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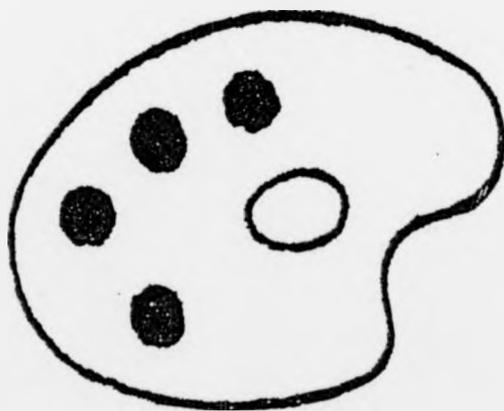
**LEGAL DISCOURSES AND PRACTISES ON DOMESTIC VIOLENCE IN
PERU WITH PARTICULAR REFERENCE TO ANDEAN COMMUNITIES**

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Submitted in fulfilment of the requirements for the degree of
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The School of Law
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Numerous
Originals in
Colour



SYNOPSIS

This is a socio legal study of social regulation on domestic violence in Peru with particular reference to the South Andean communities. It reviews the development and implementation of the state legal remedies on domestic violence. The thesis examines law as a result of historical processes, having different meanings for and impact on the various sectors of the Peruvian population. Andean communities are the product of the exploitation and resettlement of the original native people. The thesis considers the way in which these communities from a subordinated position perceive state agencies and legal institutions. It is argued that Andean people do not perceive the legal system as a granter of fundamental rights but rather as a perpetrator of abuse. From this perspective, the thesis studies how Peruvian feminists have come to see law as a tool by which to improve the position of women affected by domestic violence. It argues that this approach has not taken sufficient account of the reality of Andean women, their perceptions of domestic violence and their strategies for combating this violence. The study examines this reality and pays particular attention to the role of the judges of the peace in Andean women's strategies. It argues that Andean women are building a different social account of law which is at present not recognised by mainstream legal strategies designed to tackle domestic violence in Peru.

*To my parents,
Julia y Julio
for their unfailing love and support
throughout all my life*

and to Stu

'At present, in this life, more Indian drunks exist than in the old times. In the epoch of the Incas there was no man and never existed such a man because of the good justice that existed. To those who drank or idly chatted or gossiped or blasphemed, or who slapped his wife in the face or who fought with anyone or with his wife the Inca brought him to justice.'

Huaman Poma de Ayala, chronicle, sixteenth century.

'...it should be clear that I do not romanticize the local, the South, or the periphery. I do not romanticize, I take sides.'

Boaventura de Sousa Santos, 1998.

'To live well is to understand each other, to plan things together...'

Hilda 20, Andean Community of Chitapampa

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DECLARATION

The materials used in the study are the sole work of the author and where materials from other sources are used they are acknowledged. This work has not previously been submitted for a degree at this or any other university or institution.

CHAPTER ONE:

INTRODUCTION

This is a socio-legal study of discourses and practises on domestic violence in Peru. The thesis analyses the state legal remedies on domestic violence, with special reference to those feminist-oriented reforms and contrasts them with the reality of women from the South Andean communities of Peru on whom the fieldwork is based. It particularly reflects on Andean people's perception of the problem and on their main forum of intervention: the rural judges of the peace.

1. Re-examining Peruvian Feminist Strategies on Domestic Violence.

From a feminist analysis domestic violence is the most pervasive expression of patriarchy. In a male dominated social order, violence within intimate relationships is a way of social control over women, a powerful means to keep women *in their place*, that is, subordinate to and dependent on men (Bograd 1988:14, Dobash and Dobash 1979, Dwyer et al. 1996:72).

These feminist claims are by now widely acknowledged. Anthropological studies of different social groups have confirmed the validity of the feminist understanding of domestic violence as an expression of gender hierarchy (Campbell 1992:234-7). Even, official records in different countries present a striking reality. These reports are considered to be just the 'tip of the iceberg' and much more violence is tolerated by

women in their daily life than appears in any official statistics. (Tamayo 1991, Barnett 1998:256)

From very early in the feminist claims, the legal system has been identified as the site of the main strategies to be developed to eradicate domestic violence. The law has had a historical role in creating and defining particular characteristics of gender relationships. In the past, to beat wives was a legal right conferred on husbands. By analogy, the same was tolerated when couples were not joined by legal marriage. This historical condition has had effects until the present and has given validity to feminist legal strategies on domestic violence.

As elsewhere, the subject of domestic violence in Peru is proposed and raised by the Peruvian feminist movement as a key issue in understanding women's subordination. In this long struggle for public recognition of domestic violence as a serious social problem the Peruvian feminists have also focused on law as a fundamental strategy to eradicate this extensive social practise. In Peru this process has had a particular characteristic since the issue of domestic violence has been assumed by feminist lawyers' as a specialised group to whom an 'authoritative voice' to produce a discourse on domestic violence has been recognised by the rest of the activists. The following is an account of the reasons and rationality of legal reforms pursued in Peru by the feminist movement with a special reference to its insertion into the international human rights discourse and how these legal reforms relate to the diversity of Peruvian women.

1.1 Breaking the silence: the option for paralegality.-

The Peruvian feminist movement was born and perpetuated within sectors of 'well educated, alternative' women¹. From the very first women's association in 1876,

¹ For a review of the history of the Feminist Movement in Peru see Equipo de Difusion (1998)

through the first appearance of a 'modern and political' feminist movement in Peru in 1911 demanding equal access to education and civil and political rights for women, until the contemporary movement which took shape in the late 1970s, feminists have been active, demanding and eventually achieving results to improve women's position in society. By the late 1970s feminists began to be recognised as an 'authoritative voice' on women's concerns awaking the attention of the media. The contemporary feminist movement was made up of women dissidents of the left-wing parties disappointed with the machismo of the cadres. They were self-identified mainly as 'socialist feminists'.

The Peruvian feminists of the seventies raised the well known international slogan: 'the personal is political' as paradigm of their gender demands. In this sense, the personal should be brought into the public light because the private sphere had made invisible the oppression that women were suffering. Issues such as sexuality, reproduction and domestic life were tackled as spheres of gender confrontation. The concept able to explain all discrimination against women was 'patriarchy'. However, of all forms of oppression that women suffered in the hands of 'patriarchy' there was one which made impossible the project of women as autonomous human beings: gender violence.

Gender violence was defined as any kind of physical, moral or sexual maltreatment that women suffered at the hands of men for the fact of being a woman. Domestic violence, rape, and sexual harassment were the priority themes.

The law and the legal system were identified as the main targets of gender strategies. The legal system was regarded as an accomplice of gender violence and its operators: policemen, judges and forensic doctors, through their sympathy to male violence,

reinforced women's situation. Women were afraid to go to a police station: the treatment of raped women was degrading and battered women faced complete indifference. Sexual harassment was a situation that nobody recognised as deviant.

Peruvian feminists, assumed the task of challenging the dichotomy private/public, and another slogan was raised to serve as inspiration for their actions against domestic violence: 'breaking the silence'. Tamayo (1993:105) states: 'They perceived the social silence shared by the victims of violence as a factor which prevented the eradication of violent acts against women'. 'Female solidarity' was encouraged and practised (Tamayo 1993:105). 'Open houses' (workshops for collective discussions) were organised, inviting women to talk about their experiences of violence, creating the awareness that domestic violence was a common problem.

At the legal level, 'Legal Advisory Services' were established in the shanty towns of Lima. The emphasis was on 'paralegality'², that is, privileging alternative ways of solving conflicts and aiding women in difficult situations. Lawyers were more social assistants than traditional lawyers. Some groups went further forming 'paralegal' agents among the organised women in shanty towns, in this way, the same neighbours were responsible for the legal advisory offices.

Additionally, the 'training teams' those responsible for developing awareness of gender issues, promoted 'solidarity actions' through the 'popular women's organisations'³, in the defence of women facing violence. Organised women in the district of Villa El Salvador in the Southern outskirts of Lima responded to this

² This term will be explained further in chapter three.

³ Such as 'communal kitchen' and 'Glass of Milk' organisations. The 'communal kitchen' has its origin in the 1950s. The 'Glass of Milk' organisation was promoted by the left-wing municipal government in Lima which organised women in poor zones to receive donated milk for the children, elderly and pregnant women. This organisation became one of the most important 'popular women's organisations' in Peru during the late 1980s and the first half of the 1990s.

'awarenes' creating the action of blowing whistles when a man was beating a woman. They joined together and remained outside the house until the man stopped his action. This strategy was repeated in other poor neighbourhoods of Lima. It contributed to calling the attention of the neighbourhood to the wrongness of domestic violence.

By the eighties the feminist movement had established its position regarding the law. They understood it as a: '...discourse and practise which legitimises the power relation which subordinates women's interests and needs' (Vazquez 1998:3). Consequently, there were few hopes in the legal system and a great pledge for the development of the 'women's popular movement'.

1.2 The option for the complaint (and the legal system).-

Soon some feminist lawyers became concerned that the emphasis on 'paralegality' was not going to produce any impact on the formal legal system, precisely because by their nature such actions were carried on outside the system and its operators. It was thought that women should act as 'subject of rights', that is, as active legal protagonists and this could only be carried on within the system. Tamayo (1993:106) explains the process:

'To understand this discourse, it had to be placed within a perspective which demanded women to participate as citizens, consequently encouraging the exercise of their rights within the framework of the legal system that backed them.'

The condemnation of domestic violence should be expressed in the way the system treats deviant behaviours, that is, through the criminal jurisdiction. The objective then was to 'incriminate agents of violence' and another slogan was created and promoted: 'if he hits you, report him'.

In order to mobilise the legal system it is necessary to have the support of a professional body of lawyers. Consequently, the intervention of the feminist lawyers was even more prominent in the strategies against domestic violence. Legal services were moved from the shanty towns toward the same feminist centres and the legal personnel was expanded. The objective was clear: to facilitate women's access to the legal system and to pressure the imperfect legal institution towards the right ends for women. Underlying this was the idea that women were powerless before the legal system, not just because they were 'victims' of violence (Tamayo 1993:106) but also because they had neither the economic resources nor the education and information to deal with the system. Women became more dependent on their lawyers and the system. Feminist lawyers left behind the idea of solving situations of violence within the social settings of the women involved and, in many cases, they even acted against the women's own understanding of their personal situation.

1.2.1 Women's Police Stations.-

The opening in 1987, in the city of Lima, of the first Women's Police Station to handle complaints of domestic violence, became very important in the feminist legal strategy because it improved the conditions in which women accessed the legal system. This was the first public policy in Peru tackling specifically the problem of domestic violence and opening the formal legal system to a more adequate treatment of women's concerns.

In addition to the reception and investigation of the complaints, the Women's Police Station implemented other services of assistance: psychological, social work, and the legal offices were installed, in an effort never previously pursued at police level. This opened the possibility for a more institutionalised support from the feminist

organisations. Although feminist groups were not involved in the creation of this police station, from the beginning they considered it a pioneer experience with an extreme political importance. For instance, the 'Peruvian Women's Centre Flora Tristan' implemented a legal advisory office in the same police station and was responsible for the annual training of women and policemen⁴. Later others women's groups around the country assumed the same agenda and were campaigning for similar police stations in their cities. In 1993, five women's police stations were already operating in other parts of the country (Estremadoyro 1993:64).

The women's police stations, however, soon provided evidence of the lack of support in the legislation itself. There was a specialised police station for the reception of domestic violence complaints but there was no law on domestic violence that justified and supported the existence of such police stations. Feminist lawyers understood this problem and fiercely campaigned for the recognition of domestic violence within the legislation.

1.3 Domestic violence as a specific criminal offence.-

Feminist lawyers educated within a traditional legal perspective, held the idea that every deviant behaviour in society should have a 'criminal type' as correlation, consequently, domestic violence should be criminalised as such. The reform of the Criminal Code by the Peruvian Congress in the late eighties and beginning of the nineties gave the feminist lawyers the ideal opportunity to present their proposals in all criminal situations affecting women. Issues of abortion, rape and domestic violence were included. In relation to domestic violence the feminists reached the following proposal:

⁴ I was co-ordinator of the women's police station projects of Flora Tristan and responsible for the legal office from 1989 until 1993

'Article a.- The crime of maltreatment of women in a marital or cohabitational relationship is a special crime ruled by specific process. Consequently, the man who maltreats his wife or cohabitee producing physical, psychological or moral injury through actions, offensive expressions or threats will be subject to public intervention measures, amongst those: police may enter his house, preventive detention of the aggressor for 24 hours or he can be obliged to appear in front of the authority to be assisted by specialised professionals in 'family science' amongst other measures' (Cladem 1989:14)

The feminist lawyers also considered that in some situations of domestic violence punishment should also include prison. 'Article b' states:

'The man who commits such a criminal offence [described in article a] should be punished with a prison sentence of no more than two years: 1. If the injury produced demands medical attention or special treatment. 2. In the case of the aggressor having committed such a criminal offence previously the sanction should be applied even when there was only minor injury.' (Cladem 1989:15)

There were other articles in which feminist lawyers simply repeated the articles of the Criminal Code on 'Bodily harm'. In this way they considered the cases in which the aggressor endangers 'the life or health' of the victim, including the cases of mutilation, cruelty, disfiguration, and suicide. In all of these criminal situations the penalty was increased to that stated by the Criminal Code. Feminists understood that the fact that the aggressor has a relationship with the victim should be considered as an aggravating circumstance to increase the penalty (Cladem 1989:16-8). The reaction of the members of the Reform Commission of the Criminal Code was not a very positive one. Feminist lawyers were accused of having a 'schizophrenic position' in relation to criminal issues, wanting on the one hand more criminalisation of domestic violence and rape but, on the other hand, fighting for the decriminalisation of abortion (Tamayo 1993:111). The final result, that is the 1991 Criminal Code, is evaluated by the feminist lawyers in this way:

'The offences which involved gender related violence, such as rape and other sexual aggressions, deserved a benevolent treatment compared to other typical criminal behaviour. Maltreatment in a domestic violence context was not specifically classified, maintaining, in this way, the traditional choice not to mention its existence in proscriptive terms. Abortion, even in the case of rape, was criminalised with a punishment which deprived liberty' (Tamayo 1993:111)

The truth is that the Commission, following a more up to date trend on criminal law, was in favour of reducing the penalty for most crimes. Its members took the feminist proposals into account although the results were not exactly as the lobby of feminists would have desired. In the case of abortion, the Commission reduced the penalty for women who aborted under any circumstances. Additionally, the cases in which women abort on the grounds of rape, foetus abnormalities and poverty received special attention and the penalty was further reduced to one year in prison. In the Commission's understanding this was a way to decriminalise abortion without provoking a great controversy with the Catholic Church because the 1991 Criminal Code entitles the judges to abstain from imposing a sanction (*reserva del fallo condenatorio*) in cases with a low penalty. This remains a quite unfair situation for women who abort because they can still be subjected to criminal prosecution but a significant advance in a country where the Catholic Church continues to have a strong political influence. Additionally, in the case of domestic violence, the Commission increased the penalty in cases of '*Faltas* (minor offences) against the person' when the aggressor was the spouse or cohabitant of the victim.

The feminist campaign for the qualification of domestic violence as a criminal offence expressed the idea that the criminal system was the privileged site for contesting domestic violence. This approach has been prevalent among South American activists. In Argentina, where projects to challenge domestic violence have been more

a task for psychologists rather than lawyers, the approach is radically different. The idea is that domestic violence expresses a conflict which it is necessary to resolve and both partners in a violent relationship have responsibility in solving it. Chiarotti (1993:80) expresses that domestic violence should be considered an 'illegal behaviour' which 'must be sanctioned' but with civil sanctions. Argentinean feminists reject the idea of criminalising the problem. They argue that the criminal system is shown to be inefficient at preventing the commission of most crimes, and on domestic violence the emphasis should be on prevention and not on criminalisation. Additionally, the criminal system obliges women to prove their complaints because that is the way that the criminal law works and it gives the judge all the power to decide whether these criminal offences were committed or not. Finally their most important reason is the same women's will:

'The majority of battered women do not want their husbands to be put in jail. They fear retaliation, loss of employment, the lack of food for their children, etc. They want their husbands to stop hurting them, to change, and they seek the improvement of family relations. The criminal judges cannot satisfy these demands' (Chiarotti 1993:81)

1.4 Women's Human Rights.-

In 1983 Peru subscribed to the United Nations Convention on the Elimination of all forms of discrimination against women. This was considered a great advance for the recognition of women's rights. This important international treaty, however, did not make any explicit reference to gender violence. By the end of the 1980s an international 'call' was made by the feminist movement in the United States to campaign for the recognition of all violence against women as human rights violations. It had as an objective to take this proposal to the 1993 United Nations World Conference on Human Rights in Vienna (Friedman 1995:18-25). The campaign

sought to call international attention to the gravity of gender violence that although committed by private individuals should not be tolerated. The recognition of women's rights as human rights implies making available the structure of the international human rights system to women affected by gender violence

Peruvian feminist lawyers were always aware of the possibilities of international treaties to improve the situation of women. The Constitution of 1979 recognised the International Conventions signed by Peru in the same hierarchy as the Constitution itself. This situation, however, was modified by the current constitution of 1993, which subordinated international treaties to the constitutional text. When the 'international call' was launched the feminist organisations in Peru took the initiative in the region and the response of South American colleagues was immediate. One of the results of the South American feminist campaigns was a resolution of November 1990 within the 25th Assembly of the Women's Interamerican Commission (part of the Organisation of American States) urging the governments to take immediate measures to eradicate violence against women in the region (Loli 1991:11). One of the agreements was the elaboration of a Treaty to prevent, eradicate and sanction the violence against women. Such document was finally approved in 1994 by the General Assembly of the Organisation of American States and by now has been ratified by most of the countries of the region. The South American feminists managed to include women's human rights on the agenda of their state governments.

The issue of women's human rights complicated the strategies on domestic violence, mainly because domestic violence is seen as part of a wider spectrum of crimes against women. This was going to be evident in the strategies of the Peruvian feminists. In the context of the women's rights campaign, the legal programmes of the feminist

organisations changed their strategies of open legal services to women to reproduce the logic of the human rights defence organisations. They no longer received cases from the general public and instead formed a lobby of feminist lawyers pursuing prosecutions of 'test cases' (*casos tipo*), that is, cases in which the ingredients of gender violence deserve the investment of institutional resources to become a 'precedent' within the judicial system. This works on the logic of human rights violations in which even one case matters. We observe how the feminist legal strategy in Peru 'evolved' from a local strategy based in the active involvement and participation of neighbourhood women to the global strategy in which less women immediately and directly benefit but violence against women is included on the 'highest' agenda of the world: that of the United Nations.

1.5 Domestic violence laws and judges of the peace⁵.

It was within this atmosphere of the effervescent campaign for women's human rights that the MP Lourdes Flores from a conservative party (Christian Popular Party) took the initiative of a draft for a law on domestic violence. The context is very important to explain the rationality of the changes that feminist lawyers proposed to the original draft.

The 'domestic violence laws' have appeared as a more adequate answer to the dilemmas on how the legal system should intervene in cases of domestic violence. It means that, through a special legislation, domestic violence is condemned but the channels to process such cases are more focused on civil remedies and prevention. This position has been assumed by many Latin American groups such as the Puerto Rican feminists who supported the 'Law for the Prevention and Intervention in

⁵ The reader unfamiliar with the Peruvian judicial reality would find useful a brief description of this judicial system in Appendix I.

Domestic Violence' (Vicente 1993). This particular law served as an antecedent for the draft of the Peruvian version (which became Law 26269) (Tamayo 1993:103). In fact, both laws had very similar definitions of who can be protected by this kind of legislation. The Puerto Rican law defined as 'couples' a 'wide spectrum of intimate relationships between people', so did the Peruvian law (Vicente 1993:93). They also had similar concepts of protective measures which included the 'eviction of the aggressor' from the home and/or prohibiting his visits (amongst other possibilities). However, the great difference was that the Puerto Rican law entitled the 'municipal judges', the equivalent to the judges of the peace in Peru, to intervene in cases of domestic violence, in this way women benefit for the locality and accessibility of this type of judge (Chiarotti 1993:83). For Vicente (1993:93) to channel the action through the municipal judge offered many possibilities for women to deal with their situation of violence and provides 'the potential to have effects upon the legal system without having to depend on lawyers and other persons'.

The original draft presented to the feminist lawyers for consideration by the MP Lourdes Flores also offered the possibility of applying for protective measures to the most basic level of the judiciary. It was stated that the process for eradication of domestic violence could be started at the judges of the peace level. Authors like Chiarotti (1993:79) evaluated as positive the fact that the Peruvian draft offered to women a more accessible justice. However, while this was obvious to other South American lawyers, it was not to a group of their Peruvian colleagues. When MP Flores sent the draft of the law to the feminist groups, some of the feminist lawyers were indignant that the judges of the peace, 'the lowest rank of judges', had to deal with such an important women's issue. Chiarotti (1993:83) documents the fact in this way:

'In the Peruvian project approved by the Chamber of Deputies on September 3rd, 1991, the Justice of the Peace is competent (this has been highly criticised by our Peruvian peers who believe that, given the importance of the problem, such cases should go directly to the judges of higher rank)'

The position of these feminists prevailed and modifications were made to the final draft. Here is where the discourse of 'women's right as human rights' had much influence. These colleagues were imbued with the spirit of the 'sacred human rights' -as Esteva and Prakash (1998) would call them- and their 'high standard' institutions. The *Justicia* of the Peace an institution which has its origin in a localised, non professionalised and unpaid judicial administration was not sufficiently important to be responsible for such a task. This, despite that at present judges of the peace are divided into two kinds of magistrates. The *letrado* and the *no letrado*. The main difference between them is the setting in which they operate. The first one is an urban judge the second a rural one. The *letrado* judge is a lawyer, paid and appointed in those cities which are sites of the Superior Courts. In fact, the origin of the judges of the peace *letrados* was to ease the work load of the specialised courts. Consequently, there are no substantial differences in the nature of these judges with others in superior positions in the judicial hierarchy. The *no letrado* judges, instead, retained most of their original characteristics. They are considered an inevitable 'evil', 'the justice of the poor' by the other legal operators and hold a different rationality than the rest of the judges. Despite the obvious differences between them, the feminist lawyers rejected both.

The feminist lawyers approach overlooked the fact that almost the totality of the cases of domestic violence which reach the legal system are processed as '*Faltas* (minor offences) against the person' and are handled by judges of the peace both in urban and

rural zones. Consequently, the proposal was that a beaten woman had to 'jump' over the judicial pyramid and go to the court judges in the capital of the provinces to claim protection at a judicial level in which it is necessary to pay, to wait and to have a lawyer. The alternative position adopted by other Peruvian peers and by other South American activists was to emphasise the real defence of the largest number of women possible and not just a sample, who were lucky enough to reach a feminist lawyer with a case with 'sufficient violence' to be considered as a 'test case'. The problems that women had to face just to reach a police station and the large number of women that in our country suffer domestic violence, was dismissed.

On 25 march 1997 Law 26763 was promulgated trying to solve the deficiencies of the previous law. One of the important amendments is article 12 in which the urban (*letrados*) judge of the peace is entitled to order protective measures established by the law when handling processes of *Faltas* (minor offences). It is an improvement but exclusively refers to the *letrado* judge and only in the circumstances of a criminal procedure. Still at this judicial level, there is no possibility for a woman to apply for protective measures within the special procedure established by the law. If she wants to do so she has to go to the family judges and family prosecutors. The rural (*no letrado*) judges of the peace were also excluded from this law.

Additionally, the new domestic violence law transfers the responsibility for the procedures on protection from the civil judges to the family judges, of whom there are less. For instance, in the capital of the Department of Cusco, the second most important city of the country, there is just one family judge. Arguably, urban women face some hurdles to benefit from the law and the law is of no practical use to Andean peasant women for whom even to reach the *no letrado* judge of the peace can mean

walking for hours through the mountains. In reality, rural women were not included in this 'universal category' of woman protected against violence.

1.6 Perception of Andean women.-

Peru is a country with persistent historical denial of its multiculturality. The home of 'great indigenous civilisations', of which the last and most widely known were the Incas, is the place of an impoverished peasantry (Stern 1982:33). In Peru, all ethnic references were deleted from public declarations by governments throughout the Republican era. We are all Peruvian, we are all citizens but historically sectors of coastal people have been 'more citizen' than others. For us on the coast, it is possible to make accountable the legal representatives such as police and judges to perform the role assigned by the Constitution, in other regions of the country the same legal representatives can be agents of repression and exploitation with much more impunity. If the Peruvian state made our ethnic groups 'invisible' under the umbrella of citizenship, the feminist movement in Peru did the same but under another umbrella : the cultureless, raceless and classless category of 'women'. This tendency has been difficult to reverse even though in recent years there has been a growing awareness of the tensions arising from the concept of a universal category of 'woman'⁶.

During the left wing military government, in the 1970s, there was an effort to make the Andean communities take an active role in the political process. This was a top-down approach but because of the appalling conditions of the Peruvian peasantry, it meant an air of renewal and the acknowledgement of their long and unheard struggle for survival. In this context, the feminists started to consider peasant women and to highlight here and there the problems of poverty and underdevelopment in rural areas.

⁶ See for instance Vargas (1998)

Feminists were invited to participate and collaborate in some governmental programmes. In the following years the feminist organisations in Lima established a collaboration with other groups in the provinces which emulated the urban-style of feminism of the Lima groups. It was not until the nineties that there was a sustainable support for other kinds of Non Governmental Organisations for Development (NGOs) in the rural areas to establish a collaboration in training on gender issues. These organisations were traditionally involved in 'agricultural promotion' but pressured by the international funding bodies were obliged, not without resistance, to include gender themes in their programmes.

In any case, from a feminist approach rural women have never been addressed in terms of their ethnic categories, that is, they have never been named as Quechuas, Aymaras, or Shipibas. Still, noticeable in the feminist public declarations is this strong feeling and conviction to talk in representation of all 'Peruvian women' without even having any kind of involvement with a large sector of them. Furthermore, despite their original self-identity as 'socialist feminists' their perspective on 'development issues' and also on law has been uncritical, in other words, has held a liberal approach which 'tends to assume that underdevelopment' and with it, the oppression of women, is caused by 'traditional values' and 'to develop' also includes to embrace certain Western values and political institutions (Stewart 1993:222). This is noticeable when in Peru some feminist voices talk about 'rural women'. In a paper entitled 'Rural women: citizenship and exclusion'. A feminist lawyer claims:

'In general, the exercise and development of citizenship of the rural women has been affected by the particular intention in which the gender hierarchies are assumed in these settings...' (Tamayo 1998)

Consequently, the social groups to which these undifferentiated 'rural women' belong denies them the full enjoyment of their status as citizens. Why? It is never explained.

