

## BRIEFING PAPER

# Submission to the UN Human Rights Committee: Review of Peru

FEBRUARY 2013

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The Open Society Justice Initiative and Instituto Prensa y Sociedad present this briefing paper to the Human Rights Committee in preparation of its review of Peru at its 107<sup>th</sup> session. This submission focuses on continuing challenges to accessing the truth about, and accountability for, human rights violations, including the state's failure to investigate and prosecute crimes against humanity and other serious human rights violations, the state's withholding of critical information needed for investigations and prosecutions, and the excessive secrecy of security sector information, in violation, *inter alia*, of Articles 2, 6, 7, 9 and 19 of the ICCPR.



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## Executive Summary

Peru was engaged in a brutal internal armed conflict from 1980 to 2000 resulting in over 69,000 deaths, 75 percent of which belonged to indigenous communities.<sup>1</sup> Transitional justice in Peru, despite some progress, continues to face serious obstacles, including ineffective investigations and prosecutions for human rights violations, renewed efforts to establish amnesty laws, and ongoing calls for the pardon of former President Alberto Fujimori. The failure to effectively investigate, and ensure the prosecutions and reparations for human rights violations, is a violation of Articles 2, 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR).

One significant but rarely discussed impediment to the investigation and prosecution of human rights abuses is the violation of the right to seek and receive information held by public authorities and the right to truth. The Peruvian government possesses information about historic human rights abuses from the period of internal armed conflict that it has failed or refused to make public, in accordance with its obligations under Article 19 of the ICCPR. It should be encouraged to do so as an important step towards exhuming and identifying the disappeared, reckoning with the country's past, combating impunity for serious human rights violations, and ensuring human dignity and security in the future.

Further, in December 2012, the Peruvian state issued a decree authorizing the secrecy of security sector information, categorically and with no designated time limit or exemptions for information related to human rights violations. This is in direct conflict with Peru's obligations under Article 19 of the ICCPR, as well as with the country's decade-old access to information law.

The Open Society Justice Initiative promotes the rule of law through litigation, legal advocacy and reform of legal institutions aimed at enhancing the protection of human rights. The Justice Initiative is working with partners in Peru, including the Human Rights Association (*La Asociación Pro-Derechos Humanos*, or APRODEH), to undertake strategic litigation seeking access to information concerning historic and contemporary human rights violations.

The Press and Society Institute (also known as the *Instituto Prensa y Sociedad*, or IPYS), also based in Lima, monitors attacks on press freedom in the Andean region, engages in advocacy and provides legal support on behalf of journalists. IPYS campaigned for the 2002 Law on Transparency and Access to Public Information, and actively uses the law and promotes its improved implementation.

## Recommendations

We urge the UN Human Rights Committee to question the Government of Peru about, and make recommendations concerning, its duties to (a) investigate, prosecute and punish human rights violations, and (b) make information about human rights violations available to the victims, their families and society at large, as required by Articles 2, 6, 7, 9 and 19 of the ICCPR.

In particular, the Justice Initiative encourages the UN Human Rights Committee to call on Peru's government to take the following measures:

- Ensure **continued investigations and prosecutions** of those implicated in crimes against humanity and other serious human rights violations committed during the internal armed conflict, and publicly affirm the government's commitment to these investigations and prosecutions.
- Repeal the provisions of **Executive Decrees 1129 and 205-2012-EF** mandating secrecy of security sector information, and ensure compliance with constitutional and legislative mandates for public access to information about cases relating to human rights abuses.
- Improve efficiency and responsiveness of state entities charged with **fulfilling requests for public information** as required by Peru's Constitution as well as by Article 13 of the American Convention on Human Rights and Article 19 of the ICCPR.
- Develop or reform appropriate legal mechanisms to **enforce and/or sanction officials or state organs** that refuse to comply with requirements to provide access to public information about cases of human rights violations.
- Ensure **access by victims and their families, judicial and investigative authorities, as well as the public** to all documents that reveal information about human rights violations during the internal armed conflict, save for specific pages of documents, the disclosure of which the state can demonstrate would likely cause identifiable harm to national security. Documents that the state is obliged to disclose include military operational plans, intelligence reports, manuals, locations of military bases and installations, and names, details and level of responsibility of those having served in the military or paramilitary, including personnel files and annual evaluations.
- Construct a **registry** of all existing documents pertaining to the internal armed conflict.
- Permit full **searches of military and intelligence archives** for information related to human rights violations, by specialists independent of military and intelligence entities.
- Establish **independent oversight of the management of military and intelligence records** from, or related to, the armed conflict.

