STATE OF EMERGENCY IN NEWLY FORMED DEMOCRACIES AND HUMAN RIGHTS VIOLATIONS: CASE OF PERU 1980-1990
This paper will show that when areas of State of Emergency are under the control of the Armed Forces, human rights abuses occurred. I argue that in Peru during the 1980 until 1990, there were many factors that lead the armed forces to control the internal affairs of Peru. The analysis I have made has been concerning article 231 of the 1979 Peruvian Constitution as well as the most relevant laws passed during this time period and as result of all this I analyze the behavior of three government branches.

The first section describes the political context and the historical outcome of the new democratic system installed in Peru and states of emergency. This first section gives the historical facts concerning the governments in power during that decade and the expansion of states of emergency over the Peruvian territory. The second section presents cases of human rights violations. The cases are about disappearances, mass executions and torture in Peru during this same time period. The purpose of these two sections is to describe the magnitude of the problem to the reader. The third section presents the legal analysis of the 1979 Peruvian Constitution concerning states of emergency, law 24150 and the behavior of the three branches. I will show how human right abuses can be explained due to a confusing constitution which I believe was the main reason that the branches of government failed to stop violence. Finally I give a series of recommendations to prevent such human right abuses during state of emergency.

1. Background
In May 17 1980 the Peruvian Communist Party Shining Path (Partido Comunista del Peru Sendero Luminoso- PCPSL) began the “Guerra Popular”\(^1\). The main objective of this plan was to take over power and install a new type of State and democracy. To achieve their objective they combined guerilla and terrorists tactics.\(^2\) In August 1980 President Fernando Belaunde Terry sent troops to the department of Ayacucho. More than a thousand police officials known as the Sinchis Squad\(^3\) were sent to reestablish order. In October of that same year, the president declared a State of Emergency in the department of Ayacucho. It was the first move towards military control over internal security. This would be the first of a number of renewal decrees maintaining State of Emergency in the area.\(^4\) By 1981 the first State of Emergency was decreed for five provinces in Ayacucho.

By 1982 the government expanded the State of Emergency to the provinces of the departments of Lima, Ayacucho, Pasco, Apurimac, Huancavelica, Cajamarca and Junin. This sealed the path of military control over the conflict and explains why later, in 1983, the government in desperation granted control of the contentious areas to the armed forces.\(^5\) The armed forces displayed “political-military” control of the area under a Military Political Command CPM (Comando Politico Militar CPM)\(^6\).

In 1984, the Revolutionary Movement Tupac Amaru (Movimiento Revolucionario Tupac Amaru- MRTA) began to engage in armed violence. The target was also the democratic system. They believed that the masses were being exploited by a system that served the interests of “American imperialism”. The MRTA considered the PCPSL to be a dogmatic group and said that it did not believe in the methods that

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1 Translation: War of the People.
2 Diego Garcia Sayan, Peru: Estados de Excepcion y Regimen Juridico in Estado de Emergencia en la Region Andina 114 (Comision Andina de Juristas, 1987).
3 Sinchis were special counter- insurgency Peruvian police forces.
4 Defensoria del Pueblo del Peru, La Desaparicion Forzada de Personas en el Peru 40 ( Defensoria del Pueblo del Peru 2000).
5 This was done by Supreme Decree 003-83-IN.
6 The commandos will be explained in detail in the following section.
the PCPSL employed. The MRTA is said to be responsible for a number of armed actions and selective assassinations, especially of members of the security forces.7

The result of internal violence was that during the first five years, 56 Decrees were passed establishing State of Emergency in the different departments and provinces of Peru. Forty six of these decrees were directly responses to attacks of the PCPSL. Apparently declaring States of Emergency was the method used to fight terrorist insurgency.

The response of the Joined Command Armed Forces (Commando Conjunto de las Fuerzas Armadas8) to the terrorist attacks resulted in an unclear counterinsurgency policy in which the police and armed forces had no credibility and were considered corrupt. This situation was aggravated by that the political parties’ lack of a clear position against the human rights violations that occurred inside the country. This behavior made it difficult to fight effectively against PCPSL or MRTA.9 There was no direct relationship between the State of Emergency and reduction of violence. On the contrary, the imposition of State of Emergency tended to correspond to an increase in human rights abuses.