Another feminist lawyer evaluates:

'The revision and analysis of the constitutional, civil, work, agricultural laws in force in Peru let us claim that formally there are few legal norms that discriminate against rural women. However, there subsist important obstacles which neither permit the full enjoyment of their rights nor the effective application of the current legislation' (Macassi 1998)

That is, the state has provided the 'rural women' with all that they need for their full development as citizens, however, there is a fundamental 'obstacle':

'... rules of ancestral character which relegate women to a subordinate role and they are uniformly accepted. The traditional customs and values... reinforce women's isolation and discrimination...The value and customs used as parallels not written norms, but strictly observed, do not permit that the laws are enforced in the daily life, reducing them to their formal aspects' (Macassi 1998)

Consequently, for the rural women everything has already been created but it is their 'own culture' that prevents 'a law' as a magic act, improving the life of the Andean women. The conclusion, can not be more obvious:

'Because the cultural factor is a key aspect that permits the persistence of discriminatory practise and interpretations it is necessary to develop a training programme toward the different agents of the State and the civil society involved in projects of rural development, with the objective of incorporating the gender perspective in the planning and execution of projects, and [in this way] to improve the condition for the exercise of the rights of rural women'. (Macassi 1998)

For the rural women very little protagonism and self-determination is conceded in such a statement.

2. A different voice.-

This work acknowledges the validity of the feminist legal struggles to eradicate domestic violence and the belief in a society free of violence, however, it also understands that the best intentions may not just fail to produce the expected effects but in fact can have a negative impact on some Peruvian women. This work does not question the right of live free of violence for all women in the world, but rather the ways in which the law and the state are tackled to make this reality true in a multicultural country like Peru. This is not just an academic exercise but rather a subject of discussion with much more practical and political implication for 'different' women who are not always in the mind even of the most sensitive feminist activists.

This work based on eight months fieldwork experience in the highlands of Cusco, a South Andean department of Peru, tries to bring the perception that Quechua people -or the *runakuna* as they self-denominate themselves- , the largest 'marked culture' of Peru (Anderson 1990), have on gender relations, domestic violence and conflict resolutions to contrast their perception with those of the legal system and those involved in the Peruvian feminist campaigns. Using the terms 'centre' and 'periphery' in their literal meaning (and not in their meaning within political theory) it is possible to say that in Peru, in relation to gender claims, there have been visions from the centre (those of the legal system and the feminist), understanding the centre as groups of people located in the capital of the country that because of their position and resources in society are able to create a trend of opinion and become prevalent in respect to other social groups and knowledge producing the invisibility or disqualification of other 'voices' and cultures: the periphery, mainly made up by the geographical and socially isolated groups located in the altitude of the Andean mountains and in the Amazonian jungle.

It is not just the social differentiation which causes these different categories of Peruvians to engage in different ways with the legal system but also their particular conception of justice and conflict resolution. In the Andean communities a judge '*makes the justice*'⁷ implying that the 'justice' has to be built and is a process. In modern law we say 'managing' as if justice is a pre-given entity that is 'brought' into the act of judging. This work explores to '*make the justice*' in cases of domestic violence in the Peruvian south Andes.

3. The structure of the thesis.-

The main objective of this thesis then, is to critically assess the contribution of law in the area of violence against women in Peru particularly of those reforms proposed by feminist legal activists by considering the perspectives of women in Andean communities and of the role of the forums considered as important by Andean people, particularly judges of the peace. With this purpose the thesis has the following structure:

Chapter two develops two theoretical areas from which to explore the subject. The first one is an exploration of the links between feminist theory and legal strategies on domestic violence. The second deals with perspectives that consider the different engagement of people with law.

Chapter three explains the methodological approach highlighting the challenge of working among different 'legal landscapes' (Santos 1995).

Chapter four presents the law in Peru as the result of a complex historical process. Mainly focusing on the idea of its instrumentalism to operate a colonial system which set the practises for exploitation and repression of the native population, practises that

⁷ Translation from the Quechua expression.

remained beyond the independence. The chapter concludes with the difficulty that some groups of society have in considering the official legal system as a means through which to enforce their rights.

Chapter five traces the history of the regulation of domestic violence, analysing laws, court cases and police records. It reveals the role of the legal system in the construction of a gender system and in the management of domestic violence, as well as, the limits of the legal system to address domestic violence even under a more feminist-oriented agenda. It concludes in the legal reforms as mainly thought to be applied by urban women able to access state agencies such as the police and time and money consuming procedures such as those at criminal and civil courts. A legal structure non-existent in rural areas.

The following three chapters are based on my fieldwork. Chapter six explores the construction of gender relations in Andean society and identifies the forums of intervention in marital conflicts.

Chapter seven explores the perception of domestic violence in Andean communities and in the way people, mainly women, believe this situation should be resolved.

Chapter eight assesses the main forum of intervention in domestic violence cases, the judges of the Peace.

Chapter nine concludes the thesis reflecting on important issues that come to light in the preceding chapters. It assesses the difficulties of implementing domestic violence legal strategies in multicultural societies at the same time that acknowledging the necessity of an affirmative action to challenge domestic violence which reflects Andean women's concerns.

CHAPTER TWO:
THE STUDY OF DOMESTIC VIOLENCE
IN MULTICULTURAL SOCIETIES

Introduction.-

This chapter defines two areas of theoretical exploration. Firstly it enquires into the relationship between feminist theory and the strategies on domestic violence. Secondly, it reflects on the different engagement of people with the law, or in other words, on the 'social accounts of law' (Maboreke 1996:49-56).

In relation to the first one, the following paragraphs sum up the feminist reflections and line of activism on the subject of domestic violence. It establishes a link between feminist theory and domestic violence strategies, not always presented in this form in the literature. In this review it will be noted how the development of discourses and practises on domestic violence within a feminist agenda have not been free of 'contradictory impulses' (Ferraro 1996). The main proposition is that Peruvian feminists have come to see law as a means through which to improve women's position in society. They have tackled a number of areas but have particularly concentrated on violence. They have been instrumental in the introduction of new legal measures to tackle violence both through specific activist projects (e.g. special police stations) and through general law reforms. In so doing, they have increasingly adopted the

rhetoric of women's human rights which has a tendency to universalise and homogenise both the issue and women.

The attitude of some feminists to see law uncritically is challenged in the second part of the chapter. The main proposition is that law in post colonial societies holds particular characteristics that complicate any possible 'emancipatory' claim¹ or enforceability of rights for disadvantaged groups in society. This disheartening scenario, however, competes with alternative forms of 'law' in which people resolve their conflicts and negotiate their expected ends within a rationality common to the group

This takes us to the central point of the thesis: to unveil the difficulties of implementing domestic violence strategies in multicultural societies but also to explore into the alternative forms offered by different cultural groups to tackle the issue.

1. Feminists strategies to eradicate domestic violence:

In the seventies, a systematic interest in the subject of domestic violence started in the United Kingdom, the United States and Canada (Marcus 1994:22, Dobash and Dobash 1979:3,8). This had mainly a political expression represented by the self-denominated 'movement of battered women', 'women for shelter', and 'women's aid movement' (Marcus 1994:22, Yllo 1988:28, Dobash and Dobash 1979:13). This activism was also accompanied by the study of the phenomena under a new feminist methodology. The following is an account of the different strategies used until now and how they linked with the feminist theory.

¹ An emancipatory agenda or project involves to create solidary and to develop participative common knowledge (Santos 1995:46-55)

1.1 Liberal approaches on domestic violence strategies.-

Liberalism has been the 'dominant ethos' of the Western democratic world (Barnett 1998:121)². The rationality of knowledge, the unrestricted respect of the individual rights, the principle of equality between citizens, and the right of a private sphere free of state intervention have been the main principles articulating liberal thought.

The liberalism pursued to constrict an absolutist state from interfering with considered basic liberties of autonomous individuals. The notion of the separation between a sphere regulated by the state -the public sphere-, and another sphere free from State regulation and/or interference, goes back as far as Aristotle, however it was mainly developed within the natural law tradition. In the seventeenth and eighteenth centuries, all declarations of rights were inspired by this philosophy. The main example was the 'Declarations des droits de l'homme et du citoyen', in France 1789. From then on, the distinction between public and private spheres has been thought of in terms of the opposition between the realms of legitimate public regulation and the realms of freedom from intrusion, personal autonomy and private choices. This distinction has been useful in maintaining the belief that social and economic life (e.g. business, family) are outside of the government and the law (Rose 1987:63).

Feminists have pointed out that women's lives have been developed mainly within the private sphere and as a consequence, women's oppression has been invisible to the public gaze (Lacey 1993:94). The origin of feminist thought in the eighteenth century was focused on claiming the public sphere for women through the achievement of equal civil rights, access to education and employment (Barnett 1998: 3).

² See Santos (1995) for an exhaustive analysis of the liberalism and the modern law

Liberal feminists have passed through different phases during these three centuries but they have been characterised for denouncing the claims of the 'fathers of liberalism'³ at the same time as assuming the law with all its promises. Barnett (1998:5) states:

[they] Accepted law as traditionally portrayed: the rational, objective, fair, gender-neutral arbiter in disputes over rights which applied to undifferentiated but individual and autonomous legal subjects. The objections voiced by feminists in this phase was to not law *per se* but to 'bad law': law which operated to the exclusion or detriment of woman'

The task was to challenge the 'male monopoly of law' (Naffine 1990:2) this tackled the differential assignment of rights, duties and values for men and women. Examples of the most obvious 'sexist' laws were those which considered women as minors, which denied to women the right to vote and to be elected, or which restricted the rights of women as individuals when married etc. In evaluating the law by its discriminatory contents: some more obvious than others, the feminists arrived to the conclusion that 'corrective' methods (Smart 1992:31) could be applied to convert the law from a privileged site of women's oppression to a site of emancipatory conditions. Naffine (1990:4) claims that 'the prevailing idea is accepted that law should be (and can be) impartial and reasoned' and that the objection to be made to law is its 'failure' 'to adhere to its own professed standards when it invokes discriminatory laws and practices'.

In this search for equality men became the measure of women, or the 'super standard' and what was right and fair for men was also for us as women (MacKinnon 1987:35, Barnett 1998:131). The reality is that gender-neutral laws have on many occasions brought more adverse conditions for women than that legislation which established a

³ John Locke (1632-1704) in his work 'Two treatises about the government' (1690), conceived the family as a natural, non political entity, as opposed to the State. In the private space the father commanded not as a prerogative but as a duty. Locke (1670 71) stated 'this right is naturally for the husband, the nature assigned to him as the more capable and strong', wives were by 'natural law' subordinated to men (Cerroni 1975:32-5, Rose 1987:64).

differential treatment. This is because when the egalitarian principle was accepted by legislators these (mainly men) assumed that if women gained equal rights they should accept equal duties. A typical example of this new 'egalitarian' legislation was the denial of maintenance rights for divorced women or the restriction of the labour law protection to women without taking into account that women are disadvantaged in society anyway.

In relation to domestic violence, liberal feminists challenged the distinction between a public and a private sphere because it contributed to the impunity in which domestic violence occurred. Rose (1987:64-5) claims that the State has defined those aspects of life into which it does not intervene 'and then paradoxically, uses this privacy as the justification for its non-intervention'. On this basis has persisted the idea of the family as a sanctuary, saved in the privacy of the intimacy and for that free of external intervention (Dobash and Dobash 1979:2-7).

Consequently, the strategy from the end of the seventies onward has concentrated on taking the problem of domestic violence from the private-enclosed sphere into the public light. The terms wife abuse, battered spouse, battered women started to be used as card of identity of the problem: men 'as offenders and women as the victims' (Marcus 1994:24). Women's refuges or shelters were promoted, as well as encouraging women to take their cases to the legal system making formal complaints. (Dobash and Dobash 1979, Yllo 1998 and Brograd 1988).

At the level of the legal strategies, specific regulation was demanded to tackle the problem (Frisch and Caruso 1996:109). On this basis, the law was not regarded as a problem but a residual category of a changing social order. What the campaigns for making the problem 'public' revealed, however, was the entrenched gender bias at

police and judicial levels. Marcus (1994:24) expressed the idea in this way: 'the law enforcement and legal systems, through their failure to protect, were the source of battered women's revictimization'.

Nowadays and particularly in domestic violence, everybody is aware at least of the limits of the legal system. However, feminists still tend to focus on formal legal achievements rather than to evaluate wider structural problems that make difficult the implementation of their proposed strategies. The 'women's rights as human rights' campaign is a good example of this attitude.

1.2 Structuralist approaches on domestic violence strategies.-

1.2.1 Marxist feminists.-

The text of Engels, 'The origins of the family, private property and the State' illustrated the Marxist perspective on women's social condition. Engels described how women were removed from their privileged position in society toward a condition of oppression consolidated along the development of a capitalist mode of production. Marxism promised the liberation of women through the change in the correlation of the productive forces and their full incorporation into the new labour system; in this way, 'enabling women to operate on the basis of equality with men in the public sphere' (Barnett 1998:137).

The Marxist- feminists have criticised the liberal feminists for overlooking the differential ways in which women are oppressed in society depending on their class conditions. However, they challenged the Marxist mainstream pointing out that because of the pervasive nature of the gender relation an improvement in women's condition is not guaranteed just by changing the productive system. Women could go

to work but it was still assumed they were mainly responsible for childbearing and domestic chores. Reproduction was a category that was lacking in a traditional Marxist analysis of women in society. The Marxist-feminists, however, did not take into account other categories of oppression such as race. (Barnett 1998:138).

For Marxists feminists, as for the rest of Marxists, the law was evaluated as a 'superstructure of capitalism' questioning their 'self-proclaimed rational objectivity'. It was regarded as a tool that assured the privileges of one class to the detriment of another (Barnett 1998 136-7, Mc Barnet 1984). Under a Marxist feminist analysis few promises can be expected from the official legal system in a capitalist society.

In South America, and particularly in Peru, feminists were mainly identified with this political stand. As mentioned in chapter one, the contemporary feminist movement had its origin in the association of women disenchanted with the left-wing militancy. In the 1980s the political strategy was to work with the poorest sector of the population and there was a great faith in the popular movement mainly in the women's neighbouring organisation and in the unions. In relation to domestic violence there was an overt challenge to the official legal system and a preference to develop 'paralegal' resources and solidary networks to process women's demands. There was, for instance, a tacit refusal to work with the police which was dismissed as being a repressive and patriarchal organisation par excellence. If the legal system had to be tackled through the individual cases, a great display of social and political pressure was deemed necessary to assure any acceptable result within the official legal system. A successful strategy was considered to be that which managed the best practical results in favour of the woman in her particular circumstance rather than to reach the

formality of a judicial decision⁴. From 1990 onwards, a switch to a more liberal approach to the legal system is noticeable.

1.2.2 Radical feminists.-

Catherine MacKinnon (1982, 1987, 1989) is considered the main exponent of this approach. In her analysis, the paradigm of production is displaced by the paradigm of reproduction (Behabib and Cornell 1987:1-2). Particularly, in her early works there existed an effort to compare the category of class to gender. MacKinnon (1982:515) comments: 'sexuality is to feminism, what work is to Marxism', both constructed, universal and expropriated social activities.

In relation to law, MacKinnon agrees that the contents of modern law are male but also, and more importantly, that the whole rationality of modern law is male. In this sense there is a questioning of the law itself -as a social institution- which does not appear in the liberal perspective. Law is created and reproduced in the male dominated social order. Its assigned characteristics: equality, neutrality and objectivity are indeed masculine aspirations, consequently, to insist on being treated equally under the law is to 'insist on being judged by the values of masculinity' (Smart 1992:32).

MacKinnon's proposals are considered a 'dramatic shift' in the feminist legal perspective of the eighties on Western feminism. Naffine and Owens (1997:4-5) highlighted that she was one of the first to reveal that the category of woman was socially constructed, and was constructed by men, this is the 'social woman' but especially the 'legal woman' was all that men thought she was. In relation to gender violence, she has emphasised that every expression of male violence is an exercise of power. Her writing on rape particularly caused much impact. MacKinnon has also

⁴ See for instance Tamayo and Vasquez (1989)

influenced the feminists to challenge the 'positivist paradigm' when studying gender violence. Objectivity is a male subjectivity. 'Scientific methods' separate 'abstract concepts' from the experiences of the social world pretending 'neutrality' that simply means ignoring the perspective of the protagonists: women (Yllo 1998:36). In this sense, a woman researcher, does not have to be 'impartial', but deeply aware of women's concern because that condition is inseparable from her own reality. Yllo (1988:42) adds:

'For us, wife abuse is not part of the separate, observable, empirical world "out there". Its existence is intimately connected to our own status as women, whether we have personally been victimized or not'

MacKinnon and her followers have been criticised for reducing all women to a single category of 'woman', -the essential woman-, and for narrowing the understanding of women's oppression under patriarchy in women's use and abuse as sexual bodies (Naffine and Owens 1997:5). There is not just one category of 'woman' but also there is not just one category of 'man' and law can be a site of oppression for poor men as it is for 'subordinated' women, that is, law is not just male but it is also capitalist, Western, racist amongst others biases.

1.3 Poststructuralist approaches and domestic violence strategies.-

This approach includes a variety of feminists influenced by the work of Michael Foucault. Carol Smart (1995:7-8) identifies some 'key elements' which have particularly impacted on feminist theory. One of them is the 'discursive construction of the subject', the rejection of the idea of pre-given entities. There is not a 'man' and a 'woman' before the law, they are socially constructed categories and the law is one of the sources which informed such categories. The focus is then, in the discourse, on

'how the law works to produce gender' (Smart 1992:33-4). However, to find the way in which law engages in such a role the first important step is to acknowledge that law is 'as complex and contradictory as the dominant social order it reflects' (Naffine 1990:13), that is, there is not such a thing as the 'unity of law' and the law can appear as favouring women's interests but also preserving the conditions for women's subordination. Consequently, there is not a 'simple instrumental relationship between law and the structure of patriarchy' as radical feminism proposes (Smart 1982:144, Naffine 1990:14).

Another central idea is the creation of 'knowledge' as authorised discourses. Smart (1991:4) refers to the law as 'a body of knowlege/rules' 'which concedes little to other competing discourses'. In this sense, the law generates a 'truth' about women that overcomes or surpasses the women's own account of truth. Her analysis of rape cases is an inspiring analysis of these issues (Smart 1989).

Specifically on domestic violence, Freeman (1982:139) states:

'It is clear that not only does the law serve to reproduce social order, but it actually constitutes and defines that order. The legal form is one of the main modalities of social practice through which sexual stratification has been expressed. Law defines the character and creates the institutions and social relationships within which the family operates'.

He maintains that even when the gross manifestation of women's subordination has been eroded from legislation and has been replaced by equality and recognised female personal autonomy, the law reveals its 'ideological power' when intervening in domestic violence, for instance, through the criteria employed by judges, prosecutors and police. (Freeman 1989:18).

This approach reveals the inappropriateness of certain domestic violence strategies which rely on the promises of the formal legal reforms enforced through a legal system which 'constitutes part of that problem' (Freeman 1982:132). For Freeman (1989:32): 'The legal system cannot solve the problem of domestic violence because the problem cannot be solved by tackling known cases of violence and that is the only way the law can operate' but it can challenge the problem if, at least, their legal representatives do not behave as justifying the unequal power structure within the family.

It is difficult to identify a strategy on domestic violence reflecting a poststructural approach, however, whenever feminists question the role of the police, acknowledge the necessity to improve the space of the complaints and other procedures, or design wider alternatives to face domestic violence, they are taking into consideration the limits of the legal system explained here.

1.4 Postmodernism and the unessential women.-

The term postmodernism encompasses a diversity of authors and ideas that have in common their questioning of the main presumptions of modernity. Particularly, authors like Jean Francois Lyotard have challenged the belief that reason and the scientific methods can establish objective and universal knowledge (Parpart 1994:1)⁵.

Trying to clarify the confusion between post-structuralism and postmodernism (commonly found in literature⁶), Smart (1995:9) suggests that post-structuralism concentrates on analysing discourses and social subjects representations, postmodernism instead is a critique of epistemology 'It makes us rethink and reconsider what we think we know'. For Lyotard (1984) social reality is too complex and heterogeneous to be 'totalised' in general experiences or categories such as

⁵ See also Santos (1995)

⁶ See for instance Barnett (1998)

'gender, race and class' and that doing so is to silence and to deny other possible accounts of reality (Sarup 1993: 154, Parpart 1994:2).

Feminists have had different reactions when confronted by post-modern ideas. Since postmodernism is concerned with challenging the development of grand theories to explain social reality, the idea of women's oppression as an integral female experience which is explained by the sole cause of patriarchy is dismissed. This has produced much rejection from groups of feminists who find that post-modern ideas do not have any feasible application and on the contrary undermine affirmative action to improve women's situation. In this sense, Parpart (1994:2-5) points out that the major critique to post-modern ideas come from the liberal feminists, particularly, those involved in the design of policies at international level (mainly at the UN, World Bank and the ILO). They believe that post-modern ideas produce 'political fragmentation and the dissipation of awareness and feminist activism' (Parpart 1994:5). Finally, it is considered that 'postmodernism' is another fashion of male academia which at other times has not hesitated to challenge the main feminist claims.

Other feminists, however, are inspired by postmodernism to rethink the diversity of women's experiences. For instance, black feminists in the United States reflect on the experiences of the oppression of black women as substantially different to those of the white American women (Barnett 1998: 192, Parpart 1994:6, Waylen 1996: 8). There are also others feminists like Chandra Mohanty (1996) challenging the notion of 'third world women' as an undifferentiated 'other', 'oppressed by their gender and the third world underdevelopment', that appear in the narrative of Western feminists. Third world women are presented 'uniformly poor, without power and vulnerable' whilst Western feminists hold a self-image of 'modern, educated and sexually liberated

women'. They are the 'role model' and their recipes circulated as the right way of doing things in relation to the liberation of women, particularly, of third world women. (Parpart 1994:6-7)

1.4.1 'Intersectionality'.

Waylen (1996:8) points out that feminists influenced by post-structuralism and postmodernism, have become increasingly interested in 'notions of identity and the ways in which subjects are constructed'. In this exploration, it is important to understand how different categories of oppression such as race, class, gender, culture and ethnicity interact and affect women's personal identities. The literature refers to these intertwined categories as 'intersectionality' (Crenshaw 1994:94-5)

Specifically reflecting on the issue of domestic violence, the literature offers some studies on the situation of black women and migrants in the United States. For instance Crenshaw (1994) identifies two levels of the intersectionality: structural and political. The structural intersectionality referred to the disadvantaged social and economic situation of 'minority' groups. In this sense, resources offered to black women and migrant women are not sufficient to overcome their situations. Black women suffer more unemployment and have less training than other sectors of the community. Additionally, migrant women, particularly the 'Latinas', have to deal with their lack of proficiency in English when going to the authorities and also the fear of being deported when their legal status is still uncertain. The political intersectionality refers to the black women's location within two subordinated groups 'frequently pursuing conflicting political agendas'. The feminist claim asserts domestic violence as a problem of *all* women overlooking particular dilemmas that black women have to face because of racism (Crenshaw 1994:99-110). Just as one

example, Ferraro (1996:88) reports that some black women who called the police for domestic violence problems finished up being imprisoned themselves for 'investigations'⁷. The conviction in black women and other so called 'minorities' groups of the prejudice that public authorities still hold against them, discourages them from attending the legal system and certain social services. Crenshaw (1994:103) states: 'the desire to protect the home as a safe haven against assaults outside the home may make it more difficult for women of colour to seek protection against assaults from within the home'. On the other hand, anti-racist campaigners will tend to deny black men as perpetrators of domestic violence for the sake of challenging racist stereotypes. Some campaigners have even gone further to justify male violence as part of the 'identity' of the black community (Crenshaw 1994:101-2).

1.5 Domestic violence as a human rights violation.-

The 1990s international campaign to address women's rights as human rights appears to contradict post-modern formulations and is evidence of the distance between the feminist academic discussions and the international activism.

In this global campaign for women's human rights, the dichotomy private/public is stretched to the limit comparing the violence against women with other forms of human rights violation in which traditionally the state has been the infractor. The main argument is that so much gender violence is perpetrated by private individuals that it should not be ignored as an issue of human rights (Charlesworth et al. 1991). It has also been suggested that the state is responsible for the non prosecution of the cases of gender violence, consequently, if it fails it is in a way, an accomplice (Romany 1994).

⁷ cf. Freeman (1989:25-6) based in UK

The central idea of the feminist perspective on women's rights as human rights is the concept of *gender violence* or the so called 'violence against women'. This refers to all acts of violence or abuse that women suffer for the fact of 'being women', as a consequence of their subordinate position in society⁸. It includes the most diverse types of gender-based abuse such as domestic violence, rape, women trafficking, genital mutilation, sexual harassment and death by dowry amongst others.

From the seventies onwards, feminists have worked and campaigned on the issue of 'violence against women' at international levels. In 1979 the United Nations adopted the Convention on the Elimination of all forms of discrimination against women (CEDAW) which was regarded as a great advance in the defence of women's rights, however, this convention did not address explicitly the problem of domestic violence. This omission 'prompted the formation of a global coalition of 900 women's organisations, which successfully lobbied' for recognition of gender violence as a human rights violation at United Nations level. In 1992, CEDAW was amended with a recommendation 'to protect women against all kinds of violence' and from 1994 a UN 'Special Rapporteur on violence against women, its causes and consequences' is responsible for reporting the problem at world-wide levels. Women met at the fourth United Nations World Conference on Women in Beijing promoting a 'Beijing Platform for Action' which urged governments to 'take integrated measures to prevent and eliminate violence against women' (British Council 1999:3-4). In these international actions the lobby of Latin American feminists has played a leading role (Cullington 1994:197).

In a feminist understanding, domestic violence has been considered as the main expression of gender violence and specific strategies have been designed to tackle it in

⁸ See, for example, the book edited by Peters and Wolper (1995), particularly Bunch (1995).

its dimension whilst acknowledging the need for specialised bodies of officers, activists and academics. To subsume domestic violence in a global campaign for human rights has complicated an already complex problem and this is being done at both levels, at the practical level (implementation) and at discursive level.

At the practical level we can observe two trends. There is a channel of resources toward the global issue of women's rights as human rights. At present, there is a self-critique of the previous overemphasis on domestic violence in detriment of the general issue of gender violence. A report of the British Council (1999:6) reads as follows: 'It is ironic that our attempts to highlight violence within families may overshadow the violence committed by those outside them'. This self-critique could be valid in countries which have dedicated resources to face the issue of domestic violence but certainly does not apply in countries where the problem has hardly been in the public attention. Additionally, in richer countries there is a set of services provided by the state, in most European countries there is an experience of a 'welfare state', however, in poorer countries like those in Latin America, there has never been a state as provider of basic services for the population. In our countries, NGOs dedicated to improving women's position in society were able to channel international aid to tackle the problem, becoming almost the only social support in cases of domestic violence. At present, the NGOs, under pressure from international funding bodies are concentrating on working 'with the state' because these bodies hold the presumption that there is an infrastructure that can be successfully employed to address the issue of gender violence in its whole complexity. The second trend, is a paradoxical one, it has been reported that many governments have confused the terms of 'violence against women' with 'domestic violence' and they have concentrated their

policies on this area. For instance, it is in this context in which laws on domestic (or family) violence have been enacted in various countries (British Council 1999).

At the discursive level, the most important character of the campaign is the homogenisation of 'all' women suffering violence and responses to this wide range of situations of gender violence. A report by Oxfam (1999:2) about the result of a 1998 international workshop on violence against women states that responses to violence against women can be developed '...within a framework of sanctions (exacting cost from the perpetrators) and sanctuary (supporting and empowering women)' In a British Council (1999:20) report on domestic violence can be read the following: 'The basic philosophy of any strategy on gender violence must be to support and empower women and girls and to challenge abusive men'. In this report the concepts of 'sanctuary' and 'sanctions' are also employed. It also proposes to challenge gender violence: 'ending the silence', in the rationality of taking the private into the public.

