located is responsible for implementing the Programme.

<sup>192</sup> High-Level Multisectoral Commission, presentation before the United Nations Working Group on Enforced or Involuntary Disappearances, e-mail communication, 9 June 2015.

<sup>193</sup> Under article 22 of the Regulations on the Comprehensive Reparations Plan, the objective of the Health Reparations Programme is the recovery of mental and physical health, the rebuilding of social support networks and capacity-building for personal and social development. The Programme’s priority regions based on the level of need are: Apurímac, Ayacucho, Cusco, Huancavelica, Huánuco, Junín, Pasco, Puno, Ucayali and San Martín.

<sup>194</sup> Ministry of Health, official note No. 972-2016-DGIESP/MINSA, 23 June 2016, attached report, p. 1.

<sup>195</sup> Ministry of Health, Supreme Decree No. 006-2006-SA (*El Peruano*, 21 March 2006) and Supreme Decree No. 015-2006-SA, amending it (*El Peruano*, 22 July 2006).

<sup>196</sup> Ministry of Health, Ministerial Decision No. 589-2007-MINSA on the adoption of the Coordinated National Health Plan 2007-2020. *El Peruano*, 21 July 2007.

<sup>197</sup> Ministry of Health, Coordinated National Health Plan 2007-2020, p. 31. Available at <ftp://ftp2.minsa.gob.pe/normaslegales/2007/RM589-2007N.pdf> (accessed on 7 July 2016).

preparation and adoption of technical norms<sup>198</sup> and the provision of mental health care in accordance with treatment guidelines.

213. A series of activities and actions are being implemented in the areas of mental health,<sup>199</sup> full recovery from a community perspective,<sup>200</sup> the prevention of mental illness and the promotion of mental health,<sup>201</sup> and the training of health-care professionals. Funding for these activities in the regions prioritized under the Comprehensive Reparations Plan is described in annex 15.<sup>202</sup>

214. Between 2011 and 2014, training sessions on how to address the mental health of those suffering from after-effects of the political violence were held. They incorporated an integrated focus on human rights, a psychosocial approach, a gender and intercultural perspective, and an assessment of the action taken and its impact on communities. In this context, skills training was provided for 280 health-care professionals, including doctors, psychologists and nurses.<sup>203</sup>

215. In 2015, 585 health-care professionals (45 from each priority region) received human rights training, resulting in the establishment of regional teams to provide individual, family, community or social support to the relatives of persons who disappeared during the period 1980-2000. Furthermore, in coordination with the International Committee of the Red Cross, training has been provided on exhumation procedures, the display of victims' clothing and the return of skeletal remains; trained personnel have been involved in returning bodies to the victims' relatives,<sup>204</sup> as specified below.

<sup>198</sup> For example, the technical document "Guidelines on providing psychosocial support to relatives of disappeared persons", adopted by Ministerial Decision No. 299-2012/MINSA of 16 April 2012, provides methodological tools for health-care professionals to provide individual, family, community or social support to the families of persons who disappeared during the violence of 1980-2000. In addition, the technical document "Guidelines on mental health care for persons affected by the violence of 1980-2000", whose goal is the implementation, at all levels of health care, of appropriate and effective mental health care for persons affected by the violence of 1980-2000, was adopted by Ministerial Decision No. 250-2016/MINSA of 14 April 2016. In: Ministry of Health, official note No. 972-2016-DGIESP/MINSA, 23 June 2016, attached report, p. 2.

<sup>199</sup> The purpose is to provide mental health care to those who suffer from the after-effects of the political violence, in regions prioritized under the Comprehensive Reparations Plan, by means of regional teams consisting of psychiatrists, trained doctors, psychologists and nurses. The number of people who received mental health care in the priority regions between 2011 and 2015 is given in annex 12.

<sup>200</sup> The aim is to lay the foundation for rebuilding the social ties that were severed by the violence, and that isolated and fractured communities. The Ministry of Health, basing itself on the register of priority communities kept by the Reparations Board, works with local organizations to promote a participative approach to health, rebuild historical memory, hold awareness-raising workshops for community leaders and coordinate with local governments, non-governmental organizations and grass-roots organizations in order to tackle community problems together. The figures for mental health interventions during the period 2011-2015 in communities affected by the violence can be seen in annex 13.