# Peru's international legal obligations under the ICCPR

## A. Accountability for human rights violations

International human rights law creates an obligation to investigate and prosecute the material and intellectual perpetrators of grave human rights violations. This obligation arises from, *inter alia*, Articles 2, 6, 7, and 9 of the ICCPR.<sup>2</sup>

The Human Rights Committee has interpreted the Covenant to require that states “give effect to the general obligation to investigate allegations of violations promptly, thoroughly, and effectively.”<sup>3</sup> The Committee has called “the problem of impunity ... a matter of sustained concern.” The failure to investigate allegations of violations could itself give rise to a separate breach of the Covenant,<sup>4</sup> which continues so long as there has not been an effective investigation. The Committee has also reaffirmed that international law prohibits immunity for those responsible for serious human rights violations in respect of which states are required to bring in perpetrators to justice.<sup>5</sup>

Further, the prohibition of crimes against humanity, and the requirement to prosecute them as such, has been accepted as a *jus cogens* or peremptory norm of international law.<sup>6</sup> International law also requires states to arrest, investigate and prosecute, or else extradite to a jurisdiction that is willing and able to investigate and prosecute, perpetrators of certain international crimes, including genocide or crimes against humanity, in all circumstances.<sup>7</sup> Relatedly, as recognized by the Committee, a clear and binding norm of international law prohibits the grant of amnesty or the application of statutes of limitations to those charged with international crimes such as crimes against humanity.<sup>8</sup> The Committee has affirmed that granting a broad amnesty for grave human rights violations “is incompatible with the duty of States to investigate human rights violations, to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future.”<sup>9</sup> Decades-old crimes must therefore still be prosecuted.

## B. Right to information

The right to seek and receive information is protected expressly by Article 19(2) of the ICCPR, and mandates a corresponding duty of public authorities to disclose information. In its General Comment 34, the Committee stated that Article 19 guarantees the right of access to information held by all public bodies (whether executive, legislative or judicial), other public or governmental authorities, and other entities carrying out public functions.<sup>10</sup> The Committee has indicated that states parties should “proactively put in the public domain Government information of public interest.”<sup>11</sup>

As set forth in Article 19(3), the right to access information is not absolute. Freedom of information is subject to limitations, *inter alia*, to protect certain types of information from disclosure. However, these restrictions on access must be provided by law; narrowly drawn; strictly interpreted in line with the presumption of access; and be necessary and proportionate (a) for respect of the rights or reputations of others, or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. As stated by the Committee in its

General Comment 34 on Article 19, any restrictions “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those that might achieve their protective function; they must be proportionate to the interest to be protected”.<sup>12</sup> Furthermore, the principle of proportionality must be respected both in the law that frames the restrictions and also in the application of the law by administrative and judicial authorities. Non-disclosure must be time-limited, as any legitimate justifications for the non-disclosure of records become progressively weaker over time.<sup>13</sup> The Committee has stated that it is not compatible with Article 19(3) to invoke state secrecy laws to “withhold from the public information of legitimate public interest that does not harm national security.”<sup>14</sup>

In assessing whether restrictions on the right of access information are proportionate and necessary, a public authority must demonstrate that a disclosure threatens to cause harm to a protected interest under Article 19(3) of the ICCPR to justify withholding and weigh the harm that disclosure would cause to the protected interest against the public interest served by disclosure of the information.

While the Committee has not yet had the opportunity to consider the denial of a request for access to information about human rights violations on grounds of national security or related grounds, the European Court of Human Rights has held that the withholding of any information related to human rights violations on national security grounds must be subject to independent review.<sup>15</sup>

### C. Right to truth

The right to truth is recognized in international treaties and instruments, in international and national jurisprudence, and in intergovernmental resolutions.<sup>16</sup> The right to truth can arise from the State obligation to provide an effective remedy, which includes information about the violation.<sup>17</sup>

The right to truth includes, at a minimum, the right to know the full and complete truth about the events that transpired, as well as the specific circumstances and the persons involved.<sup>18</sup> In order to combat impunity for serious human rights violations, the Committee has previously called on states parties to guarantee that the victims of human rights violations know the truth with respect to the acts committed and who the perpetrators of such acts were.<sup>19</sup>