In 1978 Peruvians voted for a constituent assembly to draft the new Constitution, which was latter adopted in 1979. In 1980, President Belaunde was once again elected, with 43%of the popular vote.10 This is important because democracy in Peru had only recently been re-installed at the time the PCPSL began the Guerra Popular. The new governmental institutions were in their infancy; civilian rule had been

8 Joined Command of the Armed Forces is the institution in which the generals of the three forces army, navy and air force together with the police, advise the president on defense issues.
9 Carlos Tapia, Las Fuerzas Armadas y Sendero Luminoso dos Estrategias y un Final 39 (IEP, 1997).
10 Id at 13.
interrupted for twelve years, and the new democracy had, I believe, a strong military influence.

The second Belaunde administration enjoyed broad support from a military-weary country. His party Popular Action (Accion Popular- AP) controlled the Congress through a coalition with the Christian Party (Partido Popular Cristian-PPC). Due to the huge foreign debt, an economic recession began and so the reforms initiated by Velasco were reversed and there was a return to a free-market policy in the hope of attracting foreign investment. The government then implemented IMF austerity measures. 11

The crises that Peru faced in President Belaunde’s second term included 14 billion dollar foreign debt, severe fiscal restraints imposed by the International Monetary Fund, floods and drought and terrorist insurgency. This last factor was the foremost influence on the Belaunde government’s human rights policy.

The second democratic regime during the eighties was held by President Alan Garcia. Alan Garcia was elected in April 1985 and took office in July of that year. He was a young charismatic leader of the APRA party, and his inaugural speech gave hope for change. 12 Among many other things, he proposed to install a scrupulous respect for internationally recognized standards of human rights within the conduct of the counter-insurgency campaign.

In 1989, the Aprista government decided to focus on the counterinsurgency policy, but the indecision and previous mistakes made it very difficult for the armed forces to establish a coherent antiterrorist policy. Another probable reason for the the difficulties of implementing a counterinsurgency policy was that the government was on its way out. At the same time, President Garcia was not capable of taking a leading role in the counterinsurgency strategy. The same thing occurred with the opposition leaders-

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11 Id at 13.
12 America’s Watch. Human Rights in Peru After President Garcia’s First Year 2 (America’s Watch, 1986).
with some valuable exceptions- who instead of taking actions to stop the violence were silent. ¹³

By the end of 1988 there was State of Emergency in 8 complete departments and part of a ninth. By the end of 1989, 9 of 24 departments and part of a tenth, were being governed under State of Emergency. Therefore 47% of the Peruvian population lived under a State of Emergency. I believe that the transition toward democracy in Peru was weakened due to the promulgation of permanent States of Emergency in different provinces and departments under the complete control of the armed forces.

The following map shows the areas of State of Emergency during 1989. This demonstrates the expansion of violence over most of the country by the end of the eighties. It is important to highlight how the State of Emergency was expanded throughout the Peruvian territory during the decade because it indicates a lack of control or management concerning terrorist insurgency. As previously stated, by 1982 there were just a few provinces in the department of Ayacucho but by 1989, as the following map shows, the State of Emergency was declared in almost all of the country.


This part of the paper will focus on the three most horrendous human rights violations committed by Peruvian armed forces in areas under the State of Emergency: disappearances, extrajudicial executions, and torture.

There is a clear relationship between internal violence- begun by terrorist and subversive groups- and State of Emergency. In the case of Peru, declaring State of Emergency meant military control over the region and a product of such declarations were human rights violations. It is important to point out that violence was carried out both by terrorist groups (PCPSL and MRTA) who murdered and slaughtered civilians

¹³ Carlos Tapia, Las Fuerzas Armadas y Sendero Luminoso dos Estrategias y un Final 42-43 (IEP, 1997).
and by the members of the armed forces. The concern of this paper is the state’s responsibility to protect human rights.

There were many cases of violence attributed to Sendero Luminoso and MRTA. The terrorist groups would rely on public executions and would always claim the atrocities that they committed, a way of creating terror. The response of the state to these violent acts was to create military controlled areas which ironically also responded to these attacks with violence. The cases described here are typical of human rights violations committed by the Peruvian armed forces against civilians in the areas of State of Emergency.

The period’s history leads to the conclusion that there was a close relationship between the imposition of the State of Emergency and human rights abuses, as illustrated in the figure below. It is hard to state that a public policy encouraged human rights violations, but the fact is that in areas where State of Emergency was declared, human rights violations occurred. The cases do lead to establish a second conclusion: that military control does not respect human rights. The 1979 Peruvian Constitution recognizes and protects human rights. As the armed forces and the police are subordinate to the Constitution, their actions are limited by the respect to human rights. This new Constitution was innovative concerning human right issues in two ways. First, a large list of rights was established in its first chapter; and second, because article 105 clearly expressed that the international treaties ratified by Peru concerning human rights (and only those concerning human rights) had a constitutional rank.