<sup>201</sup> The goal is to inform the public about the importance of protecting mental health. A decentralized community approach has made it possible to boost local action under the Comprehensive Reparations Plan (annex 14).

<sup>202</sup> Ministry of Health, official note No. 972-2016-DGIESP/MINSA, 23 June 2016, attached report, pp. 2-6.

<sup>203</sup> Similarly, under phase II of the Ministry of Education and Japan International Cooperation Agency project "Strengthening comprehensive health care for victims of violence and human rights violations", 77 health-care professionals in the regions of Apurímac I, Apurímac II, Ica, Huánuco, San Martín, Ucayali, Puno, Pasco and Junín were trained in 2011. In: Ministry of Health, official note No. 972-2016-DGIESP/MINSA, 23 June 2016, attached report, p. 4.

<sup>204</sup> Ministry of Health, official note No. 972-2016-DGIESP/MINSA, 23 June 2016, attached report, pp. 4-5.

Table 2  
**Psychosocial counselling in priority regions**

<i>Year</i>	<i>Number of sessions</i>	<i>Beneficiaries</i>	<i>Region</i>	<i>Community</i>
2015	10	910 relatives (182 bodies returned)	Ayacucho	Putaccasa settlement in Sacsamarca District, Huancasancos Province; Chungui, la Mar Province; Oronccoy, Huayao, Huamanquiua
	1	20 relatives (2 bodies returned)	Huánuco	Huánuco
	3	100 relatives (20 bodies returned)	Junín	Satipo, Pangoa, Concepción
	1	10 relatives (1 body returned)	Ucayali	Aguaytia
	1	10 relatives (1 body returned)	Huancavelica	Sachapite
2016	4	225 relatives (45 bodies returned)	Ayacucho	Ayacucho
<b>Total</b>	<b>20</b>	<b>1 275 relatives (251 bodies returned)</b>		

216. In April and May 2016, three training sessions were held in the regions of Huánuco, Ucayali and San Martín, where community intervention plans were formulated.<sup>205</sup>

217. The goal of the Education Reparations Programme, in keeping with article 17 of the Regulations on the Comprehensive Reparations Plan, is to facilitate access and provide new and improved options for victims and their relatives who, as a consequence of the violence, were denied the possibility of receiving a proper education or of completing their primary, secondary, higher, technical or university studies.

218. In the second semester of 2012, the Ministry of Education introduced, under the National Scholarship Programme, the REPARED scholarship, which fully funds vocational studies at the university or technical level for beneficiaries registered in the Central Register of Victims. It provides a study allowance and covers the cost of accommodation, food, books, medicine, tuition, medical insurance and photocopies.

219. Recipients of the scholarship who study in their place of origin receive a monthly allowance of 850 soles while those who study in other cities receive 1,200 soles, in addition to 250 soles for work clothing and 2,500 soles for the purchase of a laptop computer.

220. From 2012 to 2014, 102 relatives of victims of enforced disappearance received a REPARED scholarship. Beneficiaries of the Comprehensive Reparations Plan also have access to universities and higher education under a scheme whereby places are reserved for them in entrance examinations. They are also exempt from administrative fees, from admission to graduation.<sup>206</sup>

221. Notwithstanding the above, it should be pointed out that one of the main difficulties observed in relation to reparation concerns the identification of victims. In early 1980, at the beginning of the violence, the electoral roll in place prior to the National Registry of Identification and Civil Status was dysfunctional, as pointed out in the final report of the Truth and Reconciliation Commission. Thus, many of the deceased who were registered in the Central Register of Victims did not have an identification document. Consequently, and in order to have a rapid identification and information-sharing and management mechanism for the implementation of the Comprehensive Reparations Plan by the High-Level

<sup>205</sup> Ibid., p. 4.

<sup>206</sup> High-Level Multisectoral Commission, e-mail communication, 20 February 2015.