The right to truth is established firmly in relation to missing persons, forced disappearances, and secret executions, arising in this context from the right of families to know the fate of their relatives.<sup>20</sup> The Committee has expressly recognized the right to truth for families of victims of enforced disappearance and secret execution, in connection with the right not to be subjected to torture or ill-treatment.<sup>21</sup>

It is now widely accepted that the scope of the right to truth extends beyond forced disappearances and includes a State obligation to shed light on all gross human rights violations or serious violations of international humanitarian law, including torture and extrajudicial executions.<sup>22</sup> The right attaches not only to cases of massive or repeated violations, but also to singular cases of sufficient gravity.<sup>23</sup>

The right to truth has increasingly been recognized as having a collective component. The UN Impunity Principles declare that “[e]very people has the inalienable right to know the truth about

past events concerning the perpetration of heinous crimes and about the circumstances that led, through massive or systematic violations, to the perpetration of those crimes.”<sup>24</sup>

Access to records held by public authorities is essential to any process that seeks to reconstruct the truth about and seek justice for past atrocities and other gross human rights violations. This applies in particular to the results of investigations,<sup>25</sup> as well as archives or information in closed investigative files that are directly or indirectly related to abuses committed by state agents,<sup>26</sup> and in some cases also to open investigation files.<sup>27</sup>

The right to truth creates a strong presumption in favor of the disclosure of information concerning human rights violations or violations of international humanitarian law, regardless of its asserted classification status.<sup>28</sup> Where the right to truth applies, classification of information can be justified only in exceptional cases and only to the extent strictly necessary to protect national security interests or the other state interests listed in Article 19(3). A public authority carries a particularly heavy burden to demonstrate that a compelling State interest justifies the secrecy of information concerning gross violations of human rights. Any possible justifications for the non-disclosure of records become progressively weaker over time. This is particularly true for records related to the violations committed by prior authoritarian regimes.<sup>29</sup>

## Peru's failure to comply with the Covenant

### A. Restrictions on access to information about past human rights violations

Peru's failure to disclose public information, especially security sector information related to human rights violations, violates Article 19 of the ICCPR.

Peru's 1993 Constitution recognizes the right to information.<sup>30</sup> Peru's 2003 Law of Transparency and Access to Public Information guarantees every individual the right to request and receive public information from any government body or private entity that offers public services or executes administrative functions without having to provide a motivation.<sup>31</sup> The law provides for exceptions, including on the ground of national security. However, Article 15 of the law specifies that in “no case shall information related to violations of human rights or the Geneva Conventions of 1949 be considered classified information.”<sup>32</sup>

Despite the legal protection of the right to information in Peru, the Ministry of Defense and the Peruvian Armed Forces have been unwilling to provide access to key information, which would identify perpetrators, and therefore enable human rights investigations and prosecutions to proceed. Much of the government-held information pertaining to ongoing investigations into human rights violations is either secret or allegedly destroyed. The government has repeatedly delayed, hindered, or denied access to investigators, prosecutors, and in some cases judges and prosecutors, to information critical for identifying those involved.<sup>33</sup> As a result of governmental obstruction, the overall progress of human rights cases through the justice system has suffered.

Significantly, Public Ministry officials have noted that refusal by the military and other arms of the government to provide requested information that would allow investigators to identify alleged perpetrators is one of the key factors in the closing of cases.<sup>34</sup> For instance, the case of the 1984 massacre of peasants in Putis, near Ayacucho, was stalled in the preliminary investigation stage for over a decade. Beginning in 2001, judges repeatedly sought information on the personnel who served in the Putis base, only to be told: “There exists no documentation that permits the identification of military personnel who served in the military base at Putis.”<sup>35</sup> In another case, State prosecutors investigating the case of human rights violations at Los Molinos asked the Ministry of Defense information for the names of personnel who served at military base “Teodoro Peñaloza” in Jauja between 1989 and 1993. After resubmitting the request, the Ministry of Defense notified the State prosecutor’s office that “the information requested could not be found.”<sup>36</sup>

However, despite official denials, important information about historic human rights violations often exists.<sup>37</sup> The Peruvian Army recently produced an official document, *In Honor of the Truth (En Honor a la Verdad)*, as an official Army response to the Truth Commission’s report.<sup>38</sup> It references numerous official documents from the period of the internal armed conflict that human rights lawyers and prosecutors believe could be helpful in shedding light on who was implicated in serious human rights violations. Some of the information was previously sought by prosecutors and denied or claimed to be nonexistent. These include military studies and criteria for counter-subversive operations, annual records, and personnel files.