As a party to the Inter American Convention on Human Rights, Peru is committed to respect the rights and freedoms recognized therein and to guarantee free and full exercise of those rights and freedoms. But this responsibility was not met by the Peruvian state. The fact that torture, disappearances, and extra judicial executions were
all crimes committed by state agents, leads to the conclusion that the State was fighting internal violence with more violence. These cases prove what has already been mentioned: that there was no counterinsurgency policy held by the armed forces or the police based on the respect of human rights.

The facts are that in the rural areas mass executions occurred. The violent tactics used by the armed forces and the police caused high numbers of deaths throughout the nation. In December 1983, the Attorney General of Peru told America’s Watch that his office had received some 1,200 allegations of disappearance, and the district attorney of Ayacucho said his office had received testimonies of about 1,500 cases of disappearances dating from 1983.

Almost all the disappearances were carried out by agents of the military and police; only a handful were attributed to unknowns or paramilitary agents believed to be linked to the armed forces. Among the armed forces, the army is by far the most involved in the practice. According to the Commission de Derechos Humanos (COMISEDH), 2,405 Peruvians “disappeared” in the years 1983-1989. The figures break down as follows: in 1983, 696; in 1984, 574; in 1985, 253; in 1986, 69; in 1988, 293; in 1989, 306.

In addition to selective executions in detention centers there have also been accounts of mass executions by Sinchis and Marines in remote peasant villages. Mass graves have been uncovered since 1984. Some whose corpses were found have been identified as individuals reportedly arrested by the security forces.

Most of the reported cases concerned individuals who were taken away by troops and later found dead. Killings of large numbers of prisoners were also reported. In Lima, the mass summary executions of imprisoned suspects charged with terrorism,

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as well as selective assassinations of union leaders, lawyers and others, were believed to be extrajudicial executions.  

It is impossible to assess how frequently the army murdered civilians in the emergency zone because neither the press nor human rights monitors had regular access to the areas of conflict, and the army controlled information from those zones. There are nevertheless a substantial number of documented incidents of extrajudicial executions, both targeted assassinations and group killings of villagers by international nongovernmental organizations and international organizations such as the UN.  

Police intelligence officers interviewed detainees with brutal and primitive methods: beatings, mock executions, threats with firearms, the “submarine” drowning and hanging prisoners from their wrists for hours. In the clandestine detention centers, where the disappeared were held, the captors used all these methods, as well as more sophisticated ones such as the electric prod. 

**Legal and Political Implications of States of Emergency in Peru**

To understand what happened in Peru and why such a high number of states of emergency were decreed it is important to explain the relationship between the armed forces and the governments in Latin America. One of the main distinctive characteristics of Latin American states is the officer corps, a military institution, with a tradition of alienating from civil society, of legal impunity and of imagining itself the supreme interpreter and guardian of the nation’s essence. This explains why, during an emergency situation, the armed forces take control.

The framers of Latin American constitutions, following the model of European and Anglo-American liberalism, initially rejected the necessity or convenience of

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16 America’s Watch, Peru under Fire 96 (America’s Watch, 1990).
17 Submarine is a way of drowning a person.
18 Id.
discretionary powers to deal with emergencies. Therefore, the lack of internal provisions left authorities with no choice but to act against the constitutions. The presidents invested with the authority to declare emergencies without temporal restrictions, and to determine the extension of their own powers with few checks from other government branches.\textsuperscript{19} However, when the real emergencies occurred, the president was usually unable to act as a neutral and impartial agent. As chief of state and chief of government, the president was vulnerable to criticism as a partisan actor who attempted to destroy civil liberties and to construct just another form of dictatorship. Under these conditions, anti-democratic forces typically resorted to the support of the military as a “neutral” power that would suspend the legal order, only to make its restoration possible in a more-or-less distant future.\textsuperscript{20} Latin America has constantly been moving between military and civilian regimes. In fact, most of the South American countries returned to democratic regimes fairly recently, during the 1980’s.

In the context of a presidential system, liberal constitutions in Latin America delegated to the executive discretionary powers to both decide and act on emergencies, with so few restrictions that dictatorships could easily become the norm. Two examples are Peru’s 1933 Constitution and 1979 Constitution. I believe this legacy is the most important reason factor in the implementation of states of emergency.