However, there are expressions of gender violence that can be placed in what the West would call the 'public sphere', such as genital mutilation which is performed as a central community-ritual event, another case is that of mass rapes in war. There is also the problem of non differentiation between perpetrators. In many cases of gender violence women are the aggressors, as in the case of genital mutilation or in the cases of death by dowry. It has been explained that these women as perpetrators are subsumed in a structure of male power which conditioned them to behave in such a way. While this may be true, still it is quite difficult to see how such a violence can be challenged at practical level without addressing women as perpetrators. Additionally, for the victims, there is a difference between a partner who beats them and a paramilitary who rapes them in times of war. There are also obvious differences

between 'the victims'. It is not the same to be a beaten women in a middle class urban neighbourhood, as to be a beaten poor black woman or a woman in the highlands of Peru, in terms of resources and in terms of perceptions by the legal representatives⁹. Another aspect of the discursive level of this global campaign is the emphasis on the extreme cases of violence in intimate relationships in order to 'make the case' of domestic violence as human rights violation, which contradicts the original feminist discourse that domestic violence is a pervasive and 'normalised' event in the life of women and men. The literature addressing women's human rights contains plenty of quotations such as this one in Beasley and Thomas (1994:323):

'Maria was brutally assaulted in her own kitchen in England by a man wielding two knives. He held one of the weapons at her throat, while raping her with the other. After he finished, the man doused her with alcohol and set her alight with a blow torch. Maria lived through the assault to prosecute the man....'

While cases like Maria exist and are a painful truth, the experience of working in domestic violence reveals to us that most of the coercion that women suffer in their daily life by their partners is not necessarily expressed in an ostensible physical injury and often is more an imminent than an actual violence but enough to make women live in fear. For instance, in the women's police station of Lima, 10,000 women arrive every year complaining about domestic violence, but only approximately 4,500 of them have evidence of physical injury, the rest do not fulfil that requirement. All 10,000 women suffer domestic violence but in the form of threats, insults or 'minor'

⁹ The following comments of Esteva and Prakash (1998 117), serious critics of the Western 'global project' of human rights, is certainly illustrative of what I am trying to express here 'Grandeur and more global than all the other conferences now regularly held from Malaysia to Mexico to promote human rights, its participants sought to liberate and bring justice to all the oppressed peoples of earth, and especially those whom they deem the worst off the impoverished woman and girl in the Third World, bought and sold, beaten and raped, a veritable slave of husband, in-laws, or employer, to the 100 million missing women of Asia -the girls who do not survive their conception. Forty thousand determined delegates flew back to their nations-states from Beijing with a 12-Point Platform for global action. Of Herculean dimension, this Platform proposed bringing the unschooled, unclothed, homeless, unfed, abused, tortured and unfairly imprisoned under one humane universal umbrella of human rights'

physical assaults like pushing, slapping in the face or pulling the hair (Estremadoyro 1993). On the other hand, in the global campaign the perpetrators are seen as violent, alienated men, and not as 'ordinary' husbands that is precisely what the battered women movement was trying to address. The discourse of human rights has impacted in such a way on the issue of domestic violence that Marcus (1994) proposed that domestic violence should be re-baptised as 'terrorism in the home'.

Another aspect of this perspective on women's human rights is reinforcing the tendency to take the law and the legal system *unproblematically*. In the literature on the subject¹⁰ the legal system is presented as failing to provide an appropriate legislation and a gender awareness in their legal representatives. In this sense, there is implicit the idea that, as Smart would say, implementing 'corrective' measures, the law is able to provide adequate solution to gender violence cases. The law is rarely considered, as 'part of the problem' (Freeman 1982:132). Additionally, the law is almost exclusively thought of as the 'state law'. Other ways of solving conflict, or as Santos (1995) would say other 'legal landscapes' are simply not taken into account.

1.6 Domestic violence in the criminal system.-

Since the 1970s, when feminists started to bring domestic violence into the public gaze, they have forcefully demanded that domestic violence be recognised as a crime and, consequently, subject to the criminal system (Frish and Caruso 1996). Nowadays the role of the criminal system to eradicate domestic violence is not self-evident¹¹. Particularly in the last decade a wider legal response has been offered¹². The notion of domestic violence as a crime still subsists but legal remedies are approached in a

¹⁰For a summary of world-wide legal responses on gender violence see for instance Connors (1994) and British Council (1999).

¹¹ See Barnett (1998: 261-4) for instance

¹²For an inventory of legal responses on domestic violence around the world see Armatta (1997)

combination of legal jurisdictions (criminal and civil) and special jurisdictions (e.g. family courts).

In Latin America the approach which has been prevalent is the criminalisation of domestic violence (Chiarotti 1993:81). There is a strong belief in most Latin American activists that if any other assault is considered a crime, violence between intimates should not be the exception. They argue that the criminal law has a 'symbolic value', because it deals with the behaviour considered deviant in society. Additionally, considering domestic violence as a crime makes the problem 'visible', this is 'deprivatized domestic violence' (Chiarotti 1993:81-2). Frish and Caruso (1996:105-6), based on the US experience, also suggest:

'Predictable law enforcement conveys the message of wrongfulness and social rejection and educates victims, offenders, children, neighbours, and the public at large that such behaviour will not be tolerated. Criminalization focuses the legal authority and coercive power of the criminal justice system on a set of behaviours now perceived as socially dangerous and currently not manageable using informal means of social control. Criminalization is thus more than the manipulation of law. The process includes the planned change of individual perceptions, organizational policies and procedures, and ultimately, the status quo of community life.'

To recognise domestic violence as a crime removes the idea that this violence is an 'individual pathology' rather than a behaviour 'deserving punishment' (Frisch and Caruso 1996:105). In the UK, authors like Freeman (1989:27-8) have supported this position showing their disapproval of other kinds of treatment to domestic violence. He clearly does not support the case for treating domestic violence as a civil wrong. He refers to the 'crisis interventions' programmes' that privilege 'counselling and pre-trial conference' as embracing 'an ideology which tries to allocate blame and keep

families together' preventing the appreciation of 'wife beating' as 'a brutal criminal assault and not just the symptom of a troubled marriage'.

From the scant literature questioning the criminalisation of domestic violence, Ferraro (1996) brings an interesting perspective. She shows us how a 'feminist-inspired movement to help battered women' appeared conciliatory with the 'most reactionary' discourse on 'crime control'. Ferraro (1996:82), differing with Frisch and Caruso (1996), states that 'the criminalisation of battering was not the primary focus of grassroots activists in the 1970s, but it has become central to the current discourse'. The first critique that Ferraro elaborates is the homogenous category of 'battered women' and of 'those who batter'. Despite the evolution of the feminist thought these 'unidimensional' images have not changed at all. This rigid perspective added to the demands for more repression, resulting in feminist demands being accommodated within conservative agendas looking for an increase in crime control. Ferraro (1996:82) states:

'...conservatism has been more willing to accept feminist claims which can increase repression, can be merged within the criminal system than any other feminist claim that entitles to a more positive action in society'.

Ferraro (1996:83) remembers that when in the 1970s feminist activists demanded that domestic violence appeared in the public gaze it was with the purpose of revealing the political dimension of the male power in women's life hidden in these 'individual stories'. When challenging domestic violence feminists were looking for the 'radical transformation of patriarchy', which included revealing the 'nuclear family' itself as a site of oppression.

The process in which domestic violence has come to be considered a crime shows a different turn to the first feminist political agenda. In the US, particularly during the conservative government of Ronald Reagan, in the first half of the 1990s, is when more 'effective' laws were enforced to treat domestic violence as a crime. For Ferraro (1996:85-86) these attitudes coincided with the restructuring of social services that by 1992 almost eliminated the 'welfare for the poor'. To her the 'official discourse' turned the demand for more protection toward the battered women into a 'crime control model'. As a result 'violent men have become the focus of criminal intervention and battered women the object of mental health reform', the political dimension of questioning domestic violence as a main expression of patriarchy has been 'overshadowed'.

Ferraro (1996:86) goes even further in questioning the affirmation much celebrated by the feminists, that arrest is an effective deterrent to domestic violence. In the US a pilot study was carried out in the 1980s by the police in Minneapolis which reached the conclusion that the arrest was an effective measure to stop violence. Six more studies were funded to verify the Minneapolis results but these studies did not find that arrest was a more effective measure than other modes of intervention (e.g. than separation or mediation). The latter conclusions however, were not taken into account in establishing the police attitude when intervening in domestic violence cases¹³. The recognition of the arrest as the best police attitude in relation to domestic violence has been considered a triumph in the contemporary feminist agenda, 'this was understood to challenge legal tolerance of woman battering'. Ferraro (1996:88) remembers the warning of the 1970s feminist who claimed:

¹³Freeman (1989), based also in empirical studies, affirms the positive effect of detention as a deterrent to domestic violence.

'We must caution ourselves not to overemphasize the role of the police in the eradication of spouse abuse and work on the elimination of violence as means of enforcing the dominant power relationships of men over women.'

Additionally, Ferraro (1996:88) mentions that the role of the police can be evaluated in a different way for different women, referring to the issue of 'intersectionality'. For Ferraro (1996:88) the nature of the criminal law will never be able to take into account such an intersectionality. Criminal law has a concept of 'perpetrator and victim' in which considerations of 'race, class, and sexual orientation that impinge on the experience of battering' do not have a place. On the other hand, the role of the police and even shelters for battered women were seen by the feminist as aids in the transformation of the women's situation toward a more emancipatory agenda. Ferraro (1996:89) expresses these ideas as follows:

'The possibilities which have been obscured by the crime control discourse are the ideals expressed by feminists in the 1970s. Establishment of a guaranteed minimum annual wage, broad-based changes in our economic system, revaluing women's work, and elimination of male privilege within the family are goals which have no language within the system of criminal law. These are goals involving the elimination of women's dependency on men. They belong to a discourse of liberation which does not constrict women's pain to a legal or scientific category. A discourse of liberation entails an understanding of the interlocking ideas, practices and institutions which perpetuate subordination and those that set us free.'

Zaffaroni (1993:21) goes further than Ferraro when claiming that battered women do not have a place in the interest of criminal law. For him battered women do not have a place because 'the victim' is no longer part of the criminal relationship, it is the state. 'The state is the sole offended'. While Maidment (1980:30) notices that the cases of domestic violence which fully entered in the criminal system lost the possibility of other kinds of intervention both for the perpetrators and battered women, Zaffaroni

adds that the victim simply 'disappeared' and is no longer part of the 'conflict resolution', here there is not 'struggle or settlement' but an act of 'vertical power', the power of the State. We are offered protection by the state under the form of the prosecution of a few individual cases which enter into the criminal system. Zaffaroni called these cases the 'minuscule selection of 'scapegoats'. Under this reflection, the political agenda demanded by the previous feminists becomes indispensable if we truly want to eradicate domestic violence.

1.6.1 Protective measures.-

'Injunctions', as they are called in Anglo-Saxon law, emerged to provide the victims of violence a more effective protection in wider circumstances and are fundamentally a means of preventing harassment in all its forms by the aggressor. The domestic violence laws in Latin America, whether they have criminalised domestic violence or have created special jurisdictions, offered to the victim the possibility to apply for 'protective measures' (e.g. to forbid all types of visit by the aggressor, to oblige him to leave home etc.)¹⁴. As with the injunctions, they are 'in essence civil coercive orders' (Maidment 1980:28) but in case of disobedience it gives the police the authority to intervene. This intervention is not always effective and the police fail many times in enforcing the orders. In countries like Peru a 'protective measure' is almost a 'declarative principle' with little practical impact, as will be reviewed in chapter five.

¹⁴ Armatta (1997) mentions these Latin American experiences. cf. Barnett (1998:261-3) for UK.

2. Differential engagement with law.-

2.1 Post colonial law.-

'Post colonialism' is the subject of a broad intellectual debate¹⁵. The most obvious connotation of the word 'post colonialism' concerns the social, political and economic impact involved in the process of the 'transition from colonialism to self-determination' (Darian-Smith 1996:291-2). In the South American independence experience, this process was carried on by the same colonial elite in its aspiration of modernisation and political and economic autonomy from the metropolis. The Republican elite were heirs to the dichotomy established by European imperialism with the native population: The West as the civilised, the 'others', the non-western, people to be civilised. Europe was self-constructed as 'different and superior'. (Darian-Smith 1996:294) The same reasoning was reproduced by the elite of the new nation-states drawing a distance between them as 'more western', more white, more descendants of Europe and the other cultural -and more original- groups of their own countries

However, to build a nation-state it was necessary to create an illusion of a national project that all citizens shared. As Bhabha (1994:171) states: a newly built nation had to 'give a hegemonic "normality" to the uneven development and the differential, often disadvantaged, histories of nations, races, communities and peoples'. In South America, under the label of 'freedom from colonialism', power structures, relations of oppression were perpetuated further than the post-colonial time. In fact, these asymmetrical relationships formed the base on which these new nations were

¹⁵For a summary of main ideas and debates on post-colonial theory see Childs and Williams (1997). One of the many publications containing a sample of post colonial authors is Mongia (1996). The journal *Social and Legal Studies* dedicated a whole issue (1996, vol 5/3) to the link between 'post colonialism and law'.

established. Here is where the role of law is fundamental, or as Fitzpatrick (1995a:xv-i) suggests the building of the nation is 'integral' to that of modern law because it is the law which provided the illusion of 'universalisation' to this conflictive reality, it endorses the 'civilised' project.

Trazegnies (1980a:38) claims that in Peru two imports of legal systems occurred. One with the Spanish conquest during the sixteenth century and the second during the nineteenth century. The first was a 'forced imposition' the second a 'free import', the election of an independent country searching for adaptation to modernisation and capitalist development. The claim for a new legal framework, for the modern law, is the claim to be accepted in the 'civilised' word, in the modern project. As Darian-Smith (1996:296)¹⁶ suggests the law with its 'mythic universalism', 'provides an overarching frame, a totalising narrative, by which to structure, organise and idealise' the action of these new nation-states. It helps to build the spirit of *one nation*, the 'general spirit' and it appears as defending the 'general interest'. The law gave an 'illusion', the reality was exploitation and discrimination particularly against the native population for long after the independence. Even today some authoritarian features of the state still persist as well as the denial of the multiculturalism of the country. In this sense, some authors like Purdy (1996:406-7) arrive to a radical conclusion: colonialism is not a fact of the past for the indigenous groups. For them the reality is colonial and they still are objects of so much usurpation and alienation. She claims (quoting Moody 1993:xxix¹⁷): 'to treat colonialism as a thing of the past is to ignore ... the continuing seizure of indigenous peoples' lands and the adulteration of their spirituality and culture'.

¹⁶ Inspired by Fitzpatrick 1992

¹⁷ Moody, R. (1993). The indigenous voice, visions and realities. Utrecht: International Books

2.1.1 Criminal law.-

In South American colonial times -as elsewhere- the law was used to shape the colonised people into exploitation. The notion of the 'savage' created by the civilised West exposed the non-civilised people to a permanent state of transgression¹⁸. For Norrie (1993) the criminal law has remained as the official way in which repression is performed within a framework of legality. He (1993:98) states: 'Thus in the criminal law, the rule of law enforces an exploitative and oppressive social system, but it does it in a way that proclaims its self-limiting character'. Since the state holds the monopoly of the use of force and also concentrates the production and implementation of the legal norms, it has the attribution to declare the illegality of certain events or behaviours¹⁹. This is mainly done through the criminal law that is the 'state's most efficient apparatus of coercion' (Carson 1974:70)²⁰.

Purdy (1996) reaffirms these ideas when defining the police station and the prison as 'sites of legal violence' or as an installed style of repression toward the native population until the present. Purdy's (1996) study of the rate of imprisonment in Australia indicates that there has been an increase of imprisonment as a percentage of Aboriginal people and by now they make up 30% of the prison population. She (1996:412-3) finds the same in relation to the poorest population in Trinidad and Tobago having noticed that the major rate of imprisonment occurred in 1989 and 1990 during the popular uprising against the intervention of the IMF. In Peru most of the

¹⁸These ideas are inspired by Fitzpatrick 1995 (a,b) See also Norrie (1993)

¹⁹ See Rubio and Eguiguren (1985:120)

²⁰There is a wide bibliography on the role of criminal law within state modern law part of which is summarised by Carson (1974) The basic idea is that historically the criminal law was designed to repress poor people and protect the interests of the wealthy (in a process that it is well explain by Foucault 1978) and that until present criminal law is 'formulated and administered by those segments of society which are able to incorporate their interests into the creation and interpretation of public policy' (Carson 1974:70)

intervention against peasants has been 'naked repression'. The criminal law has provided the legal framework to declare peasants' protests as illegal but very few people have been prosecuted by a criminal court.

2.1.2 Human Rights.-

Esteva and Prakash (1998:10-11) qualify Human Rights as one of the 'sacred cows' of modern thought and nowadays as one of the expressions of 'think global'. With other terms, Gaete (1995:113-116) expresses the same idea unveiling the process in which Human Rights have become a 'political conditionality on aid-receiving' for the third world countries. The assumption is that the signature of human rights covenants combined with the strength of other democratic state institutions set the necessary stability and formal legal framework for the operation of the international market. Gaete (1995:114) comments; 'Human rights provide universal standards of governance and political rationality'²¹.

Central to the debates on human rights is the tension between one unique standard of values -suspiciously Western- that countries holding a variety of cultures have to accept. In these debates, there are those who take sides with the cultural relativism and others who have become human rights 'fundamentalists'²².

For his part, Santos (1998a:180-244) is concerned with the state's monopoly of human rights. In other words, the state performs both roles, as the infractor but also as the granter. It is the entity which 'concedes' the human rights either by incorporating

²¹From 1975 the US government conditioned its external aid to the acceptance of human rights covenants. Contradictorily, the US government has not signed some of these documents. This is not the only evidence of its 'double standard' in relation to human rights. There is also the fact that the US government has not hesitated to overtly support leaders committing gross human rights violations, as it did with Pinochet in Chile. (Santos 1998a:184, Gaete 1995:113)

²²There is a wide literature on the subject. Gaete (1995) summarised main arguments in debate. Esteva and Prakash (1998) are an example of a critical position of the whole issue of Human Rights and Santos (1995, 1998a) supports some of these critics but believes in the emancipatory capacity of the international human rights activism.

them into the domestic laws (e.g. the Constitution) or making the international covenant part of the national legislation. The human rights can be both defended or violated by the same protagonists: the state's representatives. In principle, the state can be challenged through the international system, for instance, in the case of Peru, through the Inter American Court. Santos (1998:188) assesses, however, this court has had 'a very scant activity' because the level of resources needed to take a case there makes this an unlikely possibility. Consequently, human rights enforcement is inescapably linked to the features of the nation-state and its legal system.

2.2 Legal pluralism.-

As a general idea, legal pluralism refers to the recognition of the existence of other sources of 'legal norms' apart from the state²³. Legal pluralism has been a main subject of interest particularly for the legal anthropology and the sociology of law. For anthropologists, the study of law has been central since it was constituted as an independent discipline in the second half of the nineteenth century. Particularly Great Britain 'funded and supported ethnographic research' to obtain information to facilitate 'the task of imperial governance' (Conley and O'Barr 1993: 41-55). However, it is with Malinowsky, in the middle of this century that an anthropological perspective in law became especially influential. Malinowsky focused his attention on identifying sources of social control, that is, of institutions responsible for the management of considered deviant behaviours in a given society²⁴. The impact of Malinowsky's work is such that until recently legal anthropologists have continued with almost the same

²³ There are three 'classics' in the conceptualisation of legal pluralism: Santos (1977, 1985 writings compiled in 1995), Merry (1988) and Griffiths (1986).

²⁴ Especially in his work 'Crime and custom in the savage society' (1926).

enquiries into 'what behaviours perform the functions' that are possible to be classified in our understanding of 'legal' (Conley and O'Barr 1993: 47)²⁵.

What was central in the observation into the 'legal regulations' in 'primitive societies' was the process by which the introduction 'of European colonial law created a plurality of legal orders', that is, a different set of norms by which colonised people were ruled (Merry 1988:869-70). Scholars denominated this situation as 'legal pluralism'. However, this was a 'juristic legal pluralism', as defined by Griffiths (1986), which focuses on the recognition of the central state of the existence of so named 'customary', 'personal' or 'religious' law as legal 'sources with a special field of application.' (Bentzon 1997:168). This recognition involved making these 'bodies of law' (Woodman 1997:182,188) enforceable through the courts.

2.2.1 Semi-autonomous social fields.-

The subject of legal pluralism did not stop at the study of former colonies, neither in the 'juristic legal pluralism'. The work of Sally Falk Moore came to widen the perspective in the issue, and although she did not use the term 'legal pluralism', her concept of *semi-autonomous social field* (1973) contributes to the observation into the so called 'complex societies'. What defines a semi-autonomous social field is its capacity to 'generate rules and customs' and 'to induce or coerce compliance' (Moore 1973:720). She (1973:721) adds:

'...the formal legal institutions may enjoy a near monopoly of the legitimate use of force, they cannot be said to have a monopoly of any kind on the other various forms of effective coercion or effective inducement. It is well established that between the body politic and the individual, there are interposed various smaller organised social fields to which the individual "belongs". These social fields have their own customs and rules and the means of coercing or inducing compliance"

²⁵ For an example among Peruvian legal anthropologists see particularly Peña (1998)

Moore (1973:723) takes an example from the dress industry in New York and finds that its activities were imbued with 'legal, illegal, and nonlegal norms' that conditioned people's behaviour in that particular sector. In the end, it was not just that people follow other rules than that of the formal legislation but that 'the external legislation has not had, and could not be expected to have, the apparently intended effects, precisely because of the semi-autonomy of the social field' (Griffiths 1986:30).

Moore's ideas have been very inspirational for the so called 'Women's law' approach because they emphasise the different areas of regulation which inform women's lives. In fact, very few aspects of women's lives develop around courts or interacting with other legal system's representatives, consequently, the other source of 'norms' and space of negotiation for women are basic to understand women's position in society (Hellum 1995). We come back later to this point. Additionally Moore's semi autonomous social fields help us to understand how the legal system is reproduced in a particular local setting and it influences by a diversity of cultural elements of that particular locality producing different consequences than those expected by the formal law. In the present work, this will be evident in the role of the judges of the peace.

2.2.2 Justiciability and rhetoric

The inspirational work of Moore has the 'danger' of suggesting that every other normative element in a relationship is 'law' or 'legal norms' too. Santos (1994:28) warns us about it and having researched extensively in other producers of 'law' apart from the state, he arrives at the conclusion that there are two fundamental elements that make a particular event one of legal pluralism: *normative standards*, and *justiciability*, this is 'the capacity of a third person to adjudicate a conflict that arises

through the practising of such norms'. Consequently, Santos (1995:112) describes 'law' out of the state as:

'...a body of regularised procedures and normative standards, considered justiciable in a given group, which contribute to the creation and prevention of disputes, as well as to their settlement through an argumentative discourse coupled with the threat of force.'

The 'justiciable body' is able to mediate and settle disputes. It can be made up by an individual or a group, either lay persons or persons with legal formation. He adds: 'this is a fundamental idea, the possibility of the intervention of a third party to resolve in normative terms, that is, with reference to some norms'. The threat of force refers to sanctions that can be organised or diffused. The non compliance with a norm should have a cost and this cost involves a diversity of social sanctions. Santos (1994:28) adds 'a community can not have prisons but it can sanction in other ways'. The loss of reputation, for instance, is a typical diffused sanction because it can negatively affect the survival of a person within his/her community.

In more communal-oriented societies, like those studied by Santos, the 'main structural element' performed in these kinds of setting is the 'argumentative discourse' or *rhetoric*. For Santos, *rhetoric* is the 'art of persuasion by argumentation' and in the communal oriented societies the truth is rhetorical or as he expresses:

'a mythic moment of rest in a continuous and endless argumentative struggle among different discourses of truth' it is the ever-provisional result of a negotiation of meaning within a given relevant audience...' (Santos 1995:38)

Additionally, the conflicts are evaluated by the 'judge' in their social dimension. They are de-privatised, or in other words are not strictly considered as an affair between two

individual parties. It takes into account how particular disputes affect the existence of the group itself. The 'judge' holds, then, a different 'neutrality' (Santos 1995:130-2).

The rationality of this kind of law is completely different to the 'modern law', which under the influence of positivism lost its original rhetoric to become legal science (Santos 1995:39). It reflects on these issues when analysing the role of the judge of the peace as main forum for conflicts resolution.

2.2.3 The Peruvian experience.-

The interest in the diverse normative regulations of a multicultural country like Peru appears as a sustained subject of reflection between legal scholars by the end of the 1970s. There are two perspectives: from *legal anthropology* (called in Spanish *antropologia juridica*) the focus has been on recognising sources of norms and institutions similar to those in modern law (as 'Malinowsky's style') and consequently, to analyse the discrepancies between this legal plurality and the formal legal system²⁶. These scholars stress the lack of attention of the legal system to this phenomena and its failure to incorporate these 'informal' legal sources within the official law. The concept of state law is not questioned and the sources of 'extra-legality' are assumed as a more or less coherent set of norms. Still, these efforts are quite remarkable within the positivist Peruvian legal academy.

From the *sociology of law* the focus has been on the so called paralegality or extra-legality²⁷. The interest is in the possibility of the social movements to create alternative forms to those of the official law that have failed in reflecting the interests of the disadvantaged groups in society. These phenomena are described by Tamayo and Vasquez (1989:140) as: 'the emergence of alternative practices linked to an idea

²⁶ See for instance Vidal (1990), Trazegnies (1993), Revilla and Price (1992), Urteaga (1993), Urquieta (1997) and Peña 1998

²⁷ Terms used as synonymous

of popular justice generated by the oppressed'. These groups are also those with the least possibility to access to the official legal system.

Confronted by this situation the state has had an attitude of 'laissez-faire' providing that these 'alternative practices' do not threaten its interests. Santos (1994:29) evaluates this indifference of the state as very convenient for its own purpose. He argues:

'The existence of the legal plurality can be functional for some aspects of the development of the State, in fact it is a way to dispense the State of the functions that it was performing before or to maintain the populations quiet but excluded. The acknowledgement of parallel legal orders is progressive if they are part of a political configuration -as it would say in English, of empowerment-, of given power, because there are forms of legal plurality that in fact means disarm. Consequently, a progressive way is the one which contributes to arm the people, not in the sense of an army revolution- but of having more competence to reclaim more of their rights, of having a stronger cultural identity, more positive, that it does not allow them to think of themselves as inferior, as illegal, as marginal, and because of that place them in a situation of natural fatality as nothing could be done'.

The paralegality tolerated by the state also brings us to the problem of who has the power to decide when this 'paralegality' becomes 'illegality'. This depends on the political agenda of the state. In the 1960s, the famous 'Huayanay case' struck the consciousness of sensitive legal scholars. An isolated community of the highlands of Ayacucho was devastated by the constant incursion of rustlers who not only stole the animals of the community but also had murdered men and raped women. The leaders of the community went to the official authorities to intervene. The authorities did not intervene but received money from the rustlers to free them of prosecution. Indignant, the community captured the criminals and killed them. The police took prisoner the leaders of the community and sent them to court. They were found guilty of murder and sent to a prison in Lima. In prison they fell ill and died shortly afterwards. The attitude of the state was different during the internal conflict with the Maoist group

Shinning Path (the 1980s-early 1990s) when the state encouraged the formation of the peasant guards and enacted a special law which recognised the rights of 'self-defence' against the subversives.