## B. Lack of accountability for past human rights violations

In its list of issues, the Committee has requested information on the steps taken by the government to implement the recommendations of the Peruvian Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*, or CVR) regarding access for victims to truth, justice and reparation.<sup>39</sup>

The CVR was established in 2001 after the fall of President Fujimori. It stated in its 2003 final report that the State was responsible for approximately 37 percent of the more than 69,000 deaths during the armed conflict.<sup>40</sup> The Peruvian armed forces have been implicated in massacres, forced disappearances, extrajudicial executions, torture, and sexual violence.

The CVR recommended, among other things, that the State should investigate, prosecute, and punish emblematic cases of gross human rights violations, prioritizing cases of state-sponsored violations shielded in impunity during the period of conflict. While the state has made some advances in truth and accountability for the violations committed during the armed conflict, significant barriers remain to the implementation of the recommendations of the CVR. The failure to investigate, prosecute and provide reparations is in violation of ICCPR Articles 2, 6, 7 and 9.

### **Too few successful prosecutions and challenges to convictions**

The thorough documentation of the CVR, as well as several key judgments by the Inter-American Court finding state responsibility for human rights violations and rejecting the amnesty laws as a violation of international law, helped to shift Peru’s climate away from one of outright and complete impunity. Following the CVR’s recommendations, a special system was established to

investigate and prosecute the human rights violations committed during the internal armed conflict and other human rights cases in 2004-2005 and some progress has been made to advance accountability for gross human rights violations. The most significant judicial ruling occurred in December 2009, when the Supreme Court upheld the conviction and 25-year sentence of former president Alberto Fujimori for grave violations of human rights.

Overall, however, the Peruvian government has not ensured full and effective investigations and prosecutions of those responsible for the widespread and gross violations committed during the conflict, and too few perpetrators have faced prosecution. This is in part due to the refusal of the Ministry of Defense and the army to provide access to information necessary to identify perpetrators.

The Public Ministry reports, as of August 2012, over 3,000 denunciations in cases involving human rights violations yet only a small number of these cases have resulted in successful prosecutions. Only 47 judgments have been issued, convicting 66 people in 36 distinct cases of gross human rights violations, while 131 people have been acquitted.<sup>41</sup> Nearly half of all reported denunciations of human rights violations brought before the Public Ministry have been closed; and hundreds of other cases remain stuck in the Public Ministry.<sup>42</sup>

Furthermore, there have been recent efforts to challenge important convictions.

In July 2012, Peru's Supreme Court overturned parts of the 2010 conviction of members of a government death squad in the case of the massacre at Barrios Altos, holding that the violations were not crimes against humanity in light of the fact that the Colina Group military unit responsible for the deaths had as its objective the combat of terrorist groups and not civilians. The Supreme Court asserted that the victims of the massacre were not civilians, an issue not decided by the trial court.<sup>43</sup> The Supreme Court reviewed this decision after a 2012 decision by the Inter-American Court of Human Rights rejecting this as a violation of international law.<sup>44</sup>

On October 10, 2012, the family of former President Fujimori formally petitioned President Ollanta Humala for a humanitarian pardon of Mr. Fujimori, based on disputed health issues, and sparking concern that Mr. Fujimori's sentence may be commuted based on political considerations.<sup>45</sup> This would severely undermine efforts, albeit still inadequate, to ensure that those responsible for serious human rights violations are held to account.

### **Amnesty law**

During its last review of Peru in 2000, the Committee reiterated its deep concern about the 1995 Amnesty Law, which it saw as contributing to an atmosphere of impunity, and recommended that the government review and repeal the law and urged it to "refrain from adopting a new amnesty act" in the future.<sup>46</sup>

In 2001, the Inter-American Court of Human Rights, in a case concerning the 1991 Barrios Altos massacre of 15 people, declared that the two amnesty laws then in force (laws Nos. 26479 and 26492) violated the American Convention on Human Rights and therefore had no legal effect concerning the case before the Court or "other cases that have occurred in Peru where the rights established in the American Convention have been violated."<sup>47</sup> Subsequently, the amnesty laws were annulled and prosecutions began, including of former President Fujimori.