Multisectoral Commission, the Central Register of Victims adopted an alphanumerical code that summarizes the identity of the victim, the nature, place and date of the allocation, any family connections and, in some cases, the victim's legal situation. This makes it easier to transmit information to the High-Level Multisectoral Commission and improve the implementation of reparation measures.<sup>207</sup>

222. In addition, the High-Level Multisectoral Commission has set up, under the programme to restore civil rights, a number of mechanisms to tackle the judicial declaration of absence by reason of enforced disappearance, which will be explained in detail below.

### **Rights and needs of family members before, during and after exhumation**

223. The Institute of Forensic Medicine has noted that relatives have the right to attend and observe (with prior authorization from the lead prosecutor in the case) every step of the forensic investigation. They or their lawyers can be present during the preliminary investigation, the recovery of skeletal remains and the examination of the remains in the laboratory.

224. Members of the specialized forensic team, with the support and guidance of the International Committee of the Red Cross, follow the recommendations contained in the "International consensus on principles and minimum standards for psychosocial work in search processes and forensic investigations in cases of enforced disappearances, arbitrary or extrajudicial executions". The specialized forensic team has been implementing and enriching these recommendations on how to conduct forensic work while respecting all the rights of those involved since its establishment by Attorney General Decision No. 1262-2003-MP-FN of 13 August 2003. Even prior to being aware of the document, the specialized forensic team, which is primarily made up of anthropologists and archaeologists, was putting into practice many of the guidelines because their professional training teaches them how to interact with different cultural groups, such as Quechua-speaking campesinos and, to a lesser extent, with settlers and native peoples of the Amazon.<sup>208</sup>

225. Since 2012, the executive secretariat of the High-Level Multisectoral Commission has been coordinating with the Public Prosecution Service to return the skeletal remains of disappeared persons and to provide logistical and emotional support, as a symbolic reparation measure, to families going through what must be a difficult process given that remains are being returned some 30 years after the events.<sup>209</sup>

226. With a view to covering the logistical and, in particular, the emotional needs of families of victims of enforced disappearance during procedures to return skeletal remains, the High-Level Multisectoral Commission has rolled out a support programme. This support includes the provision of caskets to give a decent burial to victims of enforced disappearance (registered in the Central Register of Victims and identified by the specialized forensic team of the Public Prosecution Service or by experts retained by another party), and the holding of religious ceremonies, such as wakes and masses, after prior consultation with families and local officials to ensure that the ceremonies are conducted in accordance with the customs, religious beliefs and remembrance rites that are prevalent in a given area, in keeping with an intercultural approach. Thus far, the Commission has provided support during procedures for the restitution of the skeletal remains of 810 victims of enforced disappearance in Ayacucho (680), Apurímac (47), Huancavelica (42), Ancash — El Santa (9), Huánuco (8) and Junín (24).<sup>210</sup>

<sup>207</sup> Reparations Board, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>208</sup> Institute of Forensic Medicine, official note No. 1709-2015-MP-FN-IML-JN, 13 May 2015. Confidential report: Comments on the "Report on the measures taken in relation to the International Convention for the Protection of All Persons from Enforced Disappearance", initial report of Peru, pp. 7-8.

<sup>209</sup> High-Level Multisectoral Commission, e-mail communication, 20 February 2015.

<sup>210</sup> High-Level Multisectoral Commission, e-mail communication, 26 November 2015.

227. The procedures for the restitution of remains include public acts of acknowledgement whereby a representative of the High-Level Multisectoral Commission makes a public apology on behalf of the State. The Commission also coordinates with regional and local entities to handle other aspects and ensure a dignified and restorative process, namely:

- (a) Coffins for disappeared persons not registered in the Central Register of Victims (regional and local governments);
- (b) Psychosocial counselling during exhumation, the display of victims' clothing, the return of skeletal remains and burials (Ministry of Health and the Regional Health Department);
- (c) Food and accommodation for the duration of the procedures in Huamanga, since relatives travel there from distant communities (regional governments and High-Level Multisectoral Commission);
- (d) Travel tickets for relatives (International Committee of the Red Cross);
- (e) Transport of coffins to communities of origin (International Committee of the Red Cross, High-Level Multisectoral Commission and local governments);
- (f) Funeral niches, to ensure that the mourning process does not give rise to unnecessary stress or expense for relatives (local governments).<sup>211</sup>