Additionally, the extra-legality is often encouraged by the same official representative to avoid performing their legal functions. It was very common in the Women's police stations, as in other police stations, to listen to how the police men and women encouraged the complainants to retaliate against their husbands. While this could be common sense advice in such a situation nothing protected women from being prosecuted themselves in the case that they are the one who produced bodily harm or even killed their partners. In this situation they have to face a legal system that commonly fails to acknowledge the right of self-defence for women in gender-violence situations.

2.3 Women's Law.-

The term 'Women's Law' refers to a feminist approach in theory and research developed originally in Norway by Tove Stang Dahl who looked into 'women's actual life experiences and life situations' in contrast with a law and a legal system which is fundamentally male²⁸. In the present work, the term 'women's law' is used in a wider sense, including those studies which have as starting point women's experience when dealing with the legal system, in societies marked by legal pluralism.

In these studies special attention is paid on how 'customary law' has been informed and reproduced until present. A historical review reveals that the so called 'customary laws' were negotiated between the colonial administration and the original authorities, as a way for the first one to control the population that the second ruled but also as a

²⁸ Dahl (1986), also see Bentzon et al (1998)

way for the original authorities to keep a level of control that by imposition of a colonial administration they were losing²⁹. A general principle was established: colonists were ruled by their 'metropolitan laws' while the colonised could retain their own customary or personal laws unless they were 'repugnant to morality or public policy' (Stewart 1996:29-31). In this process a 'permanent' character was assigned to customary laws, in order to level them to the colonial system based on precedents where permanence and predictability were particularly important (Hellum 1995:26). The reality is that customs are in permanent change and as Woodman (1997:195) states:

'Many customary laws are the product of the exercise of power by particular interest groups in the societies concerned -by the elderly, the priests, the members of a particular caste, the members of particular families, the men'.

This 'permanent' character and the belief in customary law as main expression of cultural (or national) identity has contributed to preserve certain power relations in society, such as those between men and women³⁰. Consequently, when a greater advance in women's non discriminatory law is achieved at the level of the national laws these are 'overruled by discriminatory practices at the local level' (Hellum 1995:16). An important question is who 'has the discretionary power to choose the law which will govern a case' (Woodman 1997:195). Ann Stewart (1996) analyses cases in which women unsuccessfully went to the courts basing their claims on the national law as being more beneficial to them and ended being accused of acting against their own culture for challenging 'traditional' practices as held by customary law.

²⁹For instance Chanock (1982)

³⁰Baxi (1986) presents other cases in which 'non-state legal systems' aim to preserve 'repressive' and 'exploitative' practises.

However, it has also been suggested that very few aspects of women's life are developed through the courts. Feminist scholars such as Hellum (1995:16), much inspired by Moore's ideas, are particularly interested in the 'elaborate and complex rules which affect the position of women' and that emanated from 'other institutions than the state-courts such as the family, the church, the employer, the housing agency or the traditional healer'.

On the other hand, and what is particularly relevant about this approach for this work, is to consider how women take decisions based on the different aspects which inform their lives and configure their identities. As will be seen in this work, a beaten woman in the Andean communities, assesses her personal situation from her position as a *runa*, as a member of her community. Her problem is not a strictly individual problem which is the way that the legal system tackles these cases, but has different facets. In this sense, the judges of the peace are able to include the different elements which make up the context in which the conflict takes place.

Women's law approach widens Santos perspectives when talking about 'normative standards' as rules that are commonly known in a particular group. It calls our attention to who produces such norms and to whom they are applicable and if such normative standards, as a body of generalised rules, in fact exist at all. The answer is not always clear as will be explored later in this work.

Conclusions:

A literature review in the area of feminist approaches on domestic violence reveals that feminists have come to see and use the law as a means to improve women's situation. While within academic reflections the failure of law to provide justice for women became evident, at the level of international activism there was a tendency to

treat the law uncritically, relying on the law's self-proclaimed qualities of objectivity and neutrality, in such a way, that feminists often have believed that just changing the contents of discriminatory laws with no discriminatory devices could effectively improve women's status. In this process feminists also have failed to address the plurality of women's social and cultural backgrounds.

The feminist aspiration for addressing domestic violence in the public agenda has caused them to overemphasise it as a crime, losing other political dimensions of the problem. With this perspective, domestic violence has easily been accommodated in conservative agendas that are open to opportunities to increase crime control whilst being resistant to other feminist demands considered indispensable for a real change of women's status in society. All these shortcomings have been reinforced within the women's human rights discourse which has homogenised domestic violence with other gender-based violence in an undifferentiated scenario of victims and perpetrators.

Contradicting some feminist ideas on law, the exploration of the nature of the post colonial countries reveals the authoritarian features of the state and the functionality that modern law has had in perpetuating asymmetrical relations and even being used in much repression and exploitation of indigenous populations. Because of this process, disadvantaged groups are resistant to seeing the law and the legal representative as protectors of fundamental rights but rather as infractors.

The reflection on legal pluralism has been useful to acknowledge the different engagement of people with law and the recognition of other 'legal landscapes' (Santos 1995) which differ from the rationality of modern law. There are other producers of *normative standards*, apart from the state and there are other bodies of *justiciability* apart from the official judicial system. These bodies are going to fulfil the function

that these social groups do not recognise -or do not accept- from the state law. Women's law approach however, warns us how women do not necessarily participate to create these 'normative standards' in their societies because they are subordinate to the structure of local power which creates them. In that sense, women can be in permanent negotiation to achieve their right ends within such a structure and when necessary can even use the official law challenging more traditional rules.

CHAPTER THREE:

METHODOLOGY

Introduction

Santos (1995:125) writes: 'a personal account of one's own research is necessarily something of an autobiography and self-portrait'. Certainly, in my case, this statement is close to the truth. The reason is because I am a feminist lawyer and this thesis is permeated with self-criticism and a re-examining purpose, and maybe in the end with a reconciliatory tone motivated by my interviewees voices and experiences. In 1987, once graduated in law, I began to work in the largest feminist organisation in Peru, the self-denominated Women's Peruvian Centre 'Flora Tristan'. I worked for two years in an interdisciplinary project called 'Women's Organisation, Violence and Legality' and in 1989 I was made responsible for the legal office and other projects at the first women's police station in Peru, a post that I left to start these PhD studies. Consequently, I explain events and arguments as first hand information (because I was there), although whenever possible I support my narrative with secondary sources. The subject of this thesis was not new for me and I have accumulated questions throughout all of these years.

In Peru it seems impossible to separate a feminist reflection from the situation of social differentiation that we face, however, this very often happens. The necessity to consolidate a claim for 'all women' in a public space where women are much

overlooked makes us ignore how varied Peruvian women are. In 1988 when asking the women in shanty towns what they considered as violence, all sorts of answers came forward and these were much related to the situation of poverty in which they were living. Violence within the home barely appeared compared to the enormity of the unsatisfied basic needs and the daily struggle for survival. This is also violence, a tremendous violence. If poor urban women were part of the umbrella of 'all women', certainly women belonging to different ethnic groups and speaking different languages were even more 'invisible' in the feminist discourse. This work intends to bring the situation of Quechua women of the South Andean region into the discussion on domestic violence.

The 'omission' of the Andean reality is not the only omission that exists in the literature on domestic violence in Peru. Systematic data even on urban realities is scant and normally very limited in its scope. Two psychological studies on people's experiences of poverty and violence were carried out in shanty towns in Lima but these did not address specifically domestic violence¹. Two anthropological papers rethinking the issue of domestic violence within Andean culture were published by Harris (1994) and Harvey (1994). These reflections are based on the authors' fieldwork during the 1980s, which did not have as an objective the study of domestic violence. Specifically in law, studies of domestic violence have been almost non-existent. In the 1980s there was an institutional report of Tamayo, Loli, Vargas² on the experience of paralegality routes in a shanty town in a Limeñan peripheral district (San Juan the Lurigancho). I have two empirical studies on domestic violence, Estremadoyro 1993 and Estremadoyro 1995. The first was based on our experience in the legal advisory office in the first women's police station of Peru. This work is still

¹ Rodrigues Rabanal (1989) and Pimentel (1988)

² Within Peruvian Women's Centre 'Flora Tristan'

quoted in the official reports. My data in 1995 has not been published although I have circulated some information whenever I have participated in seminars, conferences or workshops. In addition to these studies I have collected material on domestic violence in Andean communities since my first 'formal' contact with women from South Andean communities in 1986, when I was invited to a seminar on women's rights by the Episcopal Social Action Commission. Throughout these years I have gathered data which has contributed to this thesis. Part of my data collected during 1995 has been fundamental in writing chapter five.

In spite of the fact that domestic violence in rural realities has not been the subject of any specific study, reference to episodes of domestic violence appears in many narratives writing by regional academics. From the compilation material of the anthropologists Valderrama and Escalante (1992) to other internal reports of local NGOs on their training work within Andean communities, it is possible to find evidence about episodes of domestic violence. These texts were very helpful because, as far as is possible, they let the reader enter into contact with the protagonists. I felt inspired by these narratives, and in my own work I tried to be as loyal as the interference of an academic work permits, to the words of my interviewees.

Consequently, the study of domestic violence in Andean communities from a socio-legal perspective was an unexplored subject until this work.

1. The research approach.-

The research has mainly been inspired by the 'women's law approach', which looks into actual women's life and experience to interrogate the 'law and society' (Bentzon et al. 1998:91). In this work, Andean women's perceptions of domestic violence are

the main area of observation (I include men's perception but in a more reduced scope), how they place domestic violence in their lives, how they value and in which forums they resolve these problems, paying particular attention to the judges of the peace because this is the space where Andean people 'meet' the legal system. At the same time, the thesis relates this reality with the feminist legal approaches that mainly used the official legal system for their strategical achievements. With that purpose, the methodology of the research (particularly that of the fieldwork): 'maps individual interactions with various informal dispute resolution and mediation practices as well as collecting so called conventional legal data' (Bentzon et al. 1998:93).

2. The research enquires.-

i) Gender and domestic violence.-

From a feminist perspective, marital violence is an expression of gender hierarchy. Anthropologists add that the problem is found world-wide although the incidence and severity vary (Brown 1992). These studies support feminist claims in the sense that there is less violence in societies where women perform a major 'contribution to subsistence', consequently increasing women's value in society. Andean studies, however, were concentrated on the Andean concept of 'complementarity' between couples (*qhariwarmi* or *chachawarmi* the Quechua and Aymara words) that:

... appeared able to recall and explain the marked division of tasks between sexes in Andean communities; the strong ideology of the couple as elemental social units, insoluble, and relatively isolated within the extended family, the *ayllu* and the local community; and the execution of the economic strategies based in the tight co-ordination between husband and wife and the differentiated contribution of both spouses.' (Anderson 1991:30)

In the last decade there has been an effort to move forward from this approach when analysing gender in Andean culture looking at other sources of gender identities and hierarchisation. Studies such as those from Cadena (1991) and the compilation of Arnold (1997) are examples of this new trend. Despite these efforts, domestic violence is still an unexplored subject. In understanding the relationship of gender and domestic violence in Andean groups this work has paid particular attention to Moore's (1994:142) ideas:

'...cultures do not have a single model of gender or a single gender system, but rather a multiplicity of discourses of gender which can vary both contextually and biographically. These different discourses on gender are frequently contradictory and conflicting'.

Overcoming the myth of a coherent set of gender sources, this work interrogates the contradiction and paradox of domestic violence with the important place that Andean women have in their societies and the Andean egalitarian practises.

ii) Not one but many laws?

Within traditional law schools we learned that law is exclusively produced and managed by the state and its institutions. Law, as a discipline, is a closed corpus knowledge with self-regulating principles. This way of thinking about law masks the difficulties that people face when dealing with the legal system and the inappropriate nature of law as a means to achieve justice. It masks as well other social arenas that perform regulatory functions and particularly operate when certain conflicts arise. As was mentioned in chapter two, legal anthropology and sociology of law have been interested in this phenomena and have assigned the status of 'law' to other regulatory devices. But how much is it possible 'to read law' from other normative bodies? Is there in fact 'law out of the state', or are certain social norms 'framed' by the

researchers to hold similar characteristic to those of the legal system? Santos (1995) proposed certain criteria to understand regulatory devices as 'law out of the state': *normative standards* and *justiciability*. This means, customs, values or any other social norm just handled within the learning and socialisation process are not law (despite the impact that this can have on women's lives). Forums of intervention without the capacity of enforcing any kind of coercion of their agreements are not producing law.

This work provides evidence that there is not necessarily a dichotomy between state law and the 'law out of the state' when investigating the role of the *no letrado* (rural) judge of the peace. These judges are a state jurisdictional organ that due to a historical process hold a different rationality than the rest of the judicial pyramid. This is not a native or a 'traditional' institution. Their characteristics, however, make them closer to the Santos concept of 'justiciable bodies' than to state judicial officers. On the other hand, not necessarily communal-based societies such as Andean communities are producing 'law' or assuming their capacity to manage certain conflicts. Sometimes the fact of being small social groups results in them not looking with sympathy at any other commoner adjudicating in a conflict. In these cases, judges of the peace have been accommodated to perform a social function not fulfilled within Andean communities: the justice management. This is important when analysing the relationship of women with law because while in other societies informed with legal pluralism, women acting outside customary law risk losing social support. In the case of Andean women to attend a judge of the peace is not perceived by the rest of the social group as an aggression, since it is an acceptable forum of intervention to 'amend' what is disrupted.

5.- It has the intention of 'giving voice'.- This is the research does not pretend just to 'learn more' about Andean women but to incorporate their opinions in a discussion on domestic violence within a wider audience (Ragin 1994:43).

4. The fieldwork³.-

In this work, it is possible to contrast two contexts in which domestic violence is observed. The first one, within the urban settings (presented in chapter five) in which it was possible to gather conventional legal data: court cases, judicial and police records and a wide range of official regulations. Even though this data is approached from a non conventional legal perspective, the legal formal sources were available to be studied. The rural context presents a completely different geographical, cultural and economic reality. Formal legal sources are not produced and justice management, even though it is carried out through a judicial organ such as the judge of the peace, holds a different rationality. The following paragraphs explain the fieldwork performed in this setting. This data was gathered based on qualitative methods of research (individual interviews, group interviews, informal conversations, observation, participant research and scrutiny of judges' records and questionnaires). The information was collected to understand the ways and reasoning of the people when facing domestic violence with particular reference to judges of Peace as the main forum to deal with these cases.

³ I have read on research methods since as far back as my first research experiences in Peru. From the literature published in the UK I found very useful on a general understanding of the research process: Allen and Skinner (1991), Blaxter et al (1996), Burgess (1993) and Ragin (1994). Atkinson (1998) was published after my interviews but has confirmed my ideas on how to explore into people's lives. The book edited by Toft (1985) presents various studies approaching the subject of domestic violence in Papua New Guinea. I read it avidly when planning my fieldwork as well as Paliwala (1986).

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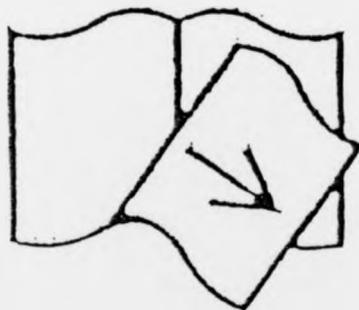
Within traditional law schools we learned that law is exclusively produced and managed by the state and its institutions. Law, as a discipline, is a closed corpus knowledge with self-regulating principles. This way of thinking about law masks the difficulties that people face when dealing with the legal system and the inappropriate nature of law as a means to achieve justice. It masks as well other social arenas that perform regulatory functions and particularly operate when certain conflicts arise. As was mentioned in chapter two, legal anthropology and sociology of law have been interested in this phenomena and have assigned the status of 'law' to other regulatory devices. But how much is it possible 'to read law' from other normative bodies? Is there in fact 'law out of the state', or are certain social norms 'framed' by the

researchers to hold similar characteristic to those of the legal system? Santos (1995) proposed certain criteria to understand regulatory devices as 'law out of the state': *normative standards* and *justiciability*. This means, customs, values or any other social norm just handled within the learning and socialisation process are not law (despite the impact that this can have on women's lives). Forums of intervention without the capacity of enforcing any kind of coercion of their agreements are not producing law.

This work provides evidence that there is not necessarily a dichotomy between state law and the 'law out of the state' when investigating the role of the *no letrado* (rural) judge of the peace. These judges are a state jurisdictional organ that due to a historical process hold a different rationality than the rest of the judicial pyramid. This is not a native or a 'traditional' institution. Their characteristics, however, make them closer to the Santos concept of 'justiciable bodies' than to state judicial officers. On the other hand, not necessarily communal-based societies such as Andean communities are producing 'law' or assuming their capacity to manage certain conflicts. Sometimes the fact of being small social groups results in them not looking with sympathy at any other commoner adjudicating in a conflict. In these cases, judges of the peace have been accommodated to perform a social function not fulfilled within Andean communities: the justice management. This is important when analysing the relationship of women with law because while in other societies informed with legal pluralism, women acting outside customary law risk losing social support. In the case of Andean women to attend a judge of the peace is not perceived by the rest of the social group as an aggression, since it is an acceptable forum of intervention to 'amend' what is disrupted.

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5.- It has the intention of 'giving voice'.- This is the research does not pretend just to 'learn more' about Andean women but to incorporate their opinions in a discussion on domestic violence within a wider audience (Ragin 1994:43).

4. The fieldwork³.-

In this work, it is possible to contrast two contexts in which domestic violence is observed. The first one, within the urban settings (presented in chapter five) in which it was possible to gather conventional legal data: court cases, judicial and police records and a wide range of official regulations. Even though this data is approached from a non conventional legal perspective, the legal formal sources were available to be studied. The rural context presents a completely different geographical, cultural and economic reality. Formal legal sources are not produced and justice management, even though it is carried out through a judicial organ such as the judge of the peace, holds a different rationality. The following paragraphs explain the fieldwork performed in this setting. This data was gathered based on qualitative methods of research (individual interviews, group interviews, informal conversations, observation, participant research and scrutiny of judges' records and questionnaires). The information was collected to understand the ways and reasoning of the people when facing domestic violence with particular reference to judges of Peace as the main forum to deal with these cases.

³ I have read on research methods since as far back as my first research experiences in Peru. From the literature published in the UK I found very useful on a general understanding of the research process: Allen and Skinner (1991), Blaxter et al (1996), Burgess (1993) and Ragin (1994). Atkinson (1998) was published after my interviews but has confirmed my ideas on how to explore into people's lives. The book edited by Toft (1985) presents various studies approaching the subject of domestic violence in Papua New Guinea. I read it avidly when planning my fieldwork as well as Paliwala (1986).

4.1 The setting.-

The research is based on eight months field work in the department of Cusco (January - August 1997), in the South Andean region of Peru. Previously I spent two months (November and December 1996) in arranging my visit and in co-ordination meetings with my sponsors in Lima, the Judiciary Academy⁴. They were interested in gathering up to date systematised data on judges of the peace and found the opportunity of my PhD fieldwork as the ideal occasion. The last systematised data within a judicial research context was carried out in the 1980s (Brandt 1990).

At almost 4,000 Mts. above sea level, Cusco is a well known place because it is the site of the main tourist attractions in the country. The city of Cusco, the capital of the department, is provided with a wider range of services and infrastructure than other South Andean areas, however, still it does not compare with the city of Lima, the capital of the country. The urban central area of the city of Cusco is quite small, the rest of the city, as the rest of the department, is basically rural. Most of the rural inhabitants in Cusco belong to the officially called 'peasant communities'. In the present work I prefer to use the terminology suggested by anthropologists like Ossio (1992, 1995) naming them as 'Andean communities', stressing their ethnic dimension. The communities of Cusco are Quechua speakers as a first language and they self-denominate themselves as *runakuna* which refers to their particular category of 'human'. Any women or men living in communities in the highlands of Peru are *runakuna* others living outside the communities are not. There is an extensive literature on the communities present and past lives and some of these are mentioned in chapter six.

⁴ An institution of the Judicial Power responsible for the training of the judges

Peru is politically divided into 'departments' which are divided into 'provinces'. Provinces are divided into districts. The department of Cusco has 13 provinces⁵. My research has a representation of 7 of these provinces. I visited 27 judges of the peace. 23 were district judges. 2 were judges in Andean communities. 1 was a judge in a *parcialidad*⁶ and another in a 'rural town'. I chose these judges because they were located in 'zone 1', that is, in an area which it is possible to access within 10 hours journey by road⁷. This was in order to make the study feasible within an eight months period. In two of these provinces (Paucartambo and Quispicanchis) however, it was necessary to spend some days in the area since the buses did not make the journey every day.

Andean communities are dispersed through these districts but their numbers vary significantly from one place to another. In the district of Yucay (Prov.⁸ Urubamba) there is just one Andean community but most districts have not less than 8 Andean communities in the area. Individual and group interviews were taken in communities within judges territorial jurisdiction. Maps and demographic information on the area of the fieldwork appear in the appendices 1 and 2.

4.2 The language.-

The language was my first difficulty in working in Andean communities. In Peru, Spanish is the official language. The 1993 National Census shows that 80.3% of the Peruvian population has as its mother tongue Spanish, while 16.5% have Quechua as their mother tongue and 3.0% learn Aymara or other native languages as first

⁵ See appendix 2.

⁶ *Parcialidades* have basically the same associative form as the Andean communities but without communal land.

⁷ See appendix 2 e

⁸ *Prov.* is used as an abbreviation of 'province' and *Dist* as 'district'

language. However, in the Andes where the indigenous population is concentrated, the rate of people declaring the Quechua as mother tongue are in the majority. In Cusco, 63.7% of the population has as mother tongue Quechua and in other departments like Apurimac it reaches 77%⁹. I have a basic knowledge of Quechua that permits me to partially understand people's conversations, however, I can not express myself in Quechua, just basic sentences. At present, the majority of *runakuna* have a good command of Spanish, however, women, because they are less involved with the 'larger society', have more difficulty in speaking Spanish fluently. They could understand but sometimes it was very difficult for them to hold a conversation in Spanish. Harvey's (1991a:227-30) study on language competence in the Andean region concluded that 46% of women were Quechua monolingual or the use of Spanish was very limited contrasting with just 10% of men in the same situation.

61% of women that I interviewed understood my Spanish but preferred to use Quechua to answer me, either because they did not have a good command of the language or because they felt more comfortable expressing themselves in their mother tongue. I was assisted in these cases. My main assistant in the field was the anthropologist Clara Moscoso, 'Clarita', although on most of my visits to judges of the peace I was alone. When necessary, I was assisted in the translation by other people including some judges. Sometimes my interviewees switched into Spanish when they wanted to emphasise a particular idea and probably they thought Clarita was not translating the ideas as they wanted them to be expressed. Some women in the judges' place made an effort to switch into Spanish when they became aware of my presence. 39% of my female interviewees did not have any problem in understanding my Spanish and to answer in a good or intermediate standard of language. Those were the

⁹ Source: 1993 National Census, Peruvian National Institute of Statistics (INEI)

cases of women fully involved in the market economy or those who had spent part of their lives living in Lima.

All of the men that I interviewed used Spanish in our communication. I noticed, though that some of them were making significant efforts to talk in Spanish or hardly could understand me. This was the case for two judges of the peace. Some commoners started to talk in Quechua with Clarita but switched to a precarious Spanish when they noticed that I was a lawyer from Lima.

Gender differences in the use of language reveal the different arenas in which women and men develop their lives and the relationships that they establish through those spaces. Harvey (1991:230-1) noticed that men use a particular register of Spanish when they give a speech in public or formal settings. Sentences are longer, with plenty of adjectives and clichés. Women do not have the same command of the language and for this reason prefer not to talk publicly.

Judges of the peace are legally required to know the local language and women manipulate this situation. I noticed that even the more 'mestizas' (more urban acculturated) preferred to use Quechua. I use the term 'manipulate' because sympathetic judges tend to be more protective in front of monolinguals. It gives the impression of a greater vulnerability, Harvey (1991a:234) even called the Quechua: the 'language of subordination'. For instance, during my observation in the Pisac judge's office, I witnessed the case of a couple of craft makers, from the AC Maska, who were unable to finish certain products requested and paid for in advance by another couple who were sellers in the local market. Luzmila, the judge, asked the sellers, a married couple, to use Quechua in the conversation because the other party were reticent to switch into Spanish (Harvey 1987:115-6, mentioned a similar case in her

work). In using Quechua the debtors were trying to suggest their lack of market skills in defining the terms of their commitment in the commercial transaction, and it worked.

In the elaboration of the present thesis, 'language', has also been an issue to consider. Part of my fieldwork data was gathered in Quechua and translated to Spanish, and other parts were originally in Spanish. Additionally, a significant amount of my secondary sources and official documents were in Spanish. I am exclusively responsible for the translation of all of this material into English.

4.3 Physical and relational access

The physical accessibility to some Andean communities and judges of the peace was the most challenging part of the work. As was mentioned, to make this study feasible in 8 months I chose the judges in zone 1. However, to reach the judges from the bus station could take me hours of walking through the mountains. The most difficult of all these experiences was the visit to the Colquepata judge who Clarita and I insisted on visiting from the town of Paucartambo. We approached by motorbike as far as 'the bridge', a trip of 20 minutes that a kindly school teacher provided for us. From then we started to ascend the steep mountain. We thought after this we would arrive in Colquepata. It took us four hours to climb the mountain, it was already completely dark, we hardly could see where we were walking, we did not have appropriate footwear and not even a torch. After two hours of walking two young peasant men passed by and Clarita asked them to take our rucksacks as far as the town. They disappeared in front of us. After two hours we met them in town, they had been waiting for us for two hours in the freezing cold demonstrating a degree of honesty that I as an urban inhabitant would not have expected. The most absurd situation was

the visit to the Maras Judge (Prov. Urubamba). Maras has a new road towards the centre of the town but there are hardly any people with a car and no public transport, consequently I had to walk one hour there. Most times my visits were rewarded by the warm welcome of the judges, in others like in the judge of Carhuayo after walking two hours I found that the judge was not there and I had to return.

Regarding the 'relational' access the presence of Clarita was fundamental when visiting Andean communities¹⁰. She was born herself in a village in the South Andes of Apurimac, a neighbouring department to Cusco. Her mother tongue is Quechua. She was adopted by school teachers and was able to study anthropology in a public university in Cusco. Clarita has worked her whole life in the South highlands, knows very well most of the region of Cusco and has strong links with some communities which is particularly important since, based on their past negative experiences, Andean people are not necessarily very welcoming to outsiders. These are societies strongly based in 'reciprocity' and believe in spiritual categories of kinship. Clarita was involved in this kinship and being myself a lawyer I could assist people in different circumstances fulfilling the requirement of 'reciprocity'. The judges were also invaluable in favouring my contact with the people attending their offices. However, I also managed to do some interviews with Andean people, particularly with women, without any special 'presentation card'.

¹⁰ I had two initial levels of contacts in the area. Firstly, with women linked to the Cusco office of the Women's National Network with whom I was familiar from my previous feminist work. They introduced me to gender teams of NGOs working with Andean communities in the area of my study. Secondly, with the Cusco Superior Court which facilitated my relationships with the judges of the peace. At both levels I managed to extend my network of contacts and got to know Clarita.