However, since then, the government has tried several times, including twice in 2008, to get the Congress to pass new amnesty bills, but Congress refused. Most recently, in September 2010, then-President Alan García issued an executive decree reinstating an amnesty, and then revoked the decree two weeks later following widespread domestic and international outcry.<sup>48</sup>

Accordingly, we invite the Human Rights Committee to remind the Government of Peru that it is legally obligated to investigate, prosecute and punish human rights violations, and that legislation granting amnesty for international crimes such as crimes against humanity violates norms of international law.

### **Lack of national plan for exhumations**

Peru's Truth Commission recommended a national plan for exhumations; none has been established or implemented.

## **C. Classification of information related to the security sector**

Of great concern are recent efforts by the government to restrict access to information about activities related to national security, which would almost inevitably have the impact of causing information about human rights violations committed by the security and intelligence forces to be suppressed.

On December 6, 2012, President Humala issued a decree classifying as secret information related to the security sector. Specifically, Article 12 of Decree No. 1129 provides that: "The agreements, minutes, recordings, transcripts and in general, all information or documentation that is generated in the scope of issues pertaining to security and national defense, and those which contain deliberations from sessions of the Council on Security and National Defense, are secret."<sup>49</sup>

Earlier, on October 21, 2012, President Humala also issued modified regulations, in Decree No. 205-2012-EF, dramatically increasing the secrecy of security sector expenditures.<sup>50</sup> Decree No. 205-2012-EF modified Decree No. 052-2001-PCM to increase the categories of information classified as "military secret" ("*secreto militar*") and exclude them from public access, including spending for the construction of military or police infrastructure.

Under ICCPR Article 19, any limitation on access to information must be necessary in a democratic society and proportionate to the protected interest that justifies it, with as minimal interference as possible with the exercise of the right. The categorical exclusion of security-related information in Decree No. 1129 from the country's access to information regime is neither necessary nor proportionate. The increased secrecy of security sector expenditures in Decree No. 205-2012-EF raises related concerns.

The broad exclusion of entire categories of information from the scope of the access to information regime is not necessary, as the information in question is already protected from disclosure, where appropriate, under the existing system of exceptions under the Law of Transparency and Access to Public Information.

An absolute and categorical exclusion, by definition, cannot satisfy the proportionality test in Article 19(3) of the Covenant. The restricted scope of the Decree No. 1129 is an absolute limitation of the right of access to information, as there is no case-by-case analysis and no

balancing of the public interests in each decision to withhold information. Decree No. 1129 not only allows for, but indeed requires, perpetual secrecy. This leaves the disclosure of large classes of information entirely at the discretion of the public authority, without any independent oversight.

Restrictions on the right of access to information require oversight and a case-by-case analysis of the propriety of withholding disclosure. For a restriction to be legitimate, the public authority must demonstrate that the disclosure in question would cause harm to a legitimate aim, and should balance any harm to the protected interest against the public interest impeded through withholding the information. Only by reviewing the nature and content of each specific document can the authorities assess the harm that its disclosure might cause and the strengths of the public interest disclosure would serve, requirements for restrictions on the right to be proportionate.

By classifying broad categories of information, Decree No. 1129 fails to respect the right to access to information enshrined in ICCPR Article 19 as it does not comply with the strict requirements of Article 19(3) for restricting access to information. Decree No. 205-2012-EF, raises similar concerns in its increased secrecy of security sector expenditures.

## Conclusion

Notwithstanding some advances toward accountability, the Peruvian State has failed to comply comprehensively with its obligations to ensure truth and justice for victims of human rights violations, in violation of the ICCPR. The failure to provide information concerning human rights violations limits full accountability for those crimes, and is itself a violation of Article 19 of the ICCPR. Further, decrees No. 1129 and 205-2012-EF are a clear violation of Article 19 and must be repealed.

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<sup>1</sup> General Conclusions of the Final Report of the Truth and Reconciliation Commission, Peru, 2003, Part I: Dimensions of Conflict, paras. 2, 6, at <http://www.cverdad.org.pe/ingles/ifinal/index.php>. Hatun Willakuy (“The Great Narrative,” in Quechua), Abbreviated Version of the Final Report of the Truth and Reconciliation Commission, Peru, 2003, p. 17, at <http://www.cverdad.org.pe/ingles/ifinal/index.php>.