228. Public acts of recognition and public apologies have been made in the following cases: the campesinos of Santa,<sup>212</sup> the victims of Lucanamarca,<sup>213</sup> the victims of the National University of Central Peru,<sup>214</sup> the community of Chuschi,<sup>215</sup> the victims of Tingo María,<sup>216</sup> Soras,<sup>217</sup> Putis,<sup>218</sup> Parcco Pomatambo,<sup>219</sup> "Los Cabitos" barracks,<sup>220</sup> the National Association of Families of Abducted, Detained and Disappeared Persons of Peru,<sup>221</sup> the

<sup>211</sup> This information is explained in the guidelines of the Symbolic Reparations Programme of the executive secretariat of the High-Level Multisectoral Commission, adopted at a Commission meeting in June 2013. In: High-Level Multisectoral Commission, e-mail communication, 20 February 2015.

<sup>212</sup> On 11 November 2011, the remains of nine victims attributed to the so-called Colina group were returned. The High-Level Multisectoral Commission provided counselling and coffins.

<sup>213</sup> On 12 April 2012, with the President, the Minister of Justice and Human Rights, the Minister of Development and Social Inclusion and the head of the regional government of Ayacucho in attendance.

<sup>214</sup> On 6 July 2012, a commemorative plaque was unveiled at a public ceremony in remembrance of the victims of the violence and human rights violations committed on university campuses between 1988 and 1993.

<sup>215</sup> On 6 July 2012, in Chuschi, Cangallo Province (Ayacucho), the persons affected by the violence, notably those murdered in Quispillaccta (1983) and those killed by local officials in 1991, were publicly recognized at the Town Hall and their relatives received a public apology on behalf of the State of Peru.

<sup>216</sup> On 11 October 2012, a public ceremony was held in recognition of all the victims from the town of Tingo María; it included the unveiling of a commemorative plaque outside Tingo María, in the presence of the local authorities and associations of victims from Huallaga.

<sup>217</sup> On 9 November 2012, tribute was paid to the victims in the case of Soras, Ayacucho. The event was attended by the President of Congress, the Attorney General, the Deputy Minister for Human Rights and Access to Justice (Ministry of Justice) and members of the congressional human rights commission.

<sup>218</sup> On 13 December 2012, a public ceremony was held to commemorate the 123 victims in the Putis case, and a plaque was unveiled. On 13 December 2014, a ceremony was held to mark the 30-year anniversary of the event and a public apology was made to the families.

<sup>219</sup> On 21 October 2013, in a gesture of apology and recognition, coffins were provided for the remains of four victims and symbolic coffins were provided for the other eight victims whose remains have not been found.

<sup>220</sup> On 22 April 2013, coffins were provided and solemn burials were held for Edy Sulca Gómez and Felipe Huamán Palomino.

<sup>221</sup> On 2 September 2013 in La Hoyada, the Deputy Minister for Human Rights and Access to Justice announced that the Government had decided to convert the space into a sanctuary of remembrance. A commemorative plaque was unveiled at the premises of the Association following its request, dated 12 May 2008, to the Office of the President of the Council of Ministers and the Ministry of Justice of

victims of Santo Tomás de Chumbivilcas,<sup>222</sup> Santa Rosa,<sup>223</sup> Chongos Alto,<sup>224</sup> Ninanya,<sup>225</sup> Canchayllo,<sup>226</sup> Raccaya Umasi,<sup>227</sup> Pichccapunco,<sup>228</sup> Paccha,<sup>229</sup> Huamachuco,<sup>230</sup> Cayara,<sup>231</sup> the victims of Andahuaylas,<sup>232</sup> Toraya (Apurímac Region),<sup>233</sup> the victims of Tsiriri<sup>234</sup> and the victims of the Hermilio Valdizán National University.<sup>235</sup>

229. It should be borne in mind that the purpose of public ceremonies of recognition is to honour the memory of disappeared persons. Furthermore, the aim of setting up memorials is, in addition to facilitating mourning, to ensure that cases of enforced disappearance are not forgotten.<sup>236</sup>

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Peru to declare La Hoyada a “sanctuary of remembrance”. As a consequence, on 12 August 2014, in a deeply moving ceremony in memory of the victims of the violence of 1980-2000, the Ministry of Justice and Human Rights officially handed over the land of La Hoyada to the regional government of Ayacucho to develop a sanctuary of remembrance. The ceremony was led by the Minister of Justice and Human Rights, Daniel Figallo, who, on behalf of the State, made a public apology to the families of the victims in attendance. See <http://ayacucho.memoria.website/espacios/santuario-la-hoyada/>.