4.4 Composition of the fieldwork database

As was mentioned, this fieldwork was based in qualitative methods of research. Complete details of all my interviewees and events of participant research are included in appendix 4. The *photographic gallery* is a sample of some special people and moments during the fieldwork.

4.4.1 The interviews.-

This was the main method of research. I used 'semi-structured' interviews in all cases (Blaxter et al. 1996:154). I had a set of main questions that covered the areas of information that I wanted to gather but the context was more close to an open conversation. To get the most of what my interviewees were willing to say I did not set time limits for my interviews. I took notes of my interviews. I had a tape recorder that proved to be unsuccessful with my interviewees and with myself¹¹. Andean people tend to speak in a very low voice and when they realised that I was going to use a tape recorder it was obvious how uncomfortable they felt. I also felt uncomfortable. From my years of contact with domestic violence cases I understand that it is necessary to create a certain 'intimate' atmosphere with the interviewee and certain gadgets just seem to me completely inappropriate. When the interviews were in Quechua I confirmed that Clarita understood what people were saying by coming back to certain points and confirming that my notes were according with my interviewees views. I always double checked my notes with Clarita when not in the presence of my interviewees.

¹¹For the advantages and disadvantages of the tape recorder see Baxter et al (1996:153-4)

a. Interviews with Andean people.-

I have learnt from my past experience that to enquire into other's people lives requires to care for them. It should not be done just for the sake of gathering information. To talk about violent events is moving for the interviewee and on the other hand I do not have 'neutral' feelings about the subject¹². With both women and men I expressed my sympathy and even my opinion when asked, switching into other areas if they felt sad about talking of certain issues.

a.1 Individual interviews with women and men.-

The objectives were to enquire about their perception of domestic violence and also to know more in general about the communities lives and sources of gender differentiation. My questions were designed to answer the following issues: 1) Is there domestic violence in Andean Communities? 2) What are the characteristics of this violence? 3) Is there a violence exercised by husbands toward wives that is socially acceptable in Andean communities, that is, is domestic violence a component of gender hierarchy (to control women or in other words to make women 'keep their place' in society)? 4) Is domestic violence a ground for complaint in any social forum: kin, communal bodies, judges of the peace? 5) What is the social sanction for domestic violence in Andean communities?

I held interviews with 31 women and 12 men from different Andean communities in the areas of the judges jurisdiction. The selection of my interviewees was defined by the feasibility of access to quality interviews, in the case of my study this meant meeting people able to talk to an outsider about their most personal problems such a domestic violence. My contacts in the area facilitated these propitious meetings¹³.

¹²See Yllo (1988:42).

¹³ See note 10.

The range of age was not predefined although I had a good balance of representation between generations. I was able to obtain more in-depth interviews than I originally envisaged in my fieldwork proposal. I value every one of my interviews as a 'life story', that is, every person provided me with his/her unique personal perspective in the common context of the Andean community's life. In this sense, my interviews were not designed to provide a statistical analysis but rather a trend of representative opinions of the *runakuna* of the area.

I was in some ways surprised when I asked women if there were problems of violence in their communities as they referred directly to their own experiences making the interview a very personal story. For their part, men refer to their personal stories through remembering the experience of their mothers. Both women and men were moved remembering events of violence during their childhood.

I also held interviews within the judge's offices but these were fewer (4 cases). In these spaces I preferred observation. My idea was precisely to talk with people who were not at the time of the interview involved in a moment of 'crisis' to get a more balanced picture of peoples perception of violence in their communities.

a.2 Group Interviews.-

I had three group discussions, two with Mother's clubs and one with the members of a Steering committee. I called them interviews because my intention was similar to that with my individual interviews¹⁴. In the case of the Mother's club of AC¹⁵ of Q'enqo (Prov. Calca) I was introduced by an NGO working in the area. My experience with the Mother's club of Taray (Prov. Calca) turned out to be particularly lively. I was

¹⁴See Baxter et al (1996:154)

¹⁵AC is used in this work as an abbreviation of 'Andean community'.

introduced by the judge of the place. With the Steering Committee of AC Carhuayo (Prov. Paucartambo) I focused on forums of intervention and their managerial role.

b) Judges interviews.-

I held interviews with 27 judges about their perception of domestic violence and their role, the nature of their intervention and general information about their jobs. I was very much welcomed by the judges because I attended two training courses organised by the Cusco Superior Court where I also applied questionnaires. I was introduced there as a representative of the Judiciary Academy. Consequently, most judges remembered me when I came back to visit them, inviting me to meals, and on one occasion Clarita and I were provided with accommodation by the judges of Carhuayo (Prov. Paucartambo). Additionally they facilitated my work as much as they could. They did not hesitate to show me their records and let me stay to witness conciliatory meetings. On more than one occasion they also acted as my interpreter.

c) Interviews with governors and lieutenant governors.-

I interviewed 3 governors and 2 lieutenant governors. Governors are the representatives of the Internal Affairs Ministry in a district and lieutenant governors fulfil the same representation in front of their communities. I was interested in knowing whether they had a significant role in intervening in cases of domestic violence but I found that this was not the case.

d) Interviews with Cusco judicial members.-

I received much support from the Cusco Superior Court particularly from the president of the Court Dr. Abelardo Olivera who I also interviewed on his perception of the role of the justice of the Peace. I also interviewed the President of the Criminal Division of

the Superior Court and one provincial criminal judge about processing domestic violence cases.

e) Other interviews.-

I was interested in the perception of the situation of domestic violence in Andean communities by people involved with communities but who were not part of them. I found it particularly interesting to interview one woman mayor of a district (Taray, Prov. Calca) who is recognised for her great dedication to women's organisations in the area. I also interviewed one chief nurse in a district health centre (Tinta, Prov. Canchis), and three members of gender training teams in NGOs.

4.4.2 Scrutiny of the judges of the Peace's records.-

A very challenging research activity was to review judge's records. Processes before judges are basically verbal. Conversations are mainly in Quechua. Quechua is the academic word for *runasimi* the language of the *runakuna*. Quechua has a written alphabet developed at academic level but very few people know how to write in Quechua including Clarita. When Andean people go to school they learn to read and write in Spanish and not in Quechua. Any written agreement then is in Spanish. When the parties want a written agreement it often occurs that the judge has to translate the agreement from Quechua to Spanish to give it a written form and then verbally translate it back to Quechua before the parties sign it.

I could scrutinise 21 records, in other cases judges did not keep records at all. 17 of these records had a consistent and systematic sequence. When records were available these consisted of notebooks with the conciliatory agreement. In other cases, complaints and agreements were mixed together in one book, just in a few cases there

were separate books for each case. These records are taken in handwriting and I went through them with great difficulty. None of them had a 'record entry', a categorised source of reference as in other judicial offices. To know what the case was about it was necessary to go through the whole agreement. Just in one district, Pisac a tourist place, the town council had a photocopying machine, in the others I took notes by handwriting. I include one of these photocopies in the appendix 5.

4.4.3 Questionnaires:

I prepared a questionnaire formulating twenty questions to judges of Peace, eight were general questions and twelve questions focused on their role in intervening in domestic violence conflicts. 149 judges of the peace who attended two training courses organised by the Superior Court answered the questionnaires. One course was held in Cusco city and the other in Sicuani (Prov. Canchis) during February 1997. I include one of these questionnaires in the appendix 6.

4.4.4 Observation.-

The site of the judges was the source of invaluable information both on the diverse facets of Andean life and on their interaction with the legal system. It was of great interest to me to get to know this other judicial rationality. I especially took the opportunity to observe when scrutinising judge's records because this activity could take me several hours and more than one visit. This became the perfect opportunity to observe the dynamics of conflict resolution without my presence being so intrusive, although, on more than one occasion, the same judge made me evident introducing me as a judiciary academy representative. Some judges even asked my opinion on the cases. To sum up eight months of observation at judges places was extensive. I was

impressed by the number of women who attended the judge to make a complaint about different problems (and particularly of domestic violence) and by the dynamic of the conciliatory meeting. I took notes of my observations at the same moment and in some cases I asked the judges to give me extra details about the parties. Some of these experiences are related in chapters seven and eight.

During my trip I had also many opportunities for 'casual' observation of Andean community life, including witnessing two incidents of discussion between couples. I was also a guest at a wedding. Additionally, I participated in some festivities such as Cruz Velakuy, Carnival and Corpus Christi. It was very interesting to see how people interact in these celebrations.

4.4.5 Participant research.-

During my fieldwork in Cusco I was invited as a speaker at conferences or seminars, as co-ordinator of a workshop or advisor in the area of law and domestic violence. These events became an excellent source of information because of the composition of the participants, on some occasions Andean community members, on others members of NGOs working in the field and on others state representatives. The dynamic was very useful to gather information especially through the opinions and questions of the participants but also because of the opportunity to hold informal conversations with the participants during the intervals. Details of these events are in appendix 4.

Conclusions

The general objective of the research is to bring the perception of the Andean communities and their main forum of conflict resolution, the judges of the peace, into a wider reflection on domestic violence. Within that purpose the thesis starts by

considering the nature of the law and the legal system to re-examine the legal strategies on domestic violence, reflecting in particular on the real benefit that women obtain from them. This analysis comprises looking into the legal data in a non conventional way. Having set the scene, the thesis moves forward toward the exploration into Andean life and people's perception of domestic violence. A reflection on the forums of intervention takes us to a study of judges of the peace holding a *rationality* on conflict resolutions different from that of the state legal system. Once there, the level of satisfaction of women's needs achieved in this forum is also evaluated.

A variety of qualitative methods of research have been used to cover the areas under exploration. If there is a major *practical* contribution of the research (apart from another possible contribution into the debate on law and domestic violence) it is to have collected data in an unexplored area of study such as domestic violence in the Andean region, and to have obtained up to date data on judges of the peace. Because it is not always possible to carry out research in the Andean region due to the great deal of time and effort that it demands, I hope that these findings can be useful to a wider audience.

CHAPTER FOUR:
THE POST COLONIAL LAW

Introduction.-

This chapter unveils the post colonial nature of state and the legal system in Peru to understand the different ways in which sectors of the population evaluate and engage with the legal system and other state representatives.

It begins by examining how the colonisation process reshaped social relationships and established new social categories in a hierarchical way. It also observes how the legal system was used to facilitate exploitation and to control the native population. An infrastructure, of judges and colonial officers was appointed with that purpose. The law was also used to shape other disadvantageous relationships like that between women and men.

After independence, the maintenance of the asymmetrical relationships was the basis on which the new nation was established. This chapter suggests how the abstract premises of modern state law have contributed to maintaining these inequalities at the same time as claiming equality between citizens. In current neo-liberal times it reflects on the contradictions between the liberalisation of the economy which negatively affect the majority of the population while at the same time significant legal reforms have been carried out acknowledging fundamental women's rights.

The objective of the chapter is to understand the creation of Andean communities and the process by which they came to live a peripheral existence in relation to the mainstream of Peruvian life developed on the coast. The observation of this process provides explanations of the different roles of the state, the law and their representatives in these two socio-geographical spaces (coast and Andean highlands). The main proposition is that only by understanding this reality is it possible to have a realistic evaluation of emancipatory agendas, such as the eradication of domestic violence, which based their success exclusively in the law and the state agencies.

1. The colonial law.-

'Colonialism implies the rule of one people by another. The dominant image is that of a clash between two vastly different "worlds" - two peoples separated by history, language and culture. The result subjugates a colonised race or people, defined as degraded and inferior, to the economic, political, and cultural forces of an expansionist, imperial people. The legacy of this process is dramatic in Latin America, where there once flourished great indigenous civilisations -the highlands of southern Mexico, Guatemala, Ecuador, Peru, Bolivia- today resides an impoverished and oppressed Indian peasantry. One people or "world" now defined as "nationals" of white or mixed racial ancestry, continues to rule another' (Stern 1982:33).

Until 400 BC the human groups which populated the Andean region were isolated communal based societies of subsistence production. Between 400 and 200 BC was the age of 'tributary state-based societies', that is, self-subsistence gave way to a form of production for the generation of surplus to support the chiefs and religious elite. Those were centuries of great technological advances necessary to control the variable and discontinuous Andean landscape and to obtain resources from the coast to the jungle (Spalding 1974:92-102, Patterson 1991, Murra 1975).

The Incas were the last of these tributary state-based societies which managed the unification of the different ethnic communities under their centralised rule. Their dominance in the region lasted for 100 years. The Incas never destroyed but rather assimilated groups, religion, language and knowledge in their new state¹

The basic social organisation before and during the Inca's time was called *ayllu*. The word *ayllu* could allude to three different realities: 1) an extended family, 2) a descended kinship of a community, 3) a political group or local ethnic group (Silverblatt 1990:160, Spalding 1974:193). The most important characteristic of the *ayllu* was the linkage through common ancestry which conferred access to communal property and reciprocal labour assistance (Wightman 1990:76). These groups were lead by a *kuraka* (chief). They were religious authorities and guardians of the social values and the last instance in solving conflicts between the community members. As compensation for their function *kurakas* had special access to communal goods and resources (Spalding 1974:36).

The conquest of Peru occurred in 1532². At the very beginning of the invasion the *kurakas* kept the communal control and their power increased because they were no longer dependant on the Inca central state, this permitted an advantageous alliance with the Spaniards. For the conquerors to grant *kurakas* traditional prominence over their territories was useful for their purpose of collection of tribute and access to native labour (Patterson 1991:3, Varon 1980:28-31).

The legal institution in which these early colonists sustained their power was called the *encomienda*. This was a typical medieval institution. The *encomendero* was entitled to receive the economic rent of that place under his defence and protection.

¹ On the Inca State see Patterson (1991)

² The literature on the history of Peru is abundant, for a current analysis of the process of conquest and colonisation see especially Pease (1994)

(Wightman 1990:14) Encomienda was a private benefit and encomenderos were largely , 'uncontrolled' by the metropolis who received tribute from them and not direct from the native population (Comission 1989:72, Moore 1954:224). In 1542 the Crown decided to abolish this system to assure their own revenues. A wave of protest by the encomenderos triggered a civil war which lasted until 1554 (Moore 1954: 244-8).

Diseases, exploitation and army conflicts brought about a demographic collapse. It is estimated that in 1520 the population of the territory which is now Peru was nine million inhabitants. Half a century later the native population had dropped to one million and reached six thousand by 1620. This means a decline of 93% of the population after one century of colonisation. On the coast the demographic collapse was total. The native population was swept away and replaced by Spanish colonisers and African slaves. (Comision 1989:74)¹

This event transformed radically the agrarian landscape because of the sharp reduction in the amount of land under cultivation (Assadourian 1987:23) As a consequence, between 1572 and 1576 there started a process of radical reordering of the forms of exploitation of the native labour under the command of Viceroy Francisco de Toledo. The tribute was no longer paid in goods but in silver, consequently the native population was obliged to work under direct control of the Spaniards, in the towns, in the mining centres and in agrarian enterprises (Assadourian 1987:24).

In order 'to facilitate their social control and manipulation by crown government' (Watters 1994:55), Viceroy Toledo established the *reducciones* (reductions) this

¹ Based on Cook, D (1982) Demographic collapse Indian Peru, 1520-1620 Cambridge: Cambridge University Press

consisted in forcing whole ethnic groups, living separated in many villages, to come together into two or three large towns. The aim was to force the Indian population to leave their dispersed dwellings and move into compact *reducciones*. The land that the Indians were leaving behind was declared 'vacant' and reallocated to the Spanish colonists in a system called 'composicion de tierras' (land composition, Assadourian 1987:24)

Of all colonial institutions the *Corregidores de Indios* (Indian corregidors) had the greatest impact on the indigenous population. They were responsible for administering the native population by collecting taxes and overseeing the *mita* labour. *Mita* was the word that in ancestral times expressed the obligation of the ayllu members to cultivate the land of the Inca state. Spaniards established an 'extended' *mita* which included to work in mining centres creating the most important revenues for the Spanish Crown. Male Indians between the ages of eighteen and fifty were required to work two months of *mita* labour, followed by twelve months of rest. In reality the period of work was greater. The Indians detested services at households and *obrajes* (textiles workshops) but they despised and feared above all the *mita* of mines. This *mita* was probably the exploitative practice with the most deleterious effects over the indigenous population. The abusive conditions of work affected the health of the natives and was one of factors of demographic decline (Wightman 1990:49-50, Comision 1989:81-2).

1.1 In defence of themselves.-

The Viceroy Toledo's attempts to order the colonial system in the Viceroyalty of Peru involved a wide legal reform. The ordering of the colonial administration obliged the Crown to 'define legitimate and illegitimate rules of exploitation' (Stern 1982:115).

Toledo 'Ordenanzas' (Viceroy's law) opened the formal possibility to native populations to use the legal system to restrict exploitation. In this sense, from 1570 the figure of the 'Protector de Indios' (Indian Protectors), as the formal 'legal defenders of the native' acquired relevance (Stern 1982:115).

There is a wide documentary data in the Peruvian regional archives of suits and complaints presented by kurakas in representation of their ayllus. There were two main areas of indigenous litigation: actions against the expropriation of their land and the reduction in *mita* quota and tribute. Unfortunately, Andean people managed to achieve few victories, particularly, when claiming back their land from the conquerors⁴.

1.2 The local justice:

Colonial procedures to establish 'Indian towns' or *reducciones* was copied from the Spanish towns⁵. The foundation of a *reduccion* was left to a royal officer called *visitador*. This officer chose the location and traced the division of the urban area 'into streets and squares', a place for the church and the *cabildo* and *juzgado*⁶ (Moore 1954: 225-8)

The *visitador* also reallocated land for the native population, dividing communal areas and individual plots. The native population was entitled to retain their original land only if their plots were within a league of the *reduccion*, otherwise they should sell or exchange their property.

The *visitador* o *adelantado* was also responsible for appointing the governing body or *cabildo* of the village. Moore (1954:229) comments:

⁴ See Stern (1984: 114-137)

⁵ On Spanish towns and their adaptation to the New World see Moore (1954)

⁶ The judge's place

'The nature of government in the reductions was likewise prescribed. It was ordered that these functions should be shared by the cacique [kurakas], mayors, *regidores*, and *alguaciles*, so that the Indians might rule themselves in a manner approaching that of the Spaniards'

The *alcaldes* (mayors) were the judges of their towns having civil and criminal jurisdiction (Gonzales and Lozano 1983:572-3). They could intervene in petty crimes and, civilly, in cases involving small sums. Moore (1954:233) comments:

'...Indian judges⁷ secured excellent results in the administration of law, citing as proof of their ability the speedy settlement of many disputes, without recourse to tedious, sometimes costly, lawsuits, universally recognized as the course of the Spanish legal system. In upper Peru alone (...) over two thousand controversies among the natives were resolved in this expeditious, praiseworthy manner.'

These judges, however, were powerless when Spaniards were involved in disputes or criminal offences. They did not have the authority to intervene in these cases.

This judicial function of the *alcaldes* was recognised for first time at legislative level in the Constitution of Cadiz of 1812. This institution was the origin of the judges of the peace.

1.3 The birth of patriarchy.-

Colonialism meant the redefinition of the man-woman relationship shaped in the requirements and values of the coloniser and of the new society. (Mannareli 1994:31-22). The 'ethical' justification for the conquest of the New World was provided by the Catholic Church which was responsible for rescuing the native population from their paganism and ruling over the instincts through the full observance of the Catholic doctrine (Manarelli 1994:20)⁸. However, a double standard of morals occurred with a clear articulation between gender and ethnicity (Radcliffe

⁷ Moore (1954) uses the word 'judge' and 'mayor' alternatively

⁸ On the role of the Catholic Church in the conquest see Urbano (1999)

1995). To the white women was assigned the responsibility of the 'purity of blood' while some Indian women became mistresses of Spaniards and priests, bearing illegitimate children⁹. These women lost their land and all link with their original communities. (Radcliffe 1995:194, Silverblatt 1990:87-98).

Additionally, in a patriarchal society where men were considered head of household and women legal minors under the male tutelage, ancestral women's property and inheritance rights were undermined. Noble Inca women obliged to marry Spaniards were seriously affected as well as women forced to marry outside of their original *ayllus* due to the demographic collapse (Silverblatt 1990: 87-98).

1.3.1 Family and violence.-

The patriarchal Iberian family was strict in the criteria of command and obedience to the head of the family by the wife, children, servants and slaves. (Manarelli 1994:32-3). The Catholic Church had exclusive jurisdiction over marriage since the eleventh century. Particularly important was the Concilio de Trento in the sixteenth century because it consolidated the sacrament of marriage and the exclusive competence of the Church (Tuchle 1966: 188, Alberigo 1993:286-90).

The Concilio de Trento did not especially mention the submission of women to men but this appeared in other documents which derived from it, such as the 'Roman Catechism under the Trento Council'. This was designed as a guide for the priests in the exercise of their functions, especially in parishes. Under the title: 'The principal husband's duties' was stated:

'[the wife] is formed, not from the feet but from the side of the husband' she was not formed by the head in order to understand that she was not superior to husband but the contrary she is subject to him. [the husband] has also to govern with rectitude his home, correct the

⁹ See Manarelli (1994)

customs of everybody and make them fulfil their duties.' (Catecismo, number 26).

In the title 'The duties of the wife' was written:

'Women be obedient to your husbands... living subjected to them, in the way Sara obeyed Abraham to whom she called his Lord. (...) Be happy in your home, ... never go out of the home without your husbands' permission. Additionally, and this is the basis of the conjugal union, you should always take into consideration that after God to nobody you should love and estimate more than your husband, to whom you should please and obey promptly in everything...' (Catecismo, number 27)

The right of correction granted to husbands included the use of physical violence. The limits of this right were 'blurred and uncertain' and many women were subjected to much cruelty (Lavalle 1986:437). Despite the precariousness of their position in society, there was a legal way to be free of a cruel marriage: to apply to the Ecclesiastic tribunal (*Tribunal Eclesiastico*) for annulment or a 'divorce'¹⁰.

Lavalle (1986) and Flores and Chocano (1984) researched in the Archbishop Archive of Lima to find these court files. One of the studies focused on the files from 1650-1700 while the other looks at the period between 1760-1810.

Lavalle finds that the main cause of complaint in divorces and marriage annulments was violence. In the divorce cases this ground appeared in almost all of the cases initiated by women. In the case of nullity, violence was alleged to prove 'will's vice', performed in order to oblige women to enter into marriage by the husband's and/or bride's relatives. The cases brought by women were a 'repetitive litany of a suffered humanity and violence' (Lavalle 1986:436). The husband of Maria Collado (case D.1657) broke her arm and in the case of Lucia Juarez (D.1667) the husband left her one-handed. Manarelli (1990:240-2) claims that men perceived women as a master to

¹⁰ It was the authorisation to live separate not the dissolution of the marriage

a servant. In the same way that those men punished their slaves, they did the same to their wives. There are numerous testimonies of women who manifested being whipped frequently and being treated with such a 'cruelty' as if they were slaves (Lavallo 1986:438). In the study of Flores and Chocano which corresponds to a century later, the cruelty was the same. They (1984:411) opine about these processes:

... the menace of violence was not enough ground for the prosecutor's admission of the claim for divorce; it was also not enough that the woman proved to have been beaten once. For this 'justice' the violent acts should be repeated, only then was it considered enough evidence of hostility from husband against his wife'

The ethnic origin of the claimants represented the whole range of races, social levels and occupations that were identified at colonial times in urban settings. There are no similar studies referring to the Indian communities. Andean people rejected the Catholic marriage, arguably, such legal processes were irrelevant. If any dispute arose between partners probably this was resolved at local level: in front of *alcaldes* (mayors) or *kurakas*. In this sense, Flores and Chocano (1984:403-4) suggest that in colonial society violence was a 'component of daily life and normality', a violent social order which necessarily had to affect the life of the native people. This is noticeable in the following comment of the acculturated indigenous chronicler Huaman Poma de Ayala¹¹ (1980,II:804) who in the sixteenth century expressed the deterioration of life and interpersonal relationships in this way:

'At present, in this life, more Indian drunks exist than in the old times. In the epoch of the Incas there was no man and never existed such a man because of the good justice that existed. To those who drank or idly chatted or gossiped or blasphemed, **or who slapped his wife in the face or who fought with anyone or with his wife the Inca brought him to justice.** They killed the drunk. In that kingdom, to be a drunk had capital punishment. In this way there was never a drunk.' (My highlight)

¹¹ Original manuscript transcribed by Pease (1980, II 804)

2. The Post colonial law:

2.1 Peru between 1821 and the 1960s

Turner (1997:3-5) states that Latin American republics were the result of a 'Creole nationalist project'. Landed colonial elite endeavoured to be free from a 'decadent metropolis' whose representatives 'monopolised political and economic privilege in the colonies and delayed the economic development of the country'.

Peru was declared an independent country in 1821 by the leader of the South American emancipation, Jose de San Martin. His first decree abolished Indian tribute and all forms of personal service, especially the *mita*. His aim was to make the native population 'citizens' of the new nation. All references to their ethnic origin ('Indians' or 'naturals') were eroded from public declarations. Years later, in 1825, Simon Bolivar, the Venezuelan leader, was elected president of Peru. He dissolved the communities, with the aim 'to integrate the Indians into the nation'. His intentions were to redistribute their lands 'converting them into yeoman farmers' (Watters 1994:60). Contradictorily in 1826 the Congress re-established a tribute affecting the *castas* (indigenous, *mestizos*¹², and blacks) because it was considered an essential state revenue (Watters 1994: 60, Radcliffe 1995:197).

All of these legal measures coincided with the expansion of the larger estates (*haciendas*) which reached its peak around 1870. Copper and alpaca fibre became leading export products motivating the ambition for the acquisition of more Indian lands by private landowners while on the coast the rapid agricultural development around the production of cotton produced the necessity for cheap labour. In a system known as *enganches*, highland inhabitants were obliged to undertake extensive work

¹² Mixed race people

periods on coastal plantations. This was not the only forced labour modality imposed during this period. Road construction was also based on the exploitation of the Andean labour force (Watters 1994:61).

Despite the devastating effects of the 1879 war between Chile and Peru, the rest of this republican period was characterised by the massive foreign investment and government's credits from the international financial market which determined the transformation of the coast by a 'massive capitalist development'. In the highlands instead, the income per capita was far below the national average (Watters 1984:62-5).

As a consequence, since 1918, a series of Indian uprisings occurred with the objective of containing the expansion and exploitation by landowners. The government response to this situation was to develop an extensive programme of 'Indian legislation', in particular the Constitution of 1920 included article 58 which recognised the legal existence of Indian communities. Many other formal gestures were performed to calm the uprisings but landowners remained untouchable, having a sound influence on the government (Watters 1994:67).

1919 and the 1920s were also years of other political mobilisations (e.g. the fight for the eight hours), and the consolidation of new political forces, especially left wing parties. The political situation polarised with both extreme left-wing and even Fascist groups emerging. Violence escalated and the military intervened supported by the aristocratic sector in 'the interest of peace and stability'. This started the subsequent periods of military rule 1930-9, 1948-56, 1968-80 (Watters 1994:68-9).

The period of Manuel Odria (1948-56) was particularly tyrannical. He purged the unions, universities and armed force of all suspected subversives. There was so much

discontent that in 1956, Odria was forced to enfranchise women who represented more than double the size of the electorate.