<sup>2</sup> Article 2 requires states to secure the rights in the Covenant to those within their jurisdiction; including through the adoption of legislation or other measures, and obliges States to provide an effective remedy for violations even where “that violation has been committed by persons acting in an official capacity.” Articles 6, 7 and 9 guarantee, respectively, the right to life; the freedom from being subjected to torture, or cruel, inhuman or degrading treatment or punishment; and the right to liberty and security of person.

<sup>3</sup> General Comment No. 31 “The Nature of Legal Obligations Imposed on the State Parties to the Covenant” CCPR/C/21/Rev.1/Add.13 26 May 2004, para. 14.

<sup>4</sup> *Ibid.* para. 18; see also para. 15.

<sup>5</sup> Concluding observations of the Human Rights Committee: Yemen, CCPR/C/YEM/CO/5, 23 April 2012, para. 6.

<sup>6</sup> See, e.g., *A-G of the Government of Israel v. Adolph Eichmann* (1962), 36 ILR 277; *Kolk and Kislyiy v. Estonia*, ECtHR decision on admissibility of 17 January 2006; *Prosecutor v. Kupreksic et al.* (Trial Judgment), IT-95-16-T, ICTY, 14 January 2000, para. 520.

<sup>7</sup> ICRC International Humanitarian Law, Rule 158, [http://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule158](http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule158).