The second reason I believe State of Emergency is applied very frequently in South America is that of the unrestricted constitutional attributions are given to the President to declare a state of emergency. That is why some authors indicate that Latin American experiences show that a popularly elected president authorized to act alone in

\textsuperscript{19}Id at 1798.
\textsuperscript{20}Id at 1797.
emergencies can always use his “appeal to the people” in order to marginalize political opposition and subdue other institutions.

I consider that these presidential attributions are created because of a “dominant presidency”. Some of the characteristics described in the 1979 Peruvian Constitution clearly fit in the definition of a dominant presidency. Some characteristics of this are that the President appoints his Cabinet without the consent of the Senate, is given powers in the event of state of siege and has federal intervention. There is an expansive power exercised by the executive. Also, the Presidents can delegate legislative power or promulgate “necessity” and “urgency” decrees. The office of President has the attribution to create powerful agencies and can abuse it power of veto; it even has the partial veto as a way to formulate laws. The President can even intervene in the process of approving the budget and investments and pardon those accused but not yet convicted of crimes. These mechanisms together with the state of emergency are identified by Nino as the ways in which the presidency has expanded in most Latin American countries.21

What happens during emergencies is that the lack of an institutional resolution to face a crisis situation could create a power vacuum that is often filled by the military.22 In the case of emergencies, the president takes control and at the same time the role of the military is strengthened. This unique presidential system is what in the long run weakens the president. He or she is responsible for solving all the national problems and due to the military legacy, the armed forces will always intervene. That is why violence and economic crisis can cause such instability that few presidential terms can survive.

There are at least two broad features common to all emergency regimes: a significant increase in the powers of the executive branch of government, to the detriment of the legislative and judicial branches, and an abridgement or suspension of the rights and freedoms enjoyed by the citizenry. As often as not, these measures are

21 Id at 146.
also accomplished by massive grants of powers to the military and other security forces, including immunity from prosecution for acts carried out by them in furtherance of the emergency rule.\textsuperscript{23}

The 1979 Peruvian Constitution, following the Latin American tradition, established a strong presidential democracy.

I believe that Article 231 gave the President the strongest constitutional attribution. This was the faculty to declare a State of Emergency. I have identified several constitutional contradictions generated by article 231.

Following the first part of what is stated in article 231, it is the president who declares the state of emergency and decides when to delegate the control of the internal order to the armed forces. This is a clear legacy of the influence of the military over the government. I find two problems concerning this part of article 231. First, it is not mandatory for the President to delegate the control of the internal order to the armed forces. It is not mandatory and it is not an inherent attribution of the armed forces during state of emergency. The correct interpretation of this first part of article 231 is that the President will decide when to delegate its powers over internal affairs during states of emergency.

I believe that this article creates major contradictions within the Constitution. This is so because Chapter XII of the 1979 Peruvian Constitution defines National Defense and Internal Order as the political decisions concerning the security of the state. The President directs the system and is in charge of preparing the National Defense System. Article 273 establishes that the president is the commander in chief of the armed forces and the police, and that the armed forces and the police must be subordinated to the Constitution. The armed forces are composed by the Army, Navy

\textsuperscript{23} Id.
and the Air Force. Their constitutional attributions are to guarantee the independence, sovereignty and integrity of the republic. These attributions are completely different from those of the Peruvian Police. Article 277 of the Constitution defines the role of the Peruvian Police as the institution in charge of maintaining the internal order; guaranteeing that the laws are followed; securing personal liberties and property, private and public; and fighting crime. These institutions have clear limited constitutional attributions. But article 231 alters these attributions during State of Emergency. Article 231 created an alteration in the functions of these two institutions and therefore in the system. The Constitution via declaration of state of emergency allows the armed forces to obtain attributions that constitutionally are given to the police. This is an inconsistency in the system. The armed forces in state of emergency are therefore given broader faculties, taking away the constitutional attributions of the Peruvian Police.

In the 1980s, the armed forces through decrees took control of the areas in a state of emergency. That is why the President abdicated his power to the armed forces in the areas of emergency.

The newly established Constitution was not utilized to provide a solution to the violence. On the contrary, these articles caused chaos in the system. Applying military control over the areas in emergency caused a jurisdictional conflict with the police. The military would exercise police attributions in this areas and this caused confusion.