- 222 On 22 November 2013, a public ceremony was held in the presence of local officials, and included a public apology to the families and victims of the district of Santo Tomás de Chumbivilcas for their suffering.
- 223 On 20 June 2014, a public ceremony of recognition and apology was held for the community of Santa Rosa in relation to the victims who disappeared and were executed at the former barracks of Santa Rosa, in the Apurímac region, as an emblematic case designated by the Truth and Reconciliation Commission.
- 224 On 27 June 2014, a public ceremony of recognition was held for the victims of Chongos Alto, which included a public apology and the unveiling of a commemorative plaque.
- 225 On Thursday, 14 August 2014, in Chupaca Province, Junín, local officials and settlers were invited to a public ceremony in which a public apology was made and a commemorative plaque was unveiled.
- 226 On Friday, 15 August 2014, in Jauja Province, Junín, a ceremony of public apology, including the unveiling of a commemorative plaque, was held on the premises of the district municipality of Canchayllo.
- 227 On 25 September 2014, a public ceremony was held in the district of Canaria, Víctor Fajardo Province, Ayacucho, to mark the return of the skeletal remains of 41 victims of the events of September 1985. A public apology for the regrettable events was made and a commemorative plaque was unveiled in the community hall of Raccaya, which was built as a collective reparation measure.
- 228 On 9 December 2014, a public commemoration of the victims of Pichccapunco was held in the district of Daniel Hernández, Tayacaja Province, Huancavelica.
- 229 On 27 February 2015, a public commemoration was held for 10 campesinos executed in the community of Paccha, district of El Tambo, Junín; the ceremony included a public apology to the families and local authorities.
- 230 On 24 March 2015, victims from the province of Sánchez Carrión, Libertad, were remembered in a public ceremony, with the unveiling of a commemorative plaque in the Casa de Memoria in Huamachuco.
- 231 On 14 May 2015, the Deputy Minister for Human Rights and Access to Justice made a public apology on behalf of the State to the families and leaders of the community of Cayara for the events that led to the loss of their loved ones during the political violence. The public ceremony of recognition was held in the community of Cayara, district of Cayara, Víctor Fajardo Province, Ayacucho.
- 232 On 9 June 2015, a public ceremony in remembrance of the victims of Andahuaylas Province was held in Apurímac; organizations of those affected, relatives, local officials and the general public were in attendance.
- 233 On 10 July 2015, a commemorative plaque was unveiled in the community of Toraya at the Ojo que Lloro (Weeping Eye) memorial in Toraya, Aymaraes Province, Apurímac. A public apology was also made in a local ceremony.
- 234 On 31 August 2015, in Mazamari, Satipo Province, Junín, the victims of Tsiriri were remembered, some 22 years after the massacre of 72 people by Sendero Luminoso (Shining Path). A public apology was made and a commemorative plaque was unveiled.
- 235 On 22 September 2015, a public ceremony was held to commemorate the victims of this educational institution, including the unveiling of a commemorative plaque and a public apology to the families and the academic community.
- 236 High-Level Multisectoral Commission, e-mail communication, 26 November 2015. It is worth noting the establishment of the Site of Remembrance, Tolerance and Social Inclusion, a government initiative housed in the Office of the Deputy Minister for Interculturalism at the Ministry of Culture. The aim of the Site is to provide a dynamic and interactive space where the history of the violent events that took place in Peru between 1980 and 2000 can be recounted. Its purpose is to

230. Thus, the State has taken countless steps to provide psychosocial counselling and material and logistical support, which are also provided for in title V of Act No. 30470<sup>237</sup> and which have been explained in detail above.