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- <sup>8</sup> See Human Rights Committee, General Comment No. 20 on Article 7, October 10, 1992.
- <sup>9</sup> Concluding observations of the Human Rights Committee: Peru, 25 July 1996, CCPR/C/79/Add.67, para. 347.
- <sup>10</sup> Human Rights Committee, *General Comment No. 34 on Article 19*, UN Doc. CCPR/C/GC/34, 12 September 2011, paras. 7 and 18.
- <sup>11</sup> *Ibid.*, para. 19.
- <sup>12</sup> *Ibid.*, para. 34.
- <sup>13</sup> See *Turek v. Slovakia*, ECtHR, Judgment of 14 February 2006, para. 115 (Court rejected an assumption “that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes”).
- <sup>14</sup> Human Rights Committee, General Comment No. 34 on Article 19, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 30.
- <sup>15</sup> *Ibid.* See also *Toktakunov v. Kyrgyzstan*, Human Rights Committee, Decision of 28 March 2011, UN Doc. CCPR/C/101/D/1470/2006, paras. 7.7-7.8 (finding a violation of Article 19 of the ICCPR where the State party classified and withheld on national security grounds death penalty statistics, given the public’s “legitimate interest in having access to information on the use of the death penalty”).
- <sup>16</sup> See Office of the High Commissioner for Human Rights, Study on the Right to Truth, February 8, 2006, UN Doc. E/CN.4/2006/91, para. 55. Human Rights Council Resolution 9/11, para. 1.
- <sup>17</sup> Human Rights Committee, Views of 21 July 1983, Communication No. 107/1981, CCPR/C/19/D/107/1981, para. 14, and CCPR/C/79/Add.90, para. C. Views of 3 April 2003, Communication No. 887/1999, CCPR/C/77/D/950/2000, para. 9.2. Views of 30 March 2005, Communication No. 973/2001, CCPR/C/83/D/973/2001.
- <sup>18</sup> Office of the High Commissioner for Human Rights, Study on the Right to Truth, February 8, 2006, UN Doc. E/CN.4/2006/91, para. 59. *Gomes Lund v. Brazil*, IACtHR, Judgment of 24 November 2010, para. 200 (right to “be informed of everything that has happened in connection with” past atrocities).
- <sup>19</sup> Concluding Observations of the Human Rights Committee: Guatemala. 04/03/1996, CCPR/C/79/Add.63, para. 25.
- <sup>20</sup> ICRC, *Customary International Humanitarian Law, Vol. 1, Rules* (Cambridge University Press, 2005), Rule 117, p. 421. Additional Protocol to the Geneva Conventions (Protocol I), Arts. 32-33. International Convention for the Protection of All Persons from Enforced Disappearances, Art. 24(2). Parliamentary Assembly of the Council of Europe, Resolution 1463(2005), para. 10(2).
- <sup>21</sup> Human Rights Committee, Views of 21 July 1983, Communication No. 107/1981, CCPR/C/19/D/107/1981, para. 14. Views of 3 April 2003, Communication No. 887/1999, CCPR/C/77/D/950/2000, para. 9.2.
- <sup>22</sup> Human Rights Council, Resolution 9/11. OHCHR Study on the right to truth.
- <sup>23</sup> See, e.g., *Association 21 December 1989 v. Romania*, ECtHR, Judgment of 24 May 2011, para. 144.
- <sup>24</sup> Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UNHRC, Resolution 2005/81, 2005, UN Doc. E/CN.4/2005/102/Add.1 (“UN Impunity Principles”), Principle 2. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147 of 16 December 2005, Principle 22(b). See also *Association 21 December 1989 v. Romania*, ECtHR, Judgment of 24 May 2011, para. 194; *Gomes Lund v. Brazil*, IACtHR, Judgment of 24 November 2010, para. 200.
- <sup>25</sup> See *Association 21 December 1989 v. Romania*, ECtHR, Judgment of 24 May 2011, para. 42. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by UN General Assembly, Resolution 44/162, 15 December 1989, UN Doc. A/RES/44/162, Principle 17.
- <sup>26</sup> *Kelly v United Kingdom*, ECtHR, Judgment of 4 May 2001, para. 118.
- <sup>27</sup> *Association 21 December 1989 v. Romania*, ECtHR, Judgment of 24 May 2011, paras. 139-41. *Rotaru v. Romania*, ECtHR, Judgment of 4 May 2000, paras. 60-63. *Radilla Pacheco v. Mexico*, IACtHR, Judgment of 23 November 2009, para. 25.
- <sup>28</sup> *Toktakunov v. Kyrgyzstan*, UNHRC, Decision of 28 March 2011, UN Doc. CCPR/C/101/D/1470/2006, paras. 7.7-7.8 (finding a violation of Article 19 of the ICCPR where the State party classified and withheld on national security grounds death penalty statistics, given the public’s “legitimate interest in having access to information on the use of the death penalty”). Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UNHRC, Resolution 2005/81, 2005, UN Doc. E/CN.4/2005/102/Add.1, Principle 16.
- <sup>29</sup> *Turek v. Slovakia*, ECtHR, Judgment of 14 February 2006, para. 115 (involving lustration proceedings against the applicant). See also *Jalowiecki v. Poland*, ECtHR, Judgment of 17 February 2009, para. 37.
- <sup>30</sup> Article 1 of Peru’s Constitution, adopted in 1993, establishes the protection of the individual and respect for individual dignity as the supreme goal of society and the State. Article 3 guarantees protection of rights not expressly covered by the Constitution but necessary to ensure fundamental freedoms and human dignity. Further, Article 44
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mandates that it is a prime duty of the State to guarantee the full enjoyment of human rights. Article 2.6 of the Constitution provides that “all persons have the right...to solicit information that one needs without disclosing the reason, and to receive that information from any public entity within the period specified by law, at a reasonable cost.”

<sup>31</sup> Law of Transparency and Access to Public Information, 2003, Arts. 7, 9, 10.

<sup>32</sup> Ibid., Art. 15.

<sup>33</sup> Jo-Marie Burt, “Access to information and Human Rights Violations in Peru,” Annex 3 to Submission of Asociación Pro-Derechos Humanos (APRODEH) before the Inter-American Commission on Human Rights, March 26, 2012. These concerns have been documented by the Ombuds Office (*Defensoría del Pueblo*), tasked with monitoring implementation of the Truth Commission’s recommendations, in several reports, the most recent in 2008. Defensoría del Pueblo, *A cinco años de los procesos de reparación y justicia en el Perú. Balance y desafíos de una tarea pendiente*, Informe Defensorial No. 139 (2008). See also Defensoría del Pueblo, *A un año de la Comisión de la Verdad y Reconciliación*, Informe Defensorial No. 86 (2004); Defensoría del Pueblo, *A dos años de la Comisión de la Verdad y Reconciliación*, Informe Defensorial No. 97 (2005); Defensoría del Pueblo, *El difícil camino de la reconciliación. Justicia y reparación para las víctimas de la violencia*, Informe Defensorial No. 112 (2006); Defensoría del Pueblo, *El Estado frente a las víctimas de la violencia. ¿Hacia dónde vamos en políticas de reparación y justicia?* Informe Defensorial No. 128 (2007).