In 1963 a more populist government headed by Fernando Belaunde represented the last, pre-Revolutionary attempt by a reformist administration. The oligarchy of the country was their great enemy. Incapable of dealing with the pressure of the powerful elites Belaunde disenchanted the majority of the population triggering a wave of protests. Throughout the 1950s and 1960s Peru moved closer to a general social revolution. The failure to achieve widespread social reform made that prospect a real possibility. The coup d'etat of 1968 erupted as an alternative to reform the country (Watters 1994:80).

2.1.1 The legal system

The advent of the Republic did not produce a radical change in Peruvian national life and colonial institutions remained a long time afterwards (Loli 1993:201-2). This was also reflected in the law. In the Provisional Statute of October 8th 1821, Jose de San Martin manifested that laws enforced by the previous government kept their force and effect when they were not in opposition to the independence of the country and the decrees enacted by the new government (Rodriguez 1993:195).

The liberal ideas of the French revolution arrived in South America more to give ethical support to the independence processes than to be constituted as a driving force for a societal change. Trazegnies (1980a) claimed that in Peru a kind of 'traditional modernisation'¹³ process happened in which the dominant elite intended 'to modernise' the country. They incorporated some capitalist features without changing the social stratification. The law supported by the doctrine of *jusnaturalismo*¹⁴ in most

¹³ The author is inspired by Unger (1976:224-31)

¹⁴ 'Rationalist natural law' (Santos 1995:61)

of the nineteenth century defined the individual liberties but based in the 'tradition', this is in the inherited historical values of privileges and social differentiation. All Peruvian jurists distanced themselves from the main liberal thinkers (e.g. Hobbes, Locke, Rousseau). Toward the end of the nineteenth century positivism became fashionable amongst Peruvian philosophers. The debate reached the law too but in the process ethical claims were lost and the scientific rationality was reduced to the formalism of the written law.

Consequently, the law played the important role of giving coherence to the contradictory process of 'traditional modernisation'. Trazegnies (1980a:54) describes these events as 'social schizophrenia' in which the law took the task of conciliating:

'... the tradition with the novelty, the established privilege with the capitalist principles, the ideas of freedom and equality with the existence of a society with enormous social differences in which few persons were more free than the majority'.

The legislative task was focused on the elaboration of Constitutions, and no effort was given to a different codification until the second half of the nineteenth century (Trazegnies 1980a:55). Throughout these Constitutions enacted during the nineteenth century, egalitarian principles were proclaimed but at the same time more power was granted to some social groups in detriment of others. Loli (1993:202-3) claims: 'Despite any logic, in our country has coexisted the equality as a right and the preservation of hierarchies as simultaneous objectives of the legal system'.

Reflecting these contradictions, the Catholic Church held its importance within the national life. The Political Constitutions from 1823 until 1839 consecrated the 'transcendence and validity' of the Catholic religion in our country, ratifying it as the

official religion of Peru (Rodriguez 1993:196-7). As a result, all the freedoms were promulgated except the religious freedom (Loli 1993:202).

The 1823 and 1826 Constitutions declared equality between citizens, although the requirements for accessing citizenship, such as to read and to write, to have property, being in the exercise of a profession, not to be subject to the status of servants or labourers¹⁵ excluded the majority of the population: 'to the poor, indigenous, blacks and women' (Loli 1993:204). The 1828 Constitution continued excluding black people and women although indigenous populations were recognised as 'citizens' but in a very reduced category. They did not have the right to vote in the political elections or to being elected. The exclusion of women from citizenship was made implicitly, through the requirements of the citizenship. However in 1856 the new Constitution overtly defined the citizens of the country as 'male Peruvians' (art. 36). This exclusion of women lasted 100 years until the Law No. 12391 (September 1955) which recognised to women the exercise of their political rights (Loli 1993:203-8).

At judicial level, the *Reales Audiencias*, the highest justice management of the colonial state became the *Alta Camara de Justicia* and their same *oidores* remained in their posts and were renamed as 'judges'. In 1823 a kind of criminal courts (*Comision de la Acordada*) were appointed to deal with crimes like murder, bodily harm and robbery. These 'courts' were made up of three 'honourable men' who were even able to apply capital punishment. It was not until 1823 that the new Constitution created the Supreme Court of Justice to represent the judicial system at the highest level and make it equal with the legislative and the executive powers.

This started to change in the second half of the ninetieth century with the expansion of capitalism. Then the necessity to provide the country with a new legislation became

¹⁵ art. 17, 1823 Constitution

evident. In 1852, the first Peruvian Civil Code and the first Civil Prosecution Code were enacted. In 1853, the first Commercial Code. Additionally, in 1863 the first Criminal Code and the first Criminal Prosecution Code came into force. In 1855 was enacted a law to reform the judicial system, amongst other important legislative events (Trazegnies 1980b:162). Until these years the management of justice was made up of a variety of modalities: cojudges, juries, judges of the peace, Press Courts, Public Order Courts, *Tribunales de la Acordada* in which non-lawyer magistrates had an important role. This second half of the nineteenth century marked the transition from one way of judicial rationality based on 'common sense' to the logic of modern law in which the state's monopoly of justice management and the professionalisation of the judicial function were indispensable (Loli 1993:211).

Trazegnies (1980b:162) claims that: 'this impressive framework of legislative production suggests the implementation of a formal juridical system based in the property assurance and in the freedom of contract' which were the requirement for the development of a modern capitalist society. The Codes were imported almost literally from European codes only adjusting them in some details to be applied in the Peruvian context.

However, the winds of modernisation just reached the appearance of the legal system and the judicial career reflected all the contradiction of these republican times. Until 1870, the post of judges was permanent. To be 'judge of law' it was a requirement to be a lawyer with at least six years in the legal profession. The requirement to be member of the Advocate Association was to be 'old Christian', this meant to be Spanish or a Spaniard's son. In the provinces, judges were clearly associated to the landowners. Pasara (1982:53) writes:

'(...) the young lawyer who was appointed judge in the province belonged to a landowner family or was associated by marriage (...) the landowners had a place where the judicial appointment decisions were taken' (...) 'this mechanism excluded -through the system of periodical judicial ratification- anyone who dared to challenge the power of the 'lords' through an adverse judicial resolution, and complementary, [the landowners] promoted to the yearned posts in Lima those who had proved to be 'reliable' in the [landowners]'s eyes'.

Toward the end of the century, the aristocrats were easily accommodated in the government, their moral claims to justify the independence process were dismissed. Within the law, the 'positivism' facilitated, 'to free the Law of any ethical claim which became the government's will expression' (Trazegnies 1980a:53). The laws and the legal forms were the means that the dominant elite used to satisfy their political and economic ambitions. In the highlands of Peru, *titulos supletorios* (land property documents) permitted the 'expansion and consolidation of the traditional land state through the dispossession of indigenous communities land', all done with much complicity of the Judicial Power (Pasara 1982:55). Arguedas (quoted in Pasara 1982:55) described these events in this way:

'...year by year, the *principales* were taking out papers, documents of all means, claiming that they were owners of this spring, of this *echadero*, of the best pastures (...). With the *mistis*, came the Court judge [*juez de Primera Instancia*], the sub-governor (*sub-prefecto*), the Provincial captain chief and some policemen'.

a) Judges of the Peace.-

The history of the judges of the peace, however, is different from the rest of the judicial pyramid. As was mentioned, mayors were responsible for local justice. After the independence, the Constitution of 1823 confirmed this position and established mayors were 'judges of peace' of their population in cases of minor patrimonial civil problems and in minor criminal offences which demanded a 'moderate correction'.

During the early republic, the mayors were elected by the 'Electoral School of the Parish' that joined all the voters of the district or town. For being a voter and for being elected it was a requirement to be a citizen. As we know the status of citizen was granted to those men having a specific amount of properties and incomes. There is not any information available to understand how the institution of the 'native judges' (held by the native mayors) evolved after the independence and if it was affected by the requirement of the 'citizenship', since citizenship was not recognised to the native population until 1928.

The Constitution of 1826 removed from the mayor the function of justice management to appoint a specific officer: the judge of the Peace. It was also an obligation to appoint a judge in any small town of more than one hundred inhabitants. The Constitution of 1826 reinforced the conciliatory role of the judge of the Peace. Article 112 established: 'there is a judge of the Peace for conciliation in every town'. Article 113 defined the conciliatory role stating: 'the ministry (the function) of conciliation is limited to listening to the petitions of the parties, informing them about their rights and to procure between them a prudent accommodation'.

The Constitution of 1828 gave a different treatment to the Justice of the Peace considering it under the title of 'Justice Administration', as other levels of the Judicial Power. This was repeated in the Constitutions of 1836 and 1839. However, for many years judges of the peace had an ambiguous position. It was part of the town councils but linked to the judicial system. In 1836, the town councils were dissolved and far from meaning the withdrawal of the judges of the peace, it permitted their independent survival supported by the judicial power. On the 29 November of 1839 a new 'Judges of the Peace regulations' was promulgated. It reinforced their conciliatory capacity

and their intervention in the 'minor extent processes'. Judges of the peace coexisted with other courts at the same level of legitimacy.

By 1855 the modern features of the justice management reached also the judges of the peace. They were incorporated to the lowest level of the judicial pyramid within the new hierarchical structure of the modern judicial system. Their candidates started to be appointed by the respective courts. However, the post of judges of the peace continued to be unpaid. This contrasts with the treatment of judges in higher levels who were paid (Loli 1997:87). In summary, status was removed from the justice of the Peace and economic recognition was not granted. On the other hand, the requirement of the judges to prove certain incomes was no longer demanded. The poverty of some zones and the necessity to appoint 'local judges' obliged that decision. For Loli (1997:88) this was the way in which the *Justicia* of the Peace became an institution with an unexpected characteristic: to support the needs of the poor people. The general consensus in the Judicial Power's representative was that the judges of the peace were a 'necessary evil', an institution to be maintained until a different one could be established. Their lack of knowledge of modern law was regarded as ignorance. Many manuals were written with the hope of providing them with, at least, a basic knowledge of legal ideas and rules.

In 1924, it was established by law (No. 4871) that the judicature of the Peace of Lima and other province's capitals, site of Superior Courts, were performed by lawyers (*letrados*). This law created a new institution, the justice of the Peace *letrada*. These judges were incorporated in a superior level to the non professional Justice of the Peace. A salary was awarded to them like any other level of the judicial system. They were appointed to deal with conflict of a higher patrimonial extent and became a

non-specialist court, this is, with the same function of a court but without division of the legal subject areas. This was a way to clear ordinary courts of an overburden of cases which retarded the administration of justice. In the background to this situation was the development of an aggressive centralism around the capital. All the state incomes were directed toward Lima and Lima was the place of the main economic operations.

b) The criminal system.-

It is clear that the law during the colony and early Republic was instrumental to facilitate the exploitation and repression of the native population. During the government of president Leguia however attempts were made, at least on the surface, to bring some protection to the native population. For instance, the Constitution of 1920 established the inviolability of the indigenous land and in 1921 the Directorate of Indigenous Affairs was created. Within this spirit, the 1924 Criminal code established some 'special considerations' to the indigenous populations (Ballon 1980:74). In the code was written:

'Article 44.- In criminal offences committed by savages, the judges take into account their special condition and they can substitute the penalty of *penitenciera* for *prison* [different categories of jails] by the collocation of the infractor in an agricultural criminal colony, for a non determinate time which should not exceed 20 years.

Having served two third of the timethe offender can obtain his conditional freedom if his assimilation to civilised life and his morality make him capable of behaving properly.

Article 45.- In criminal offences committed by semicivilised Indians or Indians degraded by servitude and alcoholism, the judges should take into account their mental development, their grade of culture and their customs and should prudentially repress them (....)

There were two clearly opposed categories: 'the Western-civilised' and the 'savage-semicivilised-indians' and within the Indians a differentiation which rank for

his grade of involvement with the 'Western-civilised': the savage was the man (or woman) without any relationship with civilisation (in the case of Peru this referred to the jungle native groups) and the semicivilised, those whose degree of contact with civilisation permitted the judges to measure his mental and cultural attitudes (referring particularly to the Andean communities). The 'civilised' was, instead, a category without definition but also without controversy (Ballon 1980: 70-3,89). Article 44 makes clear that what is sanctioned is not the crime but the fact of being 'savage'. In this case, the penalty given to a 'civilised man' for the same offence is not taken into account, the savage will be jailed until providing evidence of his 'conversion' to a 'civilised being' and this can take as long as 20 years.

The Criminal Code of 1924 was in force until 1991. In the wide judicial decisions produced during these decades the concern of many judges, was not to identify the author and the criminal offence but rather to prove that the offender was 'semicivilised' and not a 'savage' in this way they could reduce the penalty and even free them (Trazegnies 1993:20-5, Ballon 1980).

These articles have been replaced by article 15 of the current Criminal Code of 1991:

'Who because his/her culture or customs committed a punishable act without understanding the criminal character of his/her act or behaved in accordance with that perception, should be exempted of responsibility. When for the same reason this possibility [of non understanding] has been reduced the penalty will be reduced'

The pejorative categories like 'savage' and 'semicivilised' have been removed, however, there subsisted the belief that the only valid behaviour is that which follows the state law. As Trazegnies (1993:23) claims: 'The rights based in other cultures are not valid if they are opposed to the norms of the official law: simply they are not law'.

b.1) Police role

During colonial times there were different bodies which assumed the police function but none of them were an organic body. In the cities there were *alguaciles* and *celadores* which fulfilled a very secondary role. The real responsibility for the 'internal order' lay with the army, especially in the case of indigenous revolts. There were also 'private organisations' promoted by the 'lords' of the region to repress native uprisings. During the republic period, these 'private organisations' were institutionalised under the name of 'National Guards' their functions remained the same. This experience was translated to the cities under the name of Urban Guards organised by the town councils. In Lima, particularly they had an important role in controlling workers strikes (Vegas 1990:25-6).

Through the peak of the capitalist development in the country the state apparatus significantly expanded. 'Next to roads and trains, police stations, judge's places [*juzgados*] (...) were erected' (Vegas 1990:27). In this context the 'modern Peruvian police' was created and it was called: Civil Guard (Vegas 1990:27). There was also the intention to remove the control of the 'internal problems' from the Army and entrust this function to a more 'professional' body. These 'modern' intentions collapsed when successive military governments erupted on the political scene of the country from the 1930s. The police were conceived by the army as an auxiliary force. The legislative support was the 1933 Constitution that confirmed the Army as responsible for the preservation of 'public order', the police were not even mentioned. The militarisation brought more authoritarian features to the police, the police station often performed as a *juzgado* where all kinds of controversies were decided under the discretion of the police.

2.2 Changing the country: Peru in the 1970s

Peruvian society was characterised by the exclusion of the majority of the population from the mainstream of political and economic spheres. The dominant elite continued in power with support from the military apparatus. The Army did not hesitate to overthrow democratically elected government which pursued different policies to those of the oligarchy. However from the 1930s and under the influence of the socialist international movement, an organised social protest started to emerge (Vega 1990:33-4).

During the 1960s, however, the military began to grow discontent with their traditional role as an 'agent of the dominant class' (Waters 1994:69). By the end of that decade there was a general consensus that the oligarchy was 'preventing a more egalitarian society from emerging' and that in the highlands the 'archaic' landowners were the main obstacle to economic development in the provinces. The military also concluded that no changes could be achieved democratically. (Watters 1994: 74).

In 1968 the military forces lead by General Juan Velazco overthrew the democratic president Fernando Belaunde and started a radical programme of social and economic changes. The government was primarily committed to an anti-oligarchic ideology and to an economic plan in which agriculture would finance industrial growth. Pre-capitalist forms of exploitation had to be eliminated; the coastal oligarchy had to be broken since they monopolised the country's wealth and were too much the accomplices of powerful foreign interests. It was thought that a reduction in the concentration of land held by landowners would lead to a redistribution of income that would expand the internal market, encourage industrialisation and reduce social tensions (Watters 1994:165-7).

The expropriation of the land aimed to eradicate landowners and all types of servile relationship derived from them. The state also established a tutelage over land property (Watters 1994:167). There was no redistribution of land between the peasant families. 'Co-operatives' were established with the aim of production on a large scale. The indigenous communities were re-baptised as 'peasant communities' stressing their class component and dismissing their ethnic one. Andean people:

'...encouraged to transform their traditional forms of economic organisation and internal government into entrepreneurial or co-operative forms, which could assist their economic and political integration into the nation.' (Watters 1994:168)

The state kept control over land use, wages, marketing and investments in the co-operatives. By the end of 1978 practically all land states in Peru were expropriated and almost 50 per cent of the agricultural land was involved in the transfer (Watters 1994:169). However, the bureaucracy behind the co-operatives denied the Andean communities a direct management of the land. Watters (1994: 172) states that ironically, although it was intended to destroy the landowner class, the reform worsened the concentration of territorial property by combining between 5 to 15 former land estates in enormous co-operatives. Many of these far from being managed efficiently.

The peasants soon felt discouraged about the whole process and conflict arose between the co-operative bureaucracy and the Andean communities. Additionally, no independent peasant organisation was permitted. Watters (1994:173) concludes: 'Even in the name of the Peruvian Revolution, the dominance of coastal *mestizos* would be perpetuated over Indian peasants'.

Finally, the objectives to increase the rate of economic growth and to improve the distribution of income were never achieved. Income distribution worsened in Peru during the period 1961-1975. Velasco was overthrown in 1975 by a coup of right wing officers, lead by General Francisco Morales. New fiscal policies of austerity were designed to assure the improvement in the national accounts while new loans were applied for from the IMF. A general social protest erupted again and the government answered by suspending the constitutional guaranties. Andean peasants tired of the bureaucracy running the *cooperativas* started a process of land invasions (*toma de tierras*). In Cusco Department the main land invasion occurred during the years of 1978 and 1979.

2.2.1 Women in the land reform.-

The 'Land Reform' in Peru was enforced by Decree No. 17716. One of the most disadvantageous aspects of this legislation was to define as 'beneficiaries' of the land reform the 'head of household'. In the Civil Code of 1936 'the head of the household' referred exclusively to the husband. In the rural areas of Peru, and even though civil marriage was not an extended practise, male partners were understood as the representative of the 'family unit'. Exceptionally, single mothers with dependent children and widows were recognised too. As a consequence just 2% of women were 'officially' members of the *cooperativas* (Huber 1990).

Peasant communities were obliged to assume a new organisation that meant the dispossession of women's traditional posts (Isbell 1978). Andean women were excluded both from the new co-operatives and from the communal management. Women's agricultural chores, however remained the same. Women were also excluded from the official peasant organisation: the CNA, (Agricultural National

Confederation). In 1972 they were enrolled in a parallel organisation -just for women-called ACOMUC (Association of Co-operation with Peasant Women) with the objective 'to promote fundamental values of the peasant family'. The participation 'in society' of peasant women was understood in a traditional domestic role and mainly as child-carers (Radcliffe 1993:197:206).

When the process of land invasion started in the late 1970s, women had a leading role Armandina Quispe, leader of the *toma de tierras* in the Anta Province, Cusco department told me¹⁶: 'Women were the ones who took the land with the flags (the Peruvian national flags), men were hidden, women headed the action with their children'. This protagonistic role did not favour women to consolidate a political space within the peasant organisation. On the contrary Armandina explained: 'when the problem of the land was resolved women were sent back home while men continued to be organised'.

2.3 Contemporary Peru, 1980s-1990s

Fernando Belaunde was elected president for his second administration in 1980 and he overtly declared his intention to reverse the legal reforms of the previous military regime. His government had to face two great problems: a very severe economic crisis in 1983¹⁷ and the beginning of the armed operations of the Maoist group Shining Path in Ayacucho (South Andes). The immediate causes of the crisis were the deteriorating prices for Peru's exports in 1982, the enormous expenditure on the public works programme and the increase in the military budget. By 1983 the real gross domestic product (GDP) fell by 10.7 percent. 'Comedores Populares' (communal

¹⁶ I interviewed Armandina Quispe in Ocongate in July 1997.

¹⁷ A detailed analysis of the Peruvian economy of the last thirty years in Ugarteche (1998).

kitchens) 'became essential for the survival of people in the shanty towns' (Watters 1994:180-1).

Alan Garcia became president in 1985. His heterodox economic programme was qualified as 'suicidal'. Initially they achieved spectacular results through reactivating the economy, including a mass employment programme in the shanty towns. However, inflation reached about 110 percent in 1987 and galloped away in 1988. The real salaries fell to 80%, the contraction of the national income was 32%. There was a negative impact on the national saving, investment, export, indices of the stock market and more. The accumulated inflation led to a change of four successive money units (soles, intis, intis millon, nuevos soles). The 'dirty war' caused by the Shining Path cost the country 26 thousand lives. At the end of the 1980s a sense of collapse and chaos pervaded the Peruvian population (Ugarteche 1998:109-110)

Contradictory to its populist discourse during Garcia's government the military incursion in the rural zones led to the greatest human rights violations. It is estimated that six hundred thousand Andean people fled to the cities for fear both of the Shining Path and of the Army incursion. A significant number of Andean communities and towns especially in the South Andean regions of Ayacucho, Huancavelica and Apurimac disappeared (Ugarteche 1998:155). Some areas were declared under military jurisdiction. In the city of Lima, the control of subversion was left to the police (Vegas 1990:37).

The performance of the police in these years contributed to an even greater deterioration of its image. In 1987, a survey revealed that 53.4% of the population considered the performance of the police 'negative', with 30.8% as 'very negative' (Vegas 1990:37). During Garcia's government, night raids by the police were

common in poor neighbourhoods or shanty towns. These raids involved breaking into houses under the excuse of persecution of subversives or ordinary criminals (Vegas 1990:39).

The police had a well established record of abuse against 'individual liberty'. Out of all people arrested by the police just 1 in 19 had sufficient merit to be sent to the criminal system. Additionally, police arrested twice as many people for 'minor offence' charges than for criminal offences (*delitos*). The worst of this situation was that in most of these detentions, incidents of torture were involved (Vegas 1990:39-40).

Bribery was an endemic problem too. This situation worsened with the deterioration of the police salaries in the last two decades. However, the illegality of police intervention did not stop there. Regularly, the command of the police force had to expel a good number of its members because of their participation in criminal offences. The most common offences in which the police force were involved were: murder and bodily harm 52.92%, robbery 24.41%, abuse of authority (11.66%). In all of these offences, particularly in bodily harm the main motive was robbery or the obtaining of a material profit. 80% of these offences were committed in poor zones while just 20% were in middle and upper classes areas. (Vegas 1990:40-1)

2.4 Peru toward the new millennium.-

Alberto Fujimori became president of Peru in 1990. In an incredible event, a candidate who had appealed to his modest origins as a son of a Japanese migrant family and had used a populist discourse to win the majority vote, changed radically once elected, establishing an alliance with the right wing sectors. Significant was the meeting that the elected candidate had with the Army forces days before his formal

appointment. The army was still the 'supervisor' of the democracy (Ugarteche 1998:110).

Inflation had reached 400% when Fujimori assumed power, it was understood that the stabilisation programme should be applied immediately and it was 'designed and managed' by the international officers (Ugarteche 1998:110-1). The adjustment programme was designed on the same pattern as for other Latin American countries: elimination of all subsidies, reform of the tax system, liquidation of the majority of public enterprises, 'labour flexibilisation'¹⁸, change of the financial system with the elimination of the Central Bank as a regulatory agent of the interest and currency exchange rates (Ugarteche 1998:111). However, there was a main problem for the implementation of the programme: the government did not have a majority in the congress. The capture of the Shining Path leader, Abimael Guzman, in September 1992 generated a massive support for Fujimori's administration and he was able to close the Parliament without producing any social unrest. Ugarteche (1998:103) defines these events as an 'antidemocratic coup functional to the neo-liberal economic reordering'.

In Peru the programme of stabilisation has basically achieved the results expected by the experts. The cost to the population, however, has been worse than in other Latin American countries because in Peru, the adjustment programme had to be applied without the money of the World Bank to relieve some of its effects. The money of the World Bank was used to pay the World Bank itself (Ugarteche 1998:108).

The neo-liberal programme has deepened the social differentiation of Peruvian society. It is estimated that just 10% of the Peruvian population has benefited from the

¹⁸ e.g. elimination of the protective labour laws, such as the so called 'stability law' and the 'eight hours' maximum journey length.

new economic management: those able to obtain credit, 'employees, well educated (professional or entrepreneurs)'. The number of poor has increased from 49% in 1991 to 52% in 1996. The social distances are even greater now between women. Despite that the national average women's incomes have worsened a more detailed observation of the phenomena shows that women in city centres have slightly increased their incomes. There is an even more substantial improvement for women who belong to the top 10% of the population, well educated and well employed. A significant event is the increment in the families headed by women at the two extremes of the social pyramid. The upper social sector of women heads of home have increased from 19.8% in 1985 to 24.7% in 1991, whilst in the poorest sector, there is an increment from 16.2% to 23.6%. This is explained by two different circumstances. The increment in the upper sector expresses a greater economic and social autonomy reached by women who are able to live independent from men. Just one fact, the rate of women professionals in the 1990s, has reached 69 women per 100 men. In relation to the poorest sector, especially those in the South Andean highlands, the extreme poverty obliges men to migrate for more incomes. Some of these men never come back, leaving their original families behind (Ugarteche 1998:19,171-3).

The poorest zones of the country continue to be concentrated along the Andean mountains, (Huancavelica, Apurimac, Ayacucho, Puno and Cusco in the South Andes, Cajamarca, in the North Andes, Huanuco in the Central Andes, and Amazonas on the border between the south Andes and the Amazon jungle). Just one piece of evidence of the dramatic effect of poverty in these areas, is the 67% of children suffering from chronic malnutrition.

2.4.1 The legal system.-

As happened in the second half of the nineteenth century, the 1990s has also been characterised by the impressive legislative production. The entire law framework of the country has been changed: in 1991 a new Criminal Code, in 1992 a new Procedure Code which includes some modification to the 1984 Civil Code, a new Judicial Organic Law has also been enacted amongst others events. This time the argument has been the necessity to adapt the country to our reinsertion in the international financial market. In 1993 a New Constitution defined the current features of the Peruvian state. In this time, of 'contradictory impulses', as Ferraro would say, other important laws have been passed such as the new Domestic Violence Laws.

The judicial system, with its endemic problems of corruption, inefficiency, and lack of political independence¹⁹, has been the object of new attempts for its re-modernisation. New judicial divisions have been created such as the Family judges and prosecutors. The new procedural code has given a great importance to conciliation and arbitrage as ways of processing conflicts with particular reference to commerce and industry. The Judiciary Academy for the 'professional' training of the judges recovered a new importance. Two other institutions came into operation to give the Peruvian state more democratic features, such as the Constitutional Tribunal and the *Defensoria del Pueblo* (the Peruvian version of the Ombudsman). A little time later, when such institutions began to clash with the government the promises for a more democratic Peru came to an end. Of most significance has been the destitution of the members of the Constitutional Tribunal for rejecting the amendment to the constitution approved by the Congress which permitted the third re-election of President Fujimori (Ugarteche 1998:168)

¹⁹ A detailed analysis of the judicial system until the early 1980s in Pasara (1982)

On the other hand, after the end of the 'dirty war' against the Shining Path and since their more protagonist role in family violence, the police have slightly improved their image in the eyes of the population. Their low salaries and lack of resources, however, have not contributed to eliminate bribes, nor have the police removed their authoritarian behaviour.