### **Judicial declaration of absence by reason of enforced disappearance**

231. Act No. 28413 regulating absence by reason of enforced disappearance during the period from 1980 to 2000 (*El Peruano*, 11 December 2004) provides for the establishment, within the Ombudsman's Office, of a special register of absences by reason of enforced disappearance. It also provides for a special judicial declaration of absence by reason of enforced disappearance, which is free of charge, and assigns the competence to make such declarations to the justice of the peace at the applicant's last place of domicile.

232. Under the Act, the Ombudsman's Office has the administrative task of ascertaining, by way of a special procedure (requesting information from the National Registry of Identification and Civil Status, the National Elections Office, the National Prison Institute, the General Directorate of Migration and Naturalization, and the Warrants Department of the National Police, among others), whether a person disappeared in the context of the violence and whether his or her whereabouts are unknown. It then issues a certificate of absence by reason of enforced disappearance that later goes through a special judicial procedure in order to be registered in the National Registry. The National Registry received 1,913 certificates between 2005 and 2014,<sup>238</sup> of which only 200 were brought before the courts, resulting in 80 judicial decisions of absence by reason of enforced disappearance. These decisions were entered in the relevant civil register by means of a death certificate.

233. Act No. 28413 provides for a special legal status in an attempt to offer an effective solution to the problem of recognizing the rights of persons whose whereabouts are unknown. Relatives and individuals with a legitimate interest may request a judicial declaration of absence by reason of enforced disappearance from a justice of the peace. To do this, applicants must submit the certificate of absence by reason of enforced disappearance. The judicial declaration of absence by reason of enforced disappearance has the same effect as a judicial declaration of presumed death, as regulated by the Civil Code. Currently, the judicial decision sets as the presumed date of enforced disappearance the date listed on the certificate recorded in the special register of absences by reason of enforced disappearance kept by the Ombudsman's Office.<sup>239</sup>

234. Pursuant to article 44 (e) of Act No. 26947,<sup>240</sup> as amended by the First Final Provision of Act No. 28413, the National Registry of Identification and Civil Status is responsible for entering in its civil registers judicial declarations of disappearance, absence, presumed death and absence by reason of enforced disappearance, and for issuing the appropriate death certificate, in accordance with article 7 (b) of Act No. 26947.<sup>241</sup>

235. Deaths certified by judicial decisions establishing enforced disappearance are entered into civil registers by virtue of the definitive judicial decisions, which themselves

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acknowledge the victims of the violence and restore their dignity through reflection, discussion and remembrance, and to help build a society in which the past informs present-day action, so as to ensure that the events are not repeated. In order to achieve this, a vibrant and evolving space has been set up that is aimed especially at young people who did not live through the period of violence. It should therefore help build a country that honours human rights. The Site is, above all, a civic, pedagogical and cultural project. See <http://lum.cultura.pe/el-lum/quienes-somos>.

<sup>237</sup> Congress of the Republic, Act No. 30470 on the search for persons who disappeared during the violence of 1980-2000. *El Peruano*, 22 June 2016.

<sup>238</sup> Ombudsman's Office, official note No. 098-2015-DP/ADHPD, 13 May 2015, comment No. 5 (c).

<sup>239</sup> High-Level Multisectoral Commission, e-mail communication, 20 February 2015.

<sup>240</sup> Congress of the Republic, Organic Act of the National Registry of Identification and Civil Status (Act No. 26947). *El Peruano*, 12 June 1995.

<sup>241</sup> Specifically, pursuant to the legal provisions referred to in the preceding paragraph, the administrative procedures provided for in items 9 (b) and 16 (b.3) of the Consolidated Administrative Procedures of the National Registry of Identification and Civil Status, adopted by Prefectural Decision No. 184-2013/JNAC/RENIEC (6 June 2013). The document describes the procedures for: (a) modifying voided entries in the Central Register for the Identification of Forcibly Disappeared Persons; and (b) registering judicial declarations of enforced disappearance.

are registered at any registry office, in accordance with article 53 of the registration regulations of the National Registry of Identification and Civil Status, adopted by Supreme Decree No. 015-08-PCM (*El Peruano*, 25 April 2016), and the rules on jurisdictional competence.