<sup>34</sup> See Jo-Marie Burt, “Access to information and Human Rights Violations in Peru,” Annex 3 to Submission of Asociación Pro-Derechos Humanos (APRODEH) before the Inter-American Commission on Human Rights, March 26, 2012.

<sup>35</sup> Defensoría del Pueblo, *A cinco años de los procesos de reparación y justicia en el Perú. Balance y desafíos de una tarea pendiente*, Informe Defensorial No. 139 (2008), p. 138.

<sup>36</sup> Jo-Marie Burt, “Access to information and Human Rights Violations in Peru,” Annex 3 to Submission of Asociación Pro-Derechos Humanos (APRODEH) before the Inter-American Commission on Human Rights, March 26, 2012.

<sup>37</sup> “Access to Information in the Investigation of Grave Violations of Human Rights in Peru,” Submission of Asociación Pro-Derechos Humanos (APRODEH) to the Inter-American Commission on Human Rights, March 26, 2012.

<sup>38</sup> Comisión Histórico Permanente del Ejército del Perú, *En Honor a la Verdad* (2003).

<sup>39</sup> CCPR/C/PER/Q/5, para. 12.

<sup>40</sup> Hatun Willakuy (“The Great Narrative,” in Quechua), Abbreviated Version of the Final Report of the Truth and Reconciliation Commission, Peru, 2003, p. 19, at <http://www.cverdad.org.pe/ingles/ifinal/index.php>.

<sup>41</sup> Jo-Marie Burt and Carlos Rivera, *El proceso de justicia frente a crímenes de lesa humanidad en el Perú* (forthcoming).

<sup>42</sup> For instance, the case of the 1984 massacre of peasants in Putis, near Ayacucho was stalled in the preliminary investigation stage for over a decade. See Defensoría del Pueblo, *A cinco años de los procesos de reparación y justicia en el Perú. Balance y desafíos de una tarea pendiente*, Informe Defensorial No. 139 (2008). See Defensoría del Pueblo, *A dos años de la Comisión de la Verdad y Reconciliación*, Informe Defensorial No. 97 (2005), p. 160.

<sup>43</sup> I/A Court H.R. *Case of Barrios Altos v. Peru*. Supervision of the Implementation of the Sentence. Resolution of Sept. 7, 2012, paras. 9, 16-18, 48, 59 (“...resulta innegable que los hechos perpetrados por el Grupo Colina no responden a ‘delitos comunes’ o meras vulneraciones ‘a los derechos humanos’, sino que están dentro de aquellas violaciones más graves que atentan contra la conciencia universal.”).

<sup>44</sup> Corte Suprema convocó a magistrados que analizarán *Caso Barrios Altos*, El Comercio (Peru), January 7, 2013. I/A Court H.R. *Case of Barrios Altos v. Peru*. Supervision of the Implementation of the Sentence. Resolution of Sept. 7, 2012, para. 59.

<sup>45</sup> The former Executive Secretary of the Inter-American Commission for Human Rights, among others, decried what would be a “parody of justice” if a decision on the pardon “responds only to political pressures or negotiations.”

<sup>46</sup> CCPR/CO/70/PER, para. 9.

<sup>47</sup> I/A Court H.R. *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Ser. C No. 83, paras. 44 and 51(4). *Case of Barrios Altos v. Peru*. Judgment of September 3, 2001. Ser. C No. 83, para. 18.

<sup>48</sup> Amnesty International, *New bill a major step backwards for human rights in Peru*, Nov. 10, 2008. Rory Carroll, *Peru’s president revokes civil war atrocities amnesty*, The Guardian (UK), Sept. 14, 2010.

<sup>49</sup> Unofficial translation. In original: “Los acuerdos, actas, grabaciones, transcripciones y en general, toda información o documentación que se genere en el ámbito de los asuntos referidos a la Seguridad y Defensa Nacional, y aquellas que contienen las deliberaciones sostenidas en las sesiones del Consejo de Seguridad y Defensa Nacional, son de carácter secreto.”

<sup>50</sup> Decreto Supremo No. 205-2012-EL, Arts. 1-2.

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