Another observation on article 231 of the Constitution is that the guarantees concerning liberty and personal security as well as inviolability of the home, and the right to reunion and to free transit, would be suspended. The time period could not be for more than 60 days and the mechanism to prorogue the state of emergency is through a new decree. The temporality of the decree is very important. The fact that the article
clearly imposes a 60-day limit demonstrates the importance of temporality in the suspension of constitutional rights.

I believe that these constitutional problems are the first step in explaining why human rights violations occurred in the areas under a state of emergency. In the following section I will analyze how the three main branches, as well as the Office of the National Prosecutor, behaved during the state of emergency. I believe that their behavior is a result of the constitutional inconsistencies.

A. Executive Branch

The Executive Branch, due to the powers previously described, could be considered the strongest branch. What seems to have occurred in Peru during the State of Emergency was that the other two branches lost power to the President. This is demonstrated by the partisan behavior of the legislative and by the impunity allowed by the judiciary. The branches did not coordinate to create a civilian solution to face terrorism.

One of the reasons I believe there was a lack of leadership was the lack of democratic history in Peru. Democratic regimes have been very short so there is a lack of democratic tradition among the leaders and the population. This factor did not allow the president to face terrorism without involving the armed forces. The newly formed institutions were weakened as a result. I believe that the delegation of powers to the armed forces and the police caused human rights violations. So the lack of democratic tradition in Peru and the pressure due to violence and terror caused the executive to strengthen the armed forces and the Peruvian police.
Following the burst of terrorism, in 1980, there were 22 laws passed to confront terrorism. These sudden changes demonstrate the lack of a consistent antiterrorist policy to face the problem. These laws over the years would become eventually less respectful to human rights. Here Congress, the main presidential supporter tried to fix the problem through laws. No counter insurgency policy was presented the president who had responsibility for this because he was the head of the national security and defense system. Reality would later show that the solution to the terrorist violence and threats did not depend exclusively on laws.

The lack of leadership is also demonstrated in the executive’s attitude towards internal violence and human rights abuses and in the increase of its use of declaring states of emergency. In addiction, the denial of human rights violations by the executive was a clear lack of leadership. Especially during the first five years, the executive branch denied the crimes and human rights abuses committed in the areas of state of emergency.

The executive branch, since the internal conflict began, was only interested in denying and not recognizing the human rights violations of the people. The fact that the civilian authorities of the executive branch did deny human rights violations makes me infer that there was some kind of complicity among the members of the executive branch to hide abuses. So the civilian population depended, in the areas of State of Emergency, on the character and personal philosophy of the zone commander, as well as on the role that the area played in any crisis.

B. Legislative Branch

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24 The time period is up to 1997 when the laws are modified.
25 Defensoria del Pueblo, La labor de la Comision Ad hoc a Favor de los Inocentes en Prison 39 (Defensoria del Pueblo del Peru 2000).
26 America’s Watch, In Desperate Straits Human Rights in Peru after a Decade of Democracy and Insurgency 96 (America’s Watch 1990).
The legislative branch also was not able to solve the problems caused by internal violence. The main reason I believed this occurred was the highly partisan Congress. This caused the legislature to delegate its legislative power to the executive, as can be demonstrated by Law 23330, which later permitted the executive to pass the first antiterrorist Decree 46. I believe that Congress utilized law 24150 to ally with the executive and strengthen the armed forces in the areas of emergency.

The 1979 Peruvian Constitution, in article 188, allows Congress to decide on the subjects and the time period with respect to which it can delegate its legislative power to the executive. Pursuant to this article, on December 1980, Congress passed Law 23230 which allowed the executive to modify or extinguish in a period of 180 days all legislation passed since October 1968. The law specifically referred to the Criminal Code, Military Code and the Code of Criminal Procedure. This was an attempt to solve the insurgency problem. Accordingly, the first anti-terrorist law- Decree 049- was passed. It created the crime of terrorism and therefore modified the Criminal Code.

This law was created to face insurgency problems. Many criminal law experts made severe criticisms of this law. The crime was considered vague; the terrorist activities were not described in enough detail. In fact the crime of terrorism could be considered an aggravating factor for the crime of homicide. This law did not stop the terrorist activities.

Meanwhile the areas of state of emergency were not regulated. It wasn’t until June 1985 that Law 24150 was passed that regulated areas in a state of emergency area. It took five years for Congress to regulate the areas in State of Emergency. This fact together with the delegation of legislative powers to the executive on criminal matters makes me infer that the problems with terrorism were also heavily ignored by Congress. Congress seems as though it did not want to get involved.
Law 24150 established that Military Political Commands MPC (Comandos Politico Militar, CPM) would take control of the areas declared in a State of Emergency. The problem was that this law gave the CPM a number of powers that go beyond the “control of the internal order” mandate issued to the armed forces in article 231 of the 1979 Peruvian Constitution.