2.4.2 Andean communities.-

It was not until the Constitution of 1920 that the indigenous communities were formally recognised and their communal land received legal tutelage from the state. To receive that special treatment (not always effective in practice), the community had to enter into a 'legal existence' and be shaped in the requirement and definition created from 'above', that is, from the state. In this way, the 'Indigenous Communities Statute' of 1966 defined the community as: 'an association of individuals linked by tradition, practises and customs holding a communal possession of lands'. This statute created a special register in which the already existent communities formalised their situation.

In the 1987 'Peasant Communities General Law' (No. 24656). The definition of Peasant communities is:

[these] are organisations of public interest, with legal existence and juridical status, integrated by families which live in and control defined territories, linked by ancestral, social economic and cultural bonds, manifested through communal property of the land, communal work, mutual aid, democratic government and development of sectors activities. Their aims are orientated to the full development of their members and the country'

And in the 1984 Civil Code the Peasant and Native communities are defined as:

'...traditional and stable organisations of public interest, conformed by natural persons and with aims which are orientated to the best profit of

their own patrimony for the general and equal benefit of the communal members and for promoting their full development'. (article 134)

From 1960 an evolution of the elements that 'make up' a community is noticeable. Since the ethnic category was eroded, the legal requirements of their existence increased, in order to justify that these associations deserve a special protection of the law.

After the 1984 Civil Code the legal treatment of the Andean communities did not experience a fundamental change until 1993. It is in our current Constitution of 1993 -under the Fujimori government- that Andean communities are the subject of a 'renewed' legal treatment. There are two major new elements:

1) The 'jurisdictional function'.- Since Peru entered into the 'modernity' during the ninetieth century, the Constitution has consecrated the exclusivity of the jurisdictional function to the Judicial System. This last constitution is not an exception. However, article 149 established:

'The authorities of the Native and Peasant Communities with the support of the Peasant Guards (Rondas Campesinas) could exercise the jurisdictional function within their territory and in conformity with the customary law, if this does not violate the fundamental rights of the person. The law established the way of co-ordination of the especial jurisdiction with the Judges of Peace and other instances of the Judicial power'.

This norm could be explained in three elements: Firstly, the recognition of the important role that the indigenous organisations and particularly the peasant guards played in the control of subversive groups. The law then, gives them 'autonomy' to decide over certain cases, always in co-ordination with other authorities. Secondly, the Constitution recognises the cultural diversity of the country (art. 2-19), in accordance

with other international documents signed by Peru, such as the Covenant 169 of the ILO. Thirdly, this is a provision emanating from a State in the process of 'privatisation' promoting the 'self-managing' of fundamental social activities.

The legal scholars interested in legal pluralism in our country welcomed the norm. Immediately, the possible application of such a disposition was the subject of debates about the nature of this special jurisdiction and the degree of co-ordination with other levels of the judicial power²⁰. Until today this article has not received further attention and no regulations have been designed to clarify its implications (Castillo 1997:144).

2) Land Tenure.- In Chapter VI on 'Agrarian System and Native and Peasant Communities' the law still granted certain protection to the communities but also adds in article 89:

'[the native and peasant communities] are autonomous in their organisation, communal work and **in the use and free disposition of their land**, and also in the economic and administrative function. Everything within the framework that the law establishes'. (My highlighting)

This is a radical change in the perspective on communal land. It means that the community may distribute or sell the land even to non members. This approach was confirmed two years later by the same government with the 'Land Law' (No. 26505, July 1995). Article 11 states:

'To sell, to mortgage, to rent or to exercise any other act over the communal land of the highlands (*sierra*) or jungle, it is necessary to have the agreement of the General Assembly...'

For Castillo (1997:145-6), this could mean the end of many communities. Aroca (1997:150) adds:

²⁰ See Yrigoyen (1996) and Urquieta (1997)

'...the new Land Law...can lead toward the division and disappearance of the peasant and native communities of the country. ..., [the communities] expect in the future a major demographic explosion, a diminishing of their productive resources, an increase in their poverty...'

and probably the compelled necessity to sell to survive such a situation.

Urquieta (1997:138) claimed that the 'Land Law' redefined the 'scenario' of the communities. It consecrates 'entrepreneurial freedom' and the 'legal equality of the property', contradicting basic principles of the communal land, in the end, contributing to the breakdown of the Andean communities.

2.4.3 Women's rights.-

In 1955 women over 21 years old and married women over 18 years were enfranchised in Peru, provided that they knew how to read and write. This meant that a significant number of Peruvian women, mainly indigenous, were not enfranchised until the 1979 Constitution which gave full political rights to the illiterate people. This Constitution also consecrated the legal equality between women and men (article 20, 2). However, married women had to wait for five more years, until the promulgation of the 1984 Civil Code, to observe any substantial change in their legal status. This will be commented on in the following chapter.

One of the important events of the 1980s, was the signature of the UN Convention of the Elimination of all forms of discrimination against Women (approved by R.Leg 23431 of 1982). However, it is during the government of President Fujimori that a significant number of legal reforms have been carried out to improve women's legal status. These can be summarised as follows:

- 1) In march 1991 a new criminal Code was enacted. Rape within marriage was recognised as a criminal offence.
- 2) In the 1992 Civil Procedure Code the 'cruel maltreatment' as ground for divorce was changed to physical and psychological violence.
- 3) The Constitution of 1993 recognises in article 2, 24-h, the right of a life free of violence including within the private sphere.
- 4) Two laws on domestic violence have been enacted addressing for first time the problem.
- 5) In March 1996 the Interamerican Convention to prevent, punish and eradicate violence against women, the 'Convention of Belem do Para', was signed by the government.
- 6) In October 1996 the 'Ministry of the Promotion of the Women and Human Development' was created having the objectives of:

...the formulation and development of programmes which promote the equality of opportunities for women and other sectors which require as a priority assistance towards human development' (Dec. Leg. 866)

Additionally, in the UN Fourth Conference of Women (September 1995) , President Fujimori addressed the public in this way:

'I am convinced that in Latin America and in other parts of the world the time has arrived to finish for ever with the old mental schemes which hinder the full development of women , and as a consequence the whole humanity (...)

The women of my country have been the engine of the solidarity and the fight for life when one of the most severe economic crises of the century hit Peru. They are, then, the true authors of the so called Peruvian economic miracle'. (quoted in Red:1996)

Nobody can deny that the issue of women's rights was on the government agenda, but the good intentions can not be more contradictory when the economic reforms are mainly affecting the interest of the majority of the population and particularly of the poorest women. Additionally, just one month before of the presidential discourse in Beijing, the 'Law of the Promotion of Employment' entered into force, derogating basic labour rights. Under the excuse of giving equal opportunities to women to compete in the labour market, the law derogated protection on the ground of motherhood like the 'breast feeding hour' and the special compensation for dismissal in case of pregnancy. Also removed was the obligation of the employer to provide crèches. Women increased their weekly hours from 45 to 48, and also the age of retirement was increased for them.

On the other hand, in July 1996, President Fujimori addressed the nation in the following way: '...the Peruvian women have to be owners of their destiny, and progressively being, agent of modernisation and of the productive revolution'(Red 1996). The discourse was made on the occasion of announcing that surgical sterilisation for men and women was declared national health policy and was provided free by the National Health System. The announcement delighted the Peruvian feminists who were always campaigning for the free availability of all safe birth control methods. A little later, they regretted it. The focus for such an operation was the poor women in shanty towns and in the highlands. In 1997 alone 110 thousand women were sterilised. A good number of them were 'threatened, forced or bribed in an attempt to meet state quotas for sterilisation' (Lamb 1999:24) After international coverage and pressure, the government announced its regret for the incidents. The minister of Health was sacked. Free surgical sterilisation is still available. Demographic control is still on the political-economic agenda as a priority.

Conclusions.-

The current features of the Peruvian state are strongly conditioned by its colonial past. The violent imposition of conquerors over the native population configured the establishment of an unequal relationship in which male, white, European colonists had to justify their supremacy over the native people. The main role of the law was to regulate the conditions of the exploitation. New social, economic and political rules were constructed. With the conquerors, came also the patriarchy which affect in a differential way women depending on their ethnic and social status.

The independent campaign during the ninetieth century was not based on a wide social movement. This was a liberal, Creole, aristocratic project which once in power assured through the support of the military, social, political and economic power for themselves with the exclusion of the social majorities. This situation lasted until the 1960s, in which in the context of generalised social protests throughout the country, a sector of left wing Army officers took power and carried on radical social and economic reforms. This marked the end of the oligarchy. The agrarian reform defined the end of the land state but was a project designed and commanded 'from above', the peasant had a marginal capacity of decision about this event. The process negatively affected women's traditional position. The Andean communities were no longer 'ruled' by landowners but by the bureaucracy of the co-operatives. However, despite the social reforms, the military rule confirmed an authoritarian characteristic of the state and their institutions.

Throughout these centuries a strong centralism was developed in Lima, the main site of the economic transactions. This has resulted in the state representatives holding different features depending their relationship with the different socio-geographic realities of the country. For instance, judges of the peace were differentiated between *letrados* and *no letrados*, reflecting the different treatment for capital and provinces, the urban and the rural settings. Police and army have continued their repressive role against the Andean populations and other disadvantaged groups in society.

President Fujimori came into power in 1990 and assumed the task of stabilising the country's economy and applying the structural adjustment programme under the international banks recommendations. The programme has succeeded in reaching their objective of stabilisation but at higher cost for the poorest sectors of society. As a consequence, the social distance between Peruvians has increased as well as the geographical difference, making the South Andes the poorest region of the country.

Contradictory, President Fujimori's government has been receptive to the Peruvian feminist movement's campaigns on women's rights and great achievements in this area have been reached. However the events surrounding surgical sterilisation give evidence that it is not possible to take the state uncritically and that the formal achievement of rights does not guarantee fair treatment for women. The thousands of women sterilised in negative conditions reflected racism and lack of respect for the integrity of the poorest women and shows that in countries like Peru, the state and the law have differential ways in which it engages with the population and these 'differential ways' are based in intertwining categories of class, ethnicity and gender.

This historical review raises questions about the validity of the Peruvian feminist proposals to challenge domestic violence which rely on state agencies such as the

police and court judges. These legal representatives are negatively valued by Andean people and arguably they are not regarded as granters of a 'life free of violence'. In this sense, the benefits reached for 'all women' are not necessarily beneficial for the 'indigenous women'.

The next chapter will consider in more detail the legal reforms relating to domestic violence.

CHAPTER FIVE

LEGAL REGULATION OF DOMESTIC VIOLENCE

Introduction.-

The previous chapter reflected on the nature of the state and the legal system in Peru. It showed how colonisation established a new style of relationships between men and women and other hierarchical relationships such as those between colonisers and the native population. These conditions of subordination persisted and were reinforced in the following centuries. Also apparent was the unequal social and economic development between urban and rural areas and the development of a strong centralism around the capital of the country where social and economic resources were concentrated. As a consequence, people have come to see the law and the state in a different way depending on their social and geographical location. In this context, it showed how new women's rights have been achieved as part of a process of improvement of the democratic features of the state, linked to the reinsertion of the country into the international financial market. Since the disadvantageous conditions in which people related to state agencies have not changed some of these proclaimed rights have had negative effects for women. Understanding this general context, we now focus on the legal provisions relating to domestic violence.

This chapter starts by analysing the historical role of the state law to regulate and enforce the rules of patriarchy in Peru. It explores the ways in which legal definitions

of family relationships have contributed to reproduce a male system of power, confirming the husband as the highest authority in the family, with the attribution of a 'right of correction' in case of disobedience. These historical antecedents serve to understand the ambiguous legal treatment of domestic violence in Peru which went further after women achieved legal equality. The chapter discovers in the performance of judges, police, and legislators an ideology of implicit recognition of a legitimate violence exercised by men against women in relationships.

The main objective of this chapter is a critical assessment of the legal treatment of domestic violence in Peru until the present. While chapter one presented the reasons and motivations of the Peruvian feminists to include domestic violence on the legal agenda of the country, this chapter focuses in the rationality of the law when dealing with domestic violence. This assessment, made through an analysis of the legislation and a review of police and court cases, will reveal the limits of the legal actions in cases of domestic violence. It will also reveal the deep urban nature both of the legal system and of the legal reforms. Particularly, the new legislation is developed over a notion of a legal structure non existent in rural areas. Consequently, the central proposition is that although the legal reforms can be considered a great achievement for the defence and enforcement of 'women's rights' from a feminist perspective, these achievements neither completely benefit urban women, because of the complexity of the legal procedures, nor take into account the reality of rural women in the country.

1. Regulating the patriarchy: Marital authority and the right of correction.-

The notion of marital authority was inherited from Roman law and German law and gave origin to the legal definition of family. In both systems, women and children

were placed under the absolute dependency of the 'head of the family'. Despite the antiquity of these norms, until recently, the family was defined by the jurists as: '...the collective formed by people linked by blood kinship or in marital relationship subject to the same authority: the head of the family' (Mazeud and Mazeud 1976:p.I, vol.I, 6-7,26)

The correlation to the marital authority was the duty of obedience by the woman, clearly established in the legal codes. For centuries, the non fulfilment by the woman to her duty of obedience was punished with physical violence by the husband, who exercised his right and duty 'of correction'. The brothers Mazeud, French jurists (1976:p.I, volIV, 6-7) mention: 'The person of the woman and her patrimony are under the husband's authority, the woman should obey her husband who has over her a right of correction'.

In Peru, the 1836 Criminal Code ¹ was the only piece of legislation which expressly mentioned the 'right of correction'. Article 447 sanctioned the husband who seriously injured his wife abusing this right. Legal doctrine and judicial decisions, however, made plenty of references to it. Additionally, the 'duty of obedience' by the woman was enforced in the Peruvian legislation until the middle of the present century. This left open the possibility for the husband to legitimately compel his wife to accept his commands, even using physical punishment (Mazeud and Mazeud 1979:p.I, vol. IV, 14).

1.1 The Civil Code of 1852

This piece of legislation ruled the country for 84 years, until the promulgation of the 1936 Civil Code. Family regulations reflected mainly the precepts of the Canonic

¹ Enforced for just two years

Law, although some articles were literal translations of the French 'Napoleonic' Code of 1804. Article 28, numeral 1, established that married women were under the authority (*potestad*) of their husbands. This was understood as: '...the right and authority that the husband acquired over the woman and her patrimony from the day of the celebration of the marriage'. (Cornejo 1921:26). It was also recognised that within the marriage women lost the capacity of exercising by herself 'most of her civil rights' (Pacheco 1872:208)

In the Title VII 'Rights and Duties generated by marriage' was repeated article 213 of the French Code: 'the husband should protect the woman and the woman obey her husband' (article 175). Cornejo (1921:236) commented in relation to this:

'Without expressed statement, in this article was consecrated the marital power and recognised the man as natural chief of the legitimate family, providing him with the moral, social and economic tutelage of his wife and children...'

This 'tutelage' included the use of the physical violence. However, this right was not unrestricted. Cornejo (1921:237-8) stated that 'the exaggeration on the right of correction...and the implacable severity that uses insults instead of advice and persuasion' could give ground for the 'divorce'. The 'divorce' was understood as the separation of the spouses (suspension of sexual cohabitation and common residence) without the dissolution of the marriage link (article 191). It could be obtained on the following grounds:

'1) The woman's adultery, 2) The concubinage or public incontinence of the husband, 3) The *sevicia* or cruel treatment, 4) The attempt against the life of the other spouse, 5) The capital hate manifested in frequent severe fighting or for repeated serious moral offences, 6) The incorrigible vices of games or drunkenness, dissipation or prodigality, 7) The denial of the husband to provide maintenance to the woman, 8) The woman's denial, without severe or fair excuses to follow her husband, 9) To abandon the common residence or the obstinate denial

to perform the conjugal duties, 10) The absence without fair ground for more than 5 years 11) The craziness or furore permanently which make dangerous the cohabitation 12) The chronic and contagious illness 13) The condemnation of any of the spouse to infamy punishment'. (Article 192)

The numerals 3, 4, and 5 referred to a violence that could be considered as illegitimate. There was not a uniform criteria to delimit it from the violence legitimately performed by the husband. This was left to the judges every time that a woman applied for divorce. The jurists discussion on the issue is very illustrative:

'The facts should be valued by the material injury produced or by the moral severity depending on the circumstances. The flagellation, for instance, it does not have any possible excuse and would produce the divorce, even though the guilty husband protested the most deep affection and the most sincere regret in excuse or satisfaction of his inexcusable and brutal act.

Instead, the repeated fights and even the most severe insults sometimes are products of an exacerbate character, of an imperfect education or a scarce cultural environment, they do not always reveal the capital hate...

The serious moral offence...the maltreatment at physical level...should constitute a deep despise, a humiliating outrage something serious that gives fundamental reason for the separation, making the common life distressful, dangerous or impossible...' (Comejo 1921:288-9)

Next to all of these limitations there was the fact that if a woman applied for divorce the judge or the husband decided over her place of residence. A woman could never by herself choose her place of residence if she did so, the husband could ask the judges to place her under 'security' and he could refuse to give her maintenance (article 203 to 206). Consequently, the divorce could worsen the already deprived status of a woman beaten 'in excess' by her husband. It is not difficult to imagine this situation discouraged many women from applying for divorce.

1.2 The Civil Code of 1936.-

This code was enforced until 1984 and established a 'lessened' women's subordination to their husbands (Comejo Chavez 1986:VI, 46). The code did not expressly mention the duty of female obedience but this was implicit in the regulation of the spouse relations. A woman had the obligation to accept the marital authority except in the cases when she could prove 'abuse of the Law' (articles 161 and 163). It was a woman's obligation, as well, to help her husband and be 'personally' responsible of the housework. If she wanted to work outside the home she only could do it with the 'express or tacit' consent of her husband (art. 173). She had the obligation to follow him where he fixed his residence. Additionally, she should add her husband's surname to hers (article 171).

This Civil Code recognised divorce with dissolution of the marriage link (article 247)². The *sevicia* and the severe moral offence were recognised as grounds for divorce in numerals: 2 and 4. Both situations involved incidents of physical violence that, as the inheritance of previous legislation, should be qualified and graded to find enough merit for the divorce. Comejo Chavez (1986:V.I.327) defined the *sevicia* as physical maltreatment which produced physical injury:

'It is not very important the intention to morally hurt but rather to produce a physical suffering. Consequently, it is not possible to classify as *sevicia* maltreatment, insults or disputes if not involving a material outrage'

This criteria was followed by judges and prosecutors. In a 1961 divorce case the Supreme Prosecutor (Exp. 610/61, Lima) stated: '...the *sevicia* has not been proved

² This code incorporated the contents of the 1930 'Divorce Law' which produced a great controversy.

because the ground should be expressed in physical maltreatment and should be valued by the material injury produced'.

Another element considered was the 'intention' to produce suffering. A Supreme Prosecutor (Exp. No. 51/53, Piura) opined in 1953:

'...the ground of *sevicia* consisted of degrading acts, performed with the intention of producing a suffering and that it reveals a brutal inclination that surpasses the limits of common respect implicit in common life'

However, the most difficult element to prove was 'repetition' because the probatory means were much restricted. It was claimed that just a continued sequence of physical maltreatment justified that the common life became unbearable. The Supreme Prosecutor stated in this case 'The sporadic fights can not be regarded as *sevicia* and cruel maltreatment... a singular act without consequences can not be evidence of *sevicia*...' (Exp. 392/55). This supreme judgement also illustrates this unfair situation. (Exp. 2187/78, Lima):

'...that the evidence acted such as the certified copies of page 39, the police report of pages 28 and 29 and the witnesses declarations of pages 18 and 19 are insufficient to prove the divorce's ground; the police complaints of page 28 and 29 were not subject to investigation or legal processing and they lack of probatory evidence; the witnesses' declarations of pages 18 and 19 did not prove to have seen the respondent committing acts of *sevicia* against his wife, they [declarations] just referred to the physical injuries that the spouse suffered; the certified copies of page 39 referred to a police report on *faltas* [minor offences] against body and health [minor bodily harm] in front of the Judge of the Peace in which it claims the existence of the physical injuries on the plaintiff, is lacking the legal medical certificate, additionally the judicial procedure was stopped and the objective of the action was not finished because the complainant desisted in the action. It declares: *HABER NULIDAD* (the nullity) of the Superior Court decision (*sentencia de vista*) of page 88 that confirmed the judgement of the judge of the first court (*primera instancia*) on March 1st., which declared *fundada* (sustained) the plaint of divorce on the ground of *sevicia*'.

In relation to the other ground, 'serious moral offence', it referred to the 'outrage to the feelings or to the dignity of one of the spouses' (Comejo 1986:V.I, 328). Events of physical violence have been used regularly by plaintiffs' lawyers as additional evidence to make up the 'serious moral offence' ground. The judges and prosecutors have normally accepted such argumentation. The opinion of the Supreme Prosecutor in a case of 1958 (Exp. 221/58, Lima) was as follows:

'...the constant insults against the wife, whom the husband classified as crazy, idiot and a slap committed in public, this in a social gathering, constitutes the ground of serious moral offence regulated by law'.

In fact, the slap was not regarded as deviant itself but the fact of being committed 'in public' contributed to the claim of 'serious moral offences'.

1.3. Domestic violence and criminal laws.-

At criminal level the situation was quite obscure. The 1863 Criminal Code, article 245 established:

'The physical injuries [*lesiones*] inflicted between spouses are not prosecuted without the accusation of the other spouse [the victim]; with the exception of the articles 246, 248 and 249 [removing eyes, castration, mutilation, or serious damaging of any vital function]'

However, the husband was exempted from criminal prosecution if he caused physical injuries to his wife while she was committing adultery and the physical injury did not produce more than 30 days of incapacity to the woman. If it produced more than 30 days of incapacity, the woman could accuse him. (art. 256).

The 1863 Criminal Procedures Code, however, contradicted the Criminal Code, establishing in its article 20: 'Accusation is not possible between:[numeral 3] The spouses with the exception of adultery'. This created an uncertain situation in which

it was not clear if a woman could accuse her husband at all. It is possible to assume that many judge's applied the most beneficial interpretation for the accused (following the criminal principle) and did not accept such an accusation. In any case, this ambiguous situation remained until 1920 when a new Criminal Procedure Law clarified the issue in the terms of the article 254 of the former Criminal Code.

2. Achieving formal equality.-

2.1 The Constitution of 1979.-

Legal equality for women was reached finally with the promulgation of the 1979 Constitution. Article 2, subsection 2, states:

‘Every person has the right to:

2.- Equality in front of the law, without discrimination for causes of sex, race, religion, opinion or language.

Man and woman have the same opportunities and responsibilities. The law recognised to women not lesser rights than those of men.’

In the last paragraph our legislators recognised that women should be entitled to ‘more rights’ in some cases, particularly relating to motherhood. This disposition was used by the feminist groups to advocate for positive discrimination. Unintentionally, the Peruvian constitutional article was very advanced in relation to other statements about equality. It established that ‘equality’ does not mean that men’s rights are the measure for women’s rights. Unfortunately this statement was dismissed by the 1993 Constitution which enacted the article 2 in these terms:

‘Every person has the right to:

2.- Equality in front of the law. Nobody can be discriminated against by cause of origin, race, sex language, religion, opinion, economic condition or any other cause.’

2.2 The Civil Code of 1984.-

This civil code, enforced at present, had as its main task to adapt the principle of legal equality to family regulations, abolishing the rules of 'marital authority'. In the 'General Statements' of the 'Family Book' article 234, 1st paragraph is written: 'The husband and the wife have the same authority, considerations, rights, duties and responsibilities at home'. However, the application of the constitutional principle consisted basically in replacing the words 'husband' or 'wife' by 'spouse' or 'spouses' depending on the case. This is especially evident in articles 287, 288 (on common duties of the spouses) and article 160 (obligation of cohabitation) of the 1984 Civil Code which were literally copied from articles 158, 159 and 289 of the 1936 Civil Code. Article 290 is a modification of the previous article 161. This article regulates the duty and right of both spouses to participate in the government of the home and cooperate in its good development. It adds the shared responsibility for fixing and moving the marital residence and to decide about the household economy. This article replaces the word 'husband' by 'both spouses'.

In article 291 our legislators attempted to protect the rights of women who remain at home performing as housewives but under the formula: 'if one of the spouses'. This is explained by the same legislator, the late Dr. Comejo Chavez³ (1986:V.I, 263-6) who commented that the code had acknowledged the reality of women as those mainly responsible for the housework and child rearing. This article has an evident origin in article 164 of the former civil code which ruled the husbands' obligation of providing maintenance to the family and the second part of article 161 which consecrated women's obligation of attending the household 'personally'.

³ Dr. Comejo Chavez, a conservative Catholic and a famous jurist, was the MP responsible for the Commission of Reform of the Book of Family of the New Civil Code.

Article 293 establishes the possibility of 'every spouse' to perform any job with the express or tacit consent of the other spouse, repeating the statement of the former article 173 which referred to the possibility of women's work with husband's consent. In the chapter about *Sociedad de Gananciales* (Common Patrimony) article 306 is a new version of the former article 182 which referred to the husbands administration over women's own patrimony. In this new article the word 'women' has been replaced by 'spouses' again and the word 'husband' by the 'other spouse'.

Finally the first part of article 24 of the current Civil Code in the title 'Name' reproduces the text of the former article 171 which consecrated the woman's obligation to add her husband's name to hers. In this new article the imperative 'add' has been changed by the phrase 'has the right to add'. Dr. Cornejo argued that to add the husband's surname is a 'privilege' that women should not lose.

Through the provisions of the 'Family Book' we are informed with a concept of family structures that although applying the constitutional principle remain the same. Dr. Cornejo Chavez (1986:V.I., 253-4) strongly believed that the law exercised 'a normative vigilant action of the personal relationships between spouses'. but that this sphere was better ruled by the 'domestic authority'. Consequently, there is a strong belief in the family as a structure in which somebody has to command and others obey. The new egalitarian notion has just removed from the surface a hierarchical notion of family relationships.

2.2.1 Domestic violence in processes of divorce.-

The grounds for separation and divorce are established in article 333. The grounds remain almost the same as in the former 1936 code. There are just two new features: the addition of the ground of 'homosexuality after marriage' and the modification of

the ground of 'malicious abandonment' by 'unjustified abandonment'. This was an important change since the 'weight' of the evidence moved from the plaintiff, this is from the abandoned spouse who had to prove that the other left the home 'maliciously', to the respondent, who had to 'justify' his abandonment. The majority of plaintiffs in these cases are women.

The grounds of *sevicia* and severe moral offences did not undergo any modification and the judicial criteria also remained the same. In the Supreme Judgement of 24 April 1991 (Exp. 1704-90, Arequipa), the prosecutor opined:

'The doctrine sustained by our jurisprudence has consecrated that the *sevicia* is configured by the continuous maltreatment which produces a suffering in the spouse and makes unbearable the common life breaking the limits of good treatment and mutual respect. It should be merited by the judge in accordance with the circumstance and personal condition of the spouses...'

The probatory requirements of the ground were based on the gathering of material evidence which proved the physical and reiterative maltreatment. In this Supreme Judgement (Exp. 1794-90) appears:

'...the *sevicia* ground is proved by the copies of the police files of the maltreatment produced by the offender in grievance of the plaintiff, of pages 19 and 22, corroborated by legal medical certificate of pages 23 and 26; personal guarantees application followed by the plaintiff, of pages 27, and the witnesses declarations of pages.40, 42 and 51; the criminal case of *faltas* against 'body and health' of pages. 59/83 and its respective sentence of page 102.'