236. Thus, relevant measures have been taken to properly register judicial declarations of absence by reason of enforced disappearance in the National Registry of Identification and Civil Status in accordance with the First Final Provision of Act No. 28413, which regulates absence by reason of enforced disappearance during the period 1980-2000. As previously mentioned, this provision established the special register of absences by reason of enforced disappearance within the Ombudsman's Office. Individuals identified as victims of enforced disappearance in the context described in the Act<sup>242</sup> must be entered in the special register.

237. Some 668 cases of presumed death or death by reason of enforced disappearance were registered in the National Registry between 2010 and 2014 (see annex 10).

238. The programme to restore civil rights has been successful in ensuring access and preferential treatment for people affected by the violence. It also includes priority lines of action in relation to the legal status of absence by reason of enforced disappearance, which is provided for in Act No. 28413, with a view to finding a practical and effective solution to the recognition of the rights of persons whose whereabouts are unknown as a consequence of the violence.

239. In this connection, the High-Level Multisectoral Commission has the following inter-institutional duties:<sup>243</sup>

(a) To provide training, in coordination with its executive secretariat and the Ombudsman's Office, for justices of the peace, with a view to ensuring the correct application of Act No. 28413, standardizing criteria and avoiding the imposition of requirements not provided for by law that would infringe the no-fees principle or due process;

(b) To ensure that the judicial procedure to have a person declared absent by reason of enforced disappearance is free of charge;

(c) In cooperation with the National Registry of Identification and Civil Status, to establish a new section in the Personal Register — which currently records births, marriages and deaths — for recording the legal status of persons declared absent by reason of enforced disappearance.

## 2.25 Article 25

240. In the event that a child victim of enforced disappearance is found and is presumed to be without parental care, the Guardianship Investigation Department of the General Directorate for Children and Adolescents (Ministry for Women and Vulnerable Groups), in coordination with the Public Prosecution Service, the National Police, the National Registry of Identification and Civil Status and other public and private institutions, carries out the procedure to establish the minor's identity, assess the circumstances of the presumed loss of parental care and order the appropriate protection measure.<sup>244</sup>

241. The process for guaranteeing the right of disappeared children to recover their identity involves either a judicial procedure to be recognized as a living person, in cases where a minor has previously been declared absent by the courts (Civil Code, art. 67), or a single procedure carried out by a family judge, in cases where there is no such judicial declaration. Alternatively, *amparo* proceedings can be initiated on grounds of a violation of

<sup>242</sup> National Registry of Identification and Civil Status, official note No. 000311-2015/GEN/RENIEC, 19 February 2015.

<sup>243</sup> High-Level Multisectoral Commission, e-mail communication, 20 February 2015.

<sup>244</sup> Ministry of Women and Vulnerable Groups, official note No. 1067-2015-MIMP/SG, 20 March 2015.

the right to identity, in accordance with article 37 (25) of the Code of Constitutional Procedure and articles 1 and 2 (1), on the right to identity, of the Constitution.<sup>245</sup>

**Procedures in place to search for child victims of enforced disappearance and to review and, where appropriate, annul any adoption or placement of children that originated in an enforced disappearance**

242. Under article 33 of the implementing regulations of Act No. 26981 on the administrative procedure for the adoption of minors declared by the courts to have been abandoned, any administrative decision sanctioning an adoption “may be challenged by a person who can demonstrate a family relationship up to the second degree of consanguinity within one working day of notification of the adoption to the concerned parties”. When a challenge is brought before the National Adoptions Secretariat, the latter transmits the file the same day to the Office of the Deputy Minister for Women, the highest administrative body, which must make a ruling within five working days. Article 34 states that an administrative action can be brought against the final ruling of the Office of the Deputy Minister for Women before the civil division of the competent high court within five days of notification of the ruling to the parties concerned.<sup>246</sup>