Law 24150 gave the armed forces the following unconstitutional attributions in the areas of state of emergency: coordinate the work of the public and private sectors in the areas declared in State of Emergency; the ability to dismiss, name and transfer civil servants when the CPM considers they have acted with negligence or abandoned their work or vacancy. The powers of all local authorities in the areas of emergency were suspended while the army was in control. The CPM was an area, under State of Emergency where the army General in charge had political attributions because the democratic representatives were suspended from their charges. Also, the members of the armed forces and the police that were in service in emergency areas were under the control of the CPM.

The Constitution stated that the State of Emergency purportedly did not suspend political rights, but CPM control effectively deprived some officials the right to exercise functions for which they have been elected. So the people were losing the right to have their representatives in office. The CPM took control over local authorities. This unconstitutional law was never challenged. What was actually happening was that the civilian rule was being controlled and substituted by the CPM. The Command was in charge not only on the internal security of the area, but was also who made the political decisions regarding the area: the Generals of the CPM decided the political outcomes

for the areas. Private enterprises were constantly supervised and national public servants were also undermined by the Commands. This clearly affected democracy.

The second important attribution this law gave to the armed forces in areas of emergency was that the officers of the armed forces and the police who were in service in these areas could only be prosecuted by military tribunals. So this law gave the CPM not only an authority beyond that of security, but also changed the jurisdiction under which officers were to be judged.

I believe that this is one of the main reasons why human rights abuses occurred. There was impunity because the military tribunals did not try any officer for human rights abuses. The impunity was established by law so I infer that the legislature was recognizing impunity for these officers.

To recognize military jurisdiction for criminal offenses was unconstitutional. Article 282 clearly considers that the military jurisdiction is for military offense or crimes committed in the line of duty. This means that they must be crimes committed as a result of its work in the armed forces and established in the military code. In the cases of human rights violations, these were all crimes established by the criminal code and code of criminal procedure. Also, the constitution establishes that the judiciary is the only institution responsible for imparting justice. This law arbitrarily broadened jurisdictional attributions to the military courts based on where the crime was committed- areas in state of emergency-and based on the characteristics of the aggressor being a member of the armed or the police forces.

There are two major indications of the negligence of the legislative branch in failing to stop human right abuses. First is by analyzing the laws passed and the second is by analyzing its political stance. This is closely related to the impunity of human rights violations committed by state agents. As the government grew tolerant of the
violence by the military, the representatives of the ruling party in Congress ignored or actively impeded investigations of serious allegations, such as those surrounding the massacre in Cayara, Ayacucho in May 1988. By the end of 1988, the violence was openly tolerated; the costs were 15,000 lives and over 2,000 disappearances.

**B. Judicial Branch**

The Peruvian judicial system has been characterized for years by corruption, political manipulation and acute under-financing. The Peruvian judiciary also had administrative problems.

By 1986 each court in Peru had an average of 120 to 180 active criminal cases and 20% of them were cases on terrorism. This is important to understand, because I consider that the judiciary had responsibility to limit the abuses committed by the armed forces and the police.

The system was structured so that the citizens suffered not only physical torture but also restrictions on basic freedoms. For example, article 2.20.g. of the 1979 Constitution, that required that all prisoners held for ordinary offenses must be taken to court within 24 hours of detention, was not followed for cases involving terrorism charges. The reason was that the authorities followed Decree 49, which established in article 9.a. that people detained on terrorist charges could be held incommunicado for at least 15 days. This article was clearly unconstitutional. In any case, the detention had to be acknowledged to the judge in 24 hours. This also was not followed. The police and armed forces violated the Constitution by having people detained for long periods of time and allowing the use of torture and other forms of cruel, inhuman or degrading treatment forbidden both by Peru’s international obligations and the Constitution.

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consider that the courts did not enforce the law. For example, torture was expressly prohibited by article 234 of the 1979 Peruvian Constitution. Nevertheless, torture became a method habitually used by police bodies to interrogate those suspected of both common and security offenses.

The denials, together with the lack of support for human rights organizations investigating human rights violations committed by armed forces or the police, were part of the dynamics by which the state worked. There were no official records of detentions, nor was the media’s and NGO’s monitoring of human rights possible due to the MPC’s power and the lack of transparency in their actions. This is the second problem I have identified within the judiciary. The armed forces in the areas of state of emergency were not accountable to civil society, not even to the government representatives. I believe that this lack of accountability caused human rights abuses to spread.