243. Regarding the procedures in place to guarantee the right of disappeared children and adults who believe they are the children of disappeared parents to recover their identity, it should be noted that the Reparations Board has referred various cases concerning the duly documented restitution of identity to the Subcommittee on the Documentation of the Victims of Political Violence (which reports to the Identity Restitution and Social Support Office of the National Registry of Identification and Civil Status). The Subcommittee coordinates with the programme on the restitution of identity and civil rights, which is governed by the implementing regulations of the Act establishing the Comprehensive Reparations Plan. The cases in point are cases of relatives of deceased persons (not necessarily victims of disappearance) in which an omission or error in their basic birth documentation has prevented their access to reparation.<sup>247</sup>

244. Concerning the State’s duty to guarantee the best interests of the child, it should be noted that article 9 of the preliminary title of the Code on Children and Adolescents, adopted by Act No. 27337, states that: “In all measures concerning children and adolescents adopted by the executive, legislative and judicial branches of the State, the Public Prosecution Service, the regional and local governments and other State institutions, as well as in the action taken by society, the principle of the best interests of the child and respect for children’s rights shall be taken into account.”<sup>248</sup>

245. Lastly, regarding the mechanisms to ensure that children are in a position to form their own opinions and to guarantee their right to freely express their opinion on all issues of concern to them in the context of enforced disappearance, it should be noted that the National Plan of Action for Children and Adolescents 2012-2021, the national public policy that guides the State’s actions with regard to children and adolescents, lists the participation of children and adolescents in the development of public policies that involve or concern them as one of its expected results. To this end, a range of concerted and consistent strategies, involving government organizations, the Public Prosecution Service, regional and local governments and civil society, have been put in place.<sup>249</sup>

<sup>245</sup> Judiciary, official note No. 047-2015-DDHH-PJ, questionnaire development document, p. 42.

<sup>246</sup> Ministry of Women and Vulnerable Groups, official note No. 1067-2015-MIMP/SG, 20 March 2015.

<sup>247</sup> Reparations Board, official note No. 819-2015-JUS-CR/ST, questionnaire for the report on the measures adopted in relation to the International Convention for the Protection of All Persons from Enforced Disappearance, 7 May 2015.

<sup>248</sup> Ministry of Women and Vulnerable Groups, official note No. 1067-2015-MIMP/SG, 20 March 2015.

<sup>249</sup> Ibid.

### **III. Concluding remarks**

246. Peru is adopting a number of administrative, legislative and judicial measures, as well as public policies, to ensure a comprehensive, consistent and inclusive response to the issue of disappeared persons.

247. The measures and public policies adopted, as described throughout this report, are fully in line with the international obligations undertaken by Peru with regard to disappeared persons and their families, including within the framework of international human rights law and international humanitarian law.

248. Although this report shows that there is a need to strengthen the mechanisms for providing clarification, truth and justice to the families of disappeared persons, it also demonstrates the State's commitment to continue adopting the necessary measures to prevent, eradicate and provide reparation for cases of enforced disappearance in Peru.

## IV. Annexes

- Annex 1: Investigations into cases of enforced disappearance being conducted by the specialized prosecutors' offices in Lima and the provinces
  - Annex 2: Investigations into cases of enforced disappearance entrusted to the supra-provincial criminal prosecutors' offices of Lima
  - Annex 3: Investigations into cases of enforced disappearance entrusted to the supra-provincial criminal prosecutors' offices of Lima
  - Annex 4: Active extradition requests for the offence of enforced disappearance
  - Annex 5: Steps in forensic investigations
  - Annex 6: Defence of victims — Enforced disappearances by month and department, 2014
  - Annex 7: Defence of victims — Enforced disappearances by age and department, 2014
  - Annex 8: Defence of victims — Enforced disappearances by gender and department, 2014
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  - Annex 10: Registrations of presumed death or death by reason of enforced disappearance by regional authority, 2010-2014
  - Annex 11: Act on the search for persons who disappeared during the violence of 1980-2000
  - Annex 12: Total number of persons receiving mental health care in the prioritized regions under the Comprehensive Reparations Plan (2011-2015)
  - Annex 13: Mental health care provided in communities affected by political violence (2011-2016)
  - Annex 14: Mental health information, education and treatment campaigns (2011-2015)
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