The result of the courts’ dismissing cases and erroneously interpreting the Constitution is that the judicial branch was completely marginalized. This is demonstrated by the fact that the writs of Habeas Corpus and Amparo in the Constitution were barely used by the population and most of the time were useless. Between the years 1983 and 1984 there were 1500 disappearances and between 1982 and 1984 only 14 Habeas Corpus writs were presented in Ayacucho, the department where most of the violence occurred. The cases were dismissed based on the fact that the area was in State of Emergency. This would eventually legitimize the military antiterrorist actions in the emergency areas.29 The dismissal by the courts of the cases accusing army officers of human rights violations was the first error the judiciary committed that allowed human rights violations to continue.

The population would not use the writs because of the refusal of the judiciary to follow through on the cases. This was established in the opinion of the Inter American Commission of Human Rights as well as the United Nations Working Group in 1985 concerning the reasons surrounding the non-use of the writ of Habeas Corpus, which was fundamentally based on “absence of confidence on part of the lawyers and the population in the judiciary”. 30

The judges’ refusal of to accept remedies of Habeas Corpus and Amparo is the another mistake that the judiciary committed which eventually allowed human rights violations to persist. The Inter-American Commission of Human Rights identified specific difficulties that undermined the full and effective enforcement of the right of habeas corpus in Peru during the 1980’s: a) judicial interpretation b) restrictions imposed by the specifically on emergency areas, and so called extraterritorial conditions c) de facto obstacles to requesting that rights be protected and recognition of rights abuses on the part of the State judicial machinery.

The main explanation for impunity is the erroneous interpretation and application of the laws by the courts. This is demonstrated by the two main reasons why habeas corpus was denied. The first reason was that the judiciary allowed the suspension of constitutional guarantees under state of emergency, and the second was the “extra-territoriality” given to the army and police officers in areas in state of emergency.

The first interpretation considered the suspension of guarantees for all persons and for any reason without limits. This goes beyond any reasonable interpretation set for any suspension of guarantees. The second determination, “extraterritoriality” was also controversial. The Peruvian Supreme Court was entitled to solve the controversy

30 Id.
about the competence of military tribunals. The Supreme Court held that, due to the accused being military members, they should be trialed by military courts.\textsuperscript{31} Impunity was also addressed by the Inter-American Commission, due to the fact that until 1990 no member of the security forces had been tried and punished for the human rights violations. Also there were no effective measures taken to defend the rights of the affected parties.\textsuperscript{32}

America’s Watch states that indiscriminate killings and disappearances were not necessarily being used by the Peruvian government as a tactical weapon of counter-insurgency. However, there is evidence that the officers charged with leading the war effort in the field occasionally did resort to the murder of civilians, without any expectation of incurring punishment.

Impunity for army officers in areas of state of emergency was the outcome of the judiciary’s behavior due to the lack of power to investigate human rights abuses and the capricious interpretations of the laws. I believe that impunity concerning cases of disappearances; extrajudicial executions and torture was the result of a judiciary that did not care to try officers. This can be seen by the fact that many of the witnesses of extrajudicial executions were disappeared or murdered after describing facts. One example is the case of Soccos where the witnesses have themselves disappeared, and those who filed complaints followed and prosecuted. Another example is that of the 1,500 complaints filed at the district attorney’s office as of February 1984; although many have been documented by national and international human rights groups, the courts did not resolve them. As President Garcia entered the second half of his five year term, initial hopes that there would be an end to disappearances vanished. There were no serious investigations into any of the disappearances. Only one case reached the

\textsuperscript{31} Id at 120.
\textsuperscript{32} Communication of 5/23/90.
civilians courts: the disappearance of journalist Jaime Ayala Sulca in Huanta-Ayacucho. It was clear then that the agents of the disappearances were still certain that they would not be investigated and would not have to answer for their actions, either in criminal courts or before administrative military tribunals.  

This impunity for human rights abuses leads to the presumption that the armed forces had heavy influence over the branches of government and this as previously addressed weakened the newly formed democratic institutions that should be punishing violators of human rights.

**CONCLUSIONS**

States of emergency in Peru have caused the deaths of many civilians. I believe that the answer to the internal insurgency was not to enlarge the power of the armed forces; this only brought sorrow and pain. Human rights abuses were committed by armed forces and, to a lesser extent, by the police.

The three branches of government were not able to fight insurgency terrorists groups so they delegated this responsibility to the armed forces. The executive needed strong leaders to face this problem, but that did not occur. The legislature, due to its partisan composition, was allied with the executive. It delegated its powers, and did not investigate cases on human rights violations. The judiciary was also incompetent. Their broad and unconstitutional behavior permitted impunity, which was I believe the most powerful reason that the armed force continued for years to murder and torture. The outcome of this entire situation was a National Prosecutor too weak to investigate these cases.

Not only was the political behavior of the branches completely ineffective to solve human rights abuses, and therefore right violence, but I also believe that the

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Constitution contributed to instability in the system. Article 231 of the 1979 Constitution created contradictions with various other articles in the Constitution. Therefore, during state of emergency, the system totally changed. These changes collapsed the newly formed democratic institutions. I believe the transition towards democracy was weakened. The branches lost power and did not confront the fact that the armed forces were committing human rights violations. I believe that to explain why state agents committed human rights violations in states of emergency it was important to analyze the constitutional definition of state of emergency and to analyze the actions of the state institutions during the time of internal crisis.

RECOMMENDATIONS

In May 27 2003 by Decree Supreme 055-2003-PCM, the president of Peru declared a State of Emergency in all the country for a period of 30 days and by Supreme Resolution 181-2003-DE he ordered the armed forces to take control of the internal security during this period. Almost twelve years have passed since the last State of Emergency was decreed in Peru. This presidential decision was an answer to riots and protests that were being held along the country against a number of public policies. I believe that Peru doesn’t learn from its mistakes. The story simply repeats itself.

I believe that to change this pattern of declaring a state of emergency every time the president cannot control a situation and therefore delegating internal control of the areas to the armed forces, there must be a constitutional reform. This is my first recommendation. Even though Peru currently has a new constitution, 1993 Peruvian Constitution, article 137.1 repeats the article 231 of the 1979 Peruvian Constitution. The fact that the armed forces can obtain the power to control internal affairs is still inconsistent with their constitutional attributions. This new Constitution literally repeats the attributions given by the 1979 Constitution to the armed forces and the police. So, to
be constant, the police, should in any case, take control of the internal order. This is also better because the police are closer to the civil society, they can respect civilians and not fight. The armed forces are trained to destroy and it cannot be possible to have armed forces fighting against its our civilians, unless it is a civil war, which was not the case in Peru.

My second recommendation is to take into consideration previous cases to decide when a situation deserves a declaration of State of Emergency. This is important because the president still can arbitrarily decide when a situation “puts in risk the peace and internal order…” This is a very broad description of when states of emergency can be applied in Peru. Therefore, the presidents must relay on previous cases to decide when a situation needs to be solved with a state of emergency. This is a problem also in international treaties, because the situation of state of emergency is not defined and I believe it can never be defined, but I do think that the president can have the criteria to decide based on the historical use of states of emergency.

A very important change in the 1993 Peruvian Constitution is that the constitutional guarantees cannot be suspended during states of emergency. This is good because it enforces the role of the judiciary; they cannot dismiss cases of habeas or Amparo as they did during the 1980’s. This leads to the third recommendation: the judiciary must have an active role. The judiciary must follow cases of human rights violations and act in coordination with the public ministry. Thanks to this new constitutional disposition, the courts must act during states of emergency. This recommendation comes with a clear sense of transforming the judiciary. There must be courts that are familiar with human rights issues and that are able to enforce the laws freely. I believe the judiciary and the national prosecutors are the two institutions that are the key to avoiding or stopping human rights abuses during a state of emergency.
This leads to the fourth recommendation, which is to enforce the role of the Public Ministry. This institution was designed to be independent from the other three branches of government that is why it must have the power to demand information and to demand that all state agents answer their requests for information. The facts are that it did not have this power during this decade. The prosecutors must have access to all the information they require. This is the way in which the role of the President is important. He must order the civil servants as well as the army and the police to provide the information prosecutors need concerning cases of human right violations.

The new Constitution creates the office of the Defender of the People as an autonomous institution, independent of any of the three branches and the national prosecutor. I believe that the role of this institution during state of emergencies would help the courts and the prosecutors work effectively and efficiently. It is in charge of supervising the work of the public administration and is entitled to protect the human rights of the people. The Defender of the People is actively supervising the public servants and the members of the armed forces and the police to protect the rights of the people. Hence, because of the pressure the Defender of the People can place on these key institutions, human rights would eventually be more protected.