Instead, a Prosecutor opined in a similar case on 16 August 1991 (Exp. 1434-88, Lima) the following:

'...the ground of *sevicia* claimed by the plaintiff, sustained in the judgement at first and second instance is not accredited; the husband's aggression to produce injuries in his wife, as medical certification of page 69 resulted in no days of medical assistance for 4 days of work

incapacity, date of 4th July of 1986, is not enough merit to constitute degrading actions constitutive of the ground of *sevicia*.'

As happened with the ground of *sevicia*, the 'severe moral injury' continued to be enforced under the same criteria until the modification by the 1992 Civil Procedure Code.

3. State recognition of domestic violence: the criminal jurisdiction.-

3.1 The legal background.-

The confusion created by the 1863 Criminal Procedure code was amended by the 1920 Criminal Procedure Code. Consequently, a husband could be charged for causing physical injuries to his wife (article 254, 1893 Criminal Code). In the 1924 Criminal Code (enforced until 1991) there was also no restriction to the accusation between spouses, and if a woman was beaten she could accuse her husband. This was possible depending on the *results* of the injuries caused by him. The evidence should always be *physical* and should fulfil the requirement of the forensic examination.

There were two procedures available for a woman, as for anyone who suffered physical aggressions: a) *Delitos* (serious criminal offences) against the life, body and health procedure and b) *Faltas* (minor offences) against the life, body and health. In practical terms the difference between these criminal situations was the gravity of the injuries produced. The forensic office was responsible for defining the gravity of the physical injuries. An injury qualified as requiring more than 10 days of resting constituted a *delito*, otherwise it was considered a *falta*. Criminal judges were responsible for the prosecution of the *delitos* while judges of the peace had jurisdiction on *faltas*.

The ideology behind these processes working against women's interests could be summarised as follows⁴: Firstly, the police underestimated the complaints of women and often dissuaded them from presenting a complaint. Secondly, the doctors in the forensic office tended to understate women's injuries. If the injury to a woman required ten days of resting (or even more) they reduced it below this limit. In this way, the case followed the procedure of 'faults'. The doctors were very aware of their important position and that their criteria was definitive. They refused to 'aggravate' cases that happened 'in the family'. Finally, the same attitude was found in the judges who tried not to open the cases even for investigation or, if they did, tried to use the 'conciliation', non-existent in criminal procedure, to finish with the case.

3.2 Women's Police Stations.-

In this context of a general state indifference towards the issue of domestic violence, the first Woman's Police Station of Peru was born on 17 of August 1988, becoming the first public policy on domestic violence.

A decisive element for its foundation was the creation in 1978 of the Female Police School within the 'Civil Guard' (now National Police). Immediately after the first women's police class was graduated the police head office created the 'Minors Centre and the Women's Police Station of Lima' (August 1978) for the custody and security of women who were prosecuted for criminal offences. In September 1979, its denomination was changed to 'Women's Preventive Centre No. 1', becoming a sub-unit in support of other police stations. However, these women police were not satisfied with their role and inspired by the Spanish precincts, proposed to their

⁴ Loli, Tamayo and Vasquez (1985) analyse cases of domestic violence under the former Criminal Code.

command a police station exclusively to handle complaints of domestic violence⁵. The project was accepted. On 12 of June 1988 by Resolution 1694-88-GC, the first Women's Police Station with special functions for the reception and investigation of complaints of 'physical and psychological maltreatment' that women suffered in their relationships was created.

This was a complete new perspective: a space exclusively for women that recognised not only the physical but also the psychological violence. Unfortunately, no specific legal procedures on physical and psychological maltreatment to women existed. There were general procedures in offences related to physical injuries. Consequently, the first women's police station appeared without legislation to support such an initiative. At the start of its activities, the police station received complaints of psychological maltreatment. Unfortunately the judges of the peace rejected these files arguing that there did not exist any legal type in the Criminal Code defining psychological maltreatment as a criminal conduct. In this way, after one year these kind of complaints were no longer processed.

The achievement of these pioneer experiences in the treatment of domestic violence can be summarised as follows: firstly, although it was not an integral state programme to tackle domestic violence but rather a police institutional initiative, it constituted an important effort to recognise domestic violence as a serious social problem, affecting a large number of Peruvian women. Secondly, this first women's police station made 'visible' the problem of domestic violence by providing accurate data on the issue and revealing the urgency for new legislation to support state actions. It became an important base for the elaboration of the laws on family violence. Thirdly, the creation of this special public space for women, acknowledged

⁵ Sub-officer Beatriz Escudero was responsible for this proposal. I interviewed her in April 1993.

the limitation of the state institution in intervening in women's rights issues. The features of the national police, authoritarianism, machismo and corruption were challenged by these police stations. The personnel were trained and their actions publicly recognised. Thousands of women arrive every year to these police stations to make complaints that they would not have done otherwise.

However, as was commented in chapter one, in more recent times there has been a tendency among feminists in Lima to work with the state 'uncritically'. In this sense, a subsequent law on domestic violence enacted in 1997, No. 26763, ignores the existence of women's police stations stressing the legal obligation of any police station to handle complaints of domestic violence, subtly questioning the existence of 'especially appointed' women's police stations. These laws have also been enacted by the government in a context of reduction of state direct services for the population. However, in the provinces, women's groups continue to acknowledge the importance of the women's police stations. After a long campaign of the South Andean women's groups network, a Women's and Children's police station was created in 1997 in the city of Cusco. This firm attitude by some groups of women has contributed to the fact that in the 1998 '*Reglamento*' of the domestic violence laws, which will be commented on later, the importance of the specialised units with trained personnel to handle complaints of domestic violence was reconsidered.

3.3 The 1991 Criminal Code.-

This Criminal Code was enacted in June 1991 and replaced the 1924 code, enforced for 67 years⁶. In the previous years a 'Commission for the Reform of the Criminal Code' was installed in the congress. This Commission opened a public debate and some proposals were received for discussion. In relation to domestic violence, the

⁶ The 1924 Criminal Code was the subject of partial modification during its existence.

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⁶ The 1924 Criminal Code was the subject of partial modification during its existence

feminist position influenced the articles on '*Faltas* against the person'. Additionally, the Commission already had taken position for the criminalisation of rape within marriage.

3.3.1 Violence in relationships.-

The '*Delitos* against the life, body and health' and '*Faltas* against the life, body and health' of the former Criminal Code were replaced by the '*Delito* of *lesiones* (bodily harm)' and '*Faltas* against the Person'. Although with some variations the logic of both criminal figures remain the same, graduating the criminal situation by the gravity of the physical injuries. Bodily Harm is defined in article 121 as:

'A person who causes to another serious injury to his/her body or health will be punished with prison of not less than three years and not more than eight years'

Faltas against the Person is ruled in article 441:

'A person who in any way, produced in another an intentional physical injury [*lesion dolosa*] which required up to 10 days of assistance or resting, as medical prescription, will be punished with communal service work of between 20 and 30 days provided there are not aggravating circumstances otherwise the case will be considered as a serious offence [*delito*]. (first paragraph, article 441)

Peña (1986:158-60) states that in 'bodily harm' of most importance is the injury produced and not the act in itself. The injury has to 'reduce' the physical integrity: (e.g. a twisted nose) and has to remain after the act which produced it (e.g. the offender twists the arm of his/her victims but if later there is not an 'appreciable' damage it is not a bodily harm). In relation to the health damage, this has to alter any physiological function in a permanent and measurable way.

In the bodily harm procedure it is obvious that the legal medical certification will define the offence. The same criteria is applied, in cases of '*Faltas* against the Person' and the forensic doctor's certificate is considered indispensable. Up to this point, the situation in relation to the former criminal code was no different. However, under the pressure of the feminist groups who were campaigning for the recognition of domestic violence as a specific criminal offence, the new code brought a new feature which was intended to acknowledge the issue of domestic violence. The article 442 states:

'A person who physically maltreats another person without producing a *lesion* (physical injury) will be sanctioned with communal service work of between 10 and 20 days'.

When the agent is a spouse or cohabitant the punishment will be of communal service work between 20 and 30 days or between 30 and 60 days of fine⁷.

The article covers two relevant aspects. Firstly, it takes into account physical aggressions which do not leave physical evidence. Secondly, it increases the penalty in cases of domestic violence. In reality, this article was never used at police level. The police work under the logic that they intervene if there is something to 'investigate'. They expect an 'evidence' of the event and -in the police understanding- this is done by a forensic certificate. Consequently, in police stations only cases under article 441 have been processed. Additionally, the *letrados* judges of the peace normally reject police files in which the forensic certificate is not enclosed. This was the main problem when the first Women's police stations tried to process complaints of psychological maltreatment.

⁷ In Peru, the fine is calculated by assigning a monetary cost per day

The other difficulty for the application of article 442 has been the lack of effectiveness of the sanctions established. The 'community service work' has not been implemented until now. Article 199 of the Criminal Execution Code states:

'The sanction of community service work obliged the offender do unpaid work in assistance institutions, hospitals, schools, orphanages and other similar establishments or public works. The Penitentiary Administration co-ordinates with the above institutions to assess their necessities in order to allocate people in service'

The inter institutional co-ordination has never been carried out and it has not been possible to implement these measures.

In rural zones, however, the police used this concept of 'community service work' but without a judicial order. It is a police practise to oblige offenders to perform certain activities, like cleaning and painting the police station, and helping with other tasks. Once the offenders finish with the assigned task they are released. In other cases, the offender is allowed to go back home but he comes back the following day to finish the task. I also found some *no letrado* judges of the peace who add in the conciliatory agreement that in case of breach of the agreed compromise the penalty will be to fulfil community services in town council building works.

3.3.2 Rape within marriage.-

One of the significant improvements in the criminal legislation was to eliminate from the definition of rape the phrase 'outside the marriage'. In the former code a husband could 'legally' rape his wife. This situation contradicted the basics rights on personal freedom, devaluing a campaign on eradication of domestic violence. There is no logic in a legislation which on one side condemns a husband who maltreats his wife but permits him to rape her. Additionally, forced sex is accompanied by physical and/or

moral maltreatment. To overcome that situation the current Criminal Code defines rape in article 170 as:

'Anyone who with violence or great threat obliges the other person to practise the sexual act or other analogous act will be prosecuted with a privation of freedom penalty of not less than four years and not more than 8 years.'

3.4 Operating the criminal laws:

3.4.1 The police.-

Faltas against Person and Bodily Harm have different judicial routes. At police level, both complaints are presented locally, that is, in the police station of the district of the complainant or in the police station corresponding to the place where the offences were committed. The women's police stations are the only non-territorial jurisdiction, that is, they receive complaints from any district. The police stage is made up of the following steps:

- 1) The police station receives the complaints of the affected person and gives him/her an order to the forensic office.
- 2) The police give both complainant and offender an appointment to make individual declarations. In the police practice this new declaration of the complainant is very important, they call it 'ratification'. If this is not made by the complainant, the police will not continue with the procedure.
- 3) Once the forensic report is received the case file is formed. The police add the conclusions of their investigation and define the criminal type applicable (i.e. *faltas* or serious criminal offences).

4) The case files are sent to the judges of the peace of the district of the complainant if they are *faltas* or, if they are criminal offences they are sent to the provincial criminal prosecutor.

These procedures demand the fulfilment of certain requirements that prevent the majority of women presenting a complaint. Our experience reveals that many physical maltreatment 'at home' do not leave any physical evidence. For instance, pulling hair, slaps without bruising, pushes and anything that constitutes a maltreatment at moral and psychological level. Additionally, there is a reluctance by the police to accept complaints of '*Faltas* against the person' when the events have occurred more than 48 hours previously. They only intervene in 'immediate' cases. In 1992, 9,216 women went to the Women's Police Station of Lima to complain about violence at home but just 3,874 women fulfilled the legal requirements for starting a criminal procedure. Just 3,874 had something 'to show' to the forensic doctors (Estremadoyro 1993:71).

Additionally, most domestic violence cases do not reach the criteria of the forensic office for more than 10 days of resting or medical assistance and are processed as '*Faltas* against the person'. I reviewed the cases sent to the judicial system from the Women's Police Station of Lima between July 1994 and February 1995. From 1,327 case files just 5 of them reached the level of criminal offences and were remitted to the provincial criminal prosecutor. 1,322 were remitted to the *letrado* judges of the peace to be processed as '*Faltas* against the person'.

3.4.2 The Judges of the Peace.-

The 1991 Criminal Code establishes the competence of the *letrados* and *no letrados* judges of the peace in the trial of *faltas* (minor offences, articles 440 numeral 6). It

is not the intention in this chapter to describe the process exhaustively but rather to point out some important characteristics in the performance of the judges which helps us to understand the way in which the legal system operates and the ideology behind the judges' performance. It also concentrates on the *letrado* judges of the peace. The performance of the *no letrado* judges of the peace are the subject of examination in chapter eight.

In this analysis I have used the data obtained by Reinoso (1992) in 1991 on 4 Judges of the peace of Lima downtown (*Cercado de Lima*) on 'Faltas against the Life, the Body and the Health' (the former denomination of the 1924 code); and my own research on two judges of the peace of the district of San Miguel, Lima on 'Faltas against the person' in 1995.

Some clarifications are necessary before looking into the data.

The *falta* is considered 'extinguished' and it is not possible to continue the prosecution, after six months from the incidents which motivated the complaint (article 440, numeral 5, Criminal Code). This rule is applied even if the police or the judges are responsible for the delay. When the *falta* is 'extinguished' at police level and is received by the judge in this state, the judge just signs a 'No proceed' resolution. When the *falta* is 'extinguished' during the judicial procedure the judges declare the *prescripcion* (ie the extinguishing of the criminal action due to the elapse of the time). In most of these cases there is a clear responsibility of the police and the judge's office in the failure to proceed with domestic violence cases.

Desistimiento is a signed declaration by the complainant expressing her intention not to continue with the procedure. This *desistimiento* is defined as a 'forgiveness'

which deletes 'guilt and action'. This is supposed to be a free act by the complainant and she is not obliged to express any reason for such a decision.

The practice reveals that judges tend to promote 'conciliation' in the criminal processes. The conciliation is a procedure within civil cases but is used extensively by judges of the peace at criminal level. It involves the mutual compromise between complainant and aggressor, normally containing the promise of the aggressor to stop the violence and sometimes even to leave the home, depending on the circumstance of the case. The Criminal Procedure Code establishes that there are two ways to conclude a criminal case: by judicial sentence or by *desistimiento* (art. 391). Consequently, all conciliations are understood as *desistimientos*. If a married woman 'conciliates' in a criminal case and later she decides to pursue a divorce because of physical violence this criminal process will be used 'referentially' but it will not constitute a full evidence, something that is never explained to the women.

Reserva del fallo condenatorio, penalty reservation, is an attribution conferred to the judges in the 1991 Criminal Code. It means judges can sentence the cases, (that is, they declare the commission of the *faltas* or serious criminal offences, identify the offender and the victim and assign the civil reparation), but they do not assign any sanction. Article 62 reads:

'The judge can order the 'penalty reservation' (*reserva del fallo condenatorio*) when the nature, the modality of the criminal action and the infractor's personality induce the belief that this measure will contribute to avoid that he/she commits a new offence.

The reserve will be ordered:

(...)

2. When the penalty to be imposed does not surpass 90 days of community services work...'

Judges tend to use this option of the law (they are not obliged to apply it) in most cases of domestic violence.

In my data from the judges of San Miguel I also paid attention to the number of cases which proceed from the Women's police station of Lima. Since this is a non-territorial jurisdiction it is interesting to see how many women from the district preferred to attend this specialised station instead of attending their district police station. I have classified the data as follows:

1) Data obtained from 4 Judges of the Peace of Lima in 1991:

Total cases: 258

Results	Number of cases	Description
1) Sentenced	12	5 'guilty' 7 'not guilty'
2) By complainant's will		
a) conciliations	16	
b) <i>desistimientos</i>	34	
3) By procedure rules		
a) 'No proceed'	18	Insufficient merit to qualify the <i>falta</i>
b) 'No proceed'	34	The <i>falta</i> was 'extinguished' on arrival
c) <i>Prescripcion</i>	144	The <i>falta</i> 'extinguished' during the judicial process.

II) Data obtained from the First Judge of the Peace of San Miguel:

Years: 1993, 1994, 1995 (January to July)

Total cases: 162

Cases proceeding from the Women's Police Station of Lima: 61

Results	Number of cases	Description
1) Sentenced	6	'guilty' with penalty reservation
2) By complainant's will		
a) conciliations	9	
b) <i>desistimientos</i>	19	
3) By procedure rules		
a) 'No proceed'	5	Insufficient merit to qualify the <i>falta</i>
b) 'No proceed'	62	The <i>falta</i> was 'extinguished' on arrival
c) <i>Prescripcion</i>	50	The <i>falta</i> 'extinguished' during the judicial process.
4) In process	11	at July 1995

III) Data obtained from the Second Judge of the Peace of San Miguel⁸

Year 1995 (June to August)

Total cases: 26. 25 were in process. 1 concluded by conciliation.

Cases proceeding from the Women's Police Station of Lima: 2 cases

In this court I scrutinised 14 files (more than 50% of the domestic violence cases) to obtain more details about the cases. I have classified these findings as follows:

a) In relation to the complainants:

a.1.- All of the complainants manifested to have been beaten on other occasions

⁸ This court was installed in April 1995

a.2 - 11 complainants lived with the aggressor at the time of the complaint. The aggressor was the husband in 6 cases. In 5 cases the cohabitant.

a.3.- In the other cases there was never a cohabitation relationship. One woman was beaten by the father of her daughter, another was a pregnant woman beaten by the father of the future baby and the third case was a boyfriend who hit the complainant.

b) In relation to the procedure -

b.1 - In 5 cases the judicial investigation (*instruccion*) was opened

b.2 - In 7 cases the Judge appointed the parties to attend a 'conciliation meeting'. In 4 cases the meeting never took place because of the absence of one of the parties. In 3 cases the meeting was going to be held after my review.

b.3 - In one case the conciliation was successful and an agreement (*acta*) was written in which the partner promised to stop the violence against his cohabitee.

b.4 - The other cases were waiting for the 'opening of the investigation' resolution.

In this court the total cases processed on the ground of '*Faltas* against the person' was 54. 26 of these cases were domestic violence, almost 50%. The total files processed in front of this judge was 112.

The data obtained in the judge's places merit the following comment. The first noticeable aspect is the low average of sentenced cases compared to a high average of cases ended by *prescripcion*. This is a serious situation since, by law, all criminal cases should be processed *de oficio*, that is, as solely action of the legal representatives. There is a clear responsibility of the legal agents in the extinguishing of the criminal action. The practise reveals that there is a lack of interest in domestic violence cases, in this way, if a woman, sometimes misinformed about the process, is

not personally attending the judge's place to insist in the prosecution of her case, this is neglected by the judge's office.

The 'penalty reservation', a novelty of the 1991 Criminal Code, is an attribution of the judges. It depends on their evaluation of the case and the position of aggressor and complainant. In many cases of domestic violence it is obvious that a previous situation of maltreatment existed. Even more, in some instances previous police cases involving the same couples reached the same district judges. Precisely, it is the 'aggressor's personality' which makes clear that he will continue to beat his partner but judges insist on the 'penalty reservation'. There is an idea in our judges that violence between partners does not deserve a sanction, not even a fine. I found some cases like this in my review. This makes an important difference between the data obtained by Reinoso (1992) and mine, obtained after the enforcement of our current Criminal Code.

As was mentioned, conciliation is not a stage of the criminal procedure. The judges of Peace are non specialised judges, they deal with both jurisdictions: criminal and civil. This can produce certain misunderstandings of their attribution that are reinforced by some legislation. For instance, article 185 of the Judiciary Organic Law establishes the authority of judges to favour the 'conciliation of the parties at any stage' of the process. In the same law, article 64 establishes:

'The Judges of the Peace are essentially Judges of Conciliation. Consequently, they have the authority to propose alternative solutions to the parties to favour a conciliation, but it is forbidden to impose an agreement.'

In almost the totality of the case files reviewed the procedure started from a citation for the parties to a 'conciliation'. That is, the criminal investigation was never

opened as it corresponds to a process by *faltas*. This gives to the process a very different feature. In some way, the parties were induced, especially women, to believe that this was the only way in which the process could conclude.

In this conciliation the judge urges the aggressor to abandon his attitude. If performed in an atmosphere of understanding the conciliation could work. The problem is that in urban settings, impregnated with a 'macho' culture, one can observe men accepting temporarily anything that frees them from criminal responsibility. I even found cases in which the same man had made the same promises in front of the same judge on previous occasions.

All of these circumstances of criminal processes produced diverse feelings in women who complained. Our experience reveals that many women who had made similar claims, had the idea that 'nothing was going to happen' with their complaints because after so much effort the case reached the judges and they 'did not do anything'. Worse is when the offender has the same impression. As Pablo Cardenaz told me in January 1993 (No. 45. Legal advisory Office record):

'She just complains in vain. The last time she denounced me we finished before the judge. Now she denounces me again, we spend our money on buses, lose our time, she should remain quiet at home'

From the data, we realise how the *letrado* judge of the peace used the 'legality', in this case the rules of procedures, to avoid prosecution in cases of domestic violence.

4. New directions, new perspectives.-

4.1 Women's rights as human rights? : The Constitution of 1993

The current 1993 Constitution consecrates as a fundamental right the right to peace and the prohibition of the use of any kind of physical or psychological violence.

Article 2, subsection 22 states:

'Every person has the right: to the peace, the tranquillity... to enjoy of an equilibrate and adequate environment for the development of his/her life'

The same article, numeral 24 letter h reads:

'Every person has the right: to freedom, and to personal security. Consequently, nobody should be victim of moral, psychological, or physical violence nor be the object of torture or inhuman or humiliating treatment...'

The law does not make distinction: no person should be the victim of violence. Additionally it does not discriminate who is the perpetrator of the violence. Traditionally, this article intended to protect citizens from state acts against personal freedom. The main revindication is that the state recognised that so much violence is committed by private individuals and offers the same guarantee of protection as in other human rights violations. It also recognises moral and psychological violence.

The article was considered a great advance toward the objectives of the international feminist campaign on women's human rights but it was also an article written in response to a period of political violence, that is, there is the intention to make responsible for their actions the subversive groups operating in the country and which had committed gross violations of human rights.

4.2 Domestic violence as divorce ground.-

In this context of legal reforms, the enactment of a new Civil Procedure Code was considered of the greatest strategic importance. An urgency to modernise the civil processes was recognised, especially to give them swiftness and certainty and to provide with alternative ways of solving disputes such as conciliation and arbitration. The result was the '*Texto Unico Ordenado* of the Procedure Civil Code' ('The Unique Ordered Text') named in this way because of the various previous drafts elaborated in the preceding years. The last version, currently in force, brought important modifications to the Civil Code and were placed in a special section at the end of the document

The modification of the ground of *sevicia* in divorce cases is a clear consequence of the new public discourse on domestic violence⁹. The *modifying clause* of the *sevicia* ground established that it is possible to obtain separation and divorce for: 'The physical or psychological violence, that the judges evaluate depending on the circumstances'

This change is a fundamental new legal perspective. The *sevicia*, as was discussed before, 'qualified' the violence. That is, it needed a whole set of requirements: e.g. cruelty, repetition, physical and evident injury. With the new legislation, incidents of violence are sufficient argument to apply for divorce. Consequently, it is enough for a woman to prove suffering physical or psychological violence to accede to the ground. It is no longer necessary to prove 'cruelty' or 'physical suffering'.

⁹ In August 1995 I interviewed Dr Nelson Ramirez, member of the Commission responsible for the modification of the Civil Procedures Code. He confirmed that the draft of the law on domestic violence (which became law 26260) influenced the change of the ground of *sevicia* by the physical and psychological violence.

4.2.1 Operating the ground.-

In 1995, I investigated how this change in the divorce ground had been processed by our courts. I mainly found cases in which judges, prosecutors and even the lawyers of the plaintiff- failed to realise that the ground of *sevicia* had been changed or that the physical and psychological violence is not the same as the *sevicia* ground (Estremadoyro 1995). The following is one example of this situation:

In the divorce case No. C93-6803, processed in front of the 27 Special Civil Judge of Lima, Huberta de Guerrero presents a plaint for divorce on 8 December 1993 on the grounds of *sevicia* and 'dishonourable behaviour' against her husband Rufino Guerrero. She based her lawsuit on the fact that her husband had become an alcoholic who stole from her, beat her and destroyed the few things that she had. He also frightened the children and produced scandals that brought complaints from the neighbours. As evidence she presented five complaints in front of judges of the peace of the district of El Agustino processed between 1985 and 1992. She also introduced two neighbours as her witnesses. On 16 of December 1993 Judge Nino Neira (a woman) admits the plaint.

On 2nd of February 1994, the civil prosecutor Maria Valverde from the Fourth Civil Provincial Prosecution Office submitted her opinion¹⁰. She wrote: 'the ground of *sevicia* (physical or psychological violence)' should be declared *improcedente* (inadmissible) because the time that had elapsed since the judicial procedures on *Faltas* were carried out 'extinguished' the evidence. In relation to 'dishonourable behaviour' she opined that this should be declared 'without merit' because the

¹⁰ In all legal processes involving family issues, the civil prosecutor is commanded by law to intervene 'as party' representing the state.

'habitual practise of shameful and immoral acts which make the common life unbearable' was not proved. The defendant did not appear in this stage of the process.

At the 'Conciliatory and Proof Meeting' held on 15 September 1994, the evidence was admitted. On 14 December 1994, the witnesses declared that the defendant had a serious problem of alcoholism and produces scandal at any time of the day. One of the witnesses declared: 'I have not seen very precisely the maltreatment suffered by the plaintiff, but I have heard her screaming and the children screaming'.

The plaintiff also submitted a medical certificate by the psychiatric hospital 'Hermilio Valdizan'. In this report of 17 December 1994 it is certified that the defendant suffered from a 'serious psychotic syndrome'.

The judge gave her judgement on 13 February 1995 considering that the 'grounds of *sevicia* (physical or psychological violence) and dishonourable behaviour' were sufficiently supported because it is evident that the defendants behaviour is *vigente* (it occurs at present) and declared: with sufficient merit the plaint, declaring the divorce.

The defendant now appeared in the process and *apela* (petition for revision in front of a court of higher rank) the judgement. The file was sent to the Sixth Civil Division of the Superior Court on 8th May of 1995, the *vocales* declared that the '*sevicia ha caducado*', the ground is extinguished, and that the 'dishonourable behaviour' is not proved. They '*revocaron la sentencia*', rejected the judgement, and modified it declaring it without merit.

The attitude of the legal system representatives deserve the following comment. Firstly, at the time of the submission of the plaint the modification of the ground of *sevicia* was already in force, however, the plaintiff's lawyer did not take this into

account. For him the modification simply did not exist. Secondly, both the courts and prosecutor use the terms *sevicia* and 'physical and psychological violence' as synonymous. Particularly, the requirements on the evidence demanded by the Superior Court and the prosecutor correspond to the former *sevicia* ground. They did not pay attention to the new criteria in the modification of the ground. Only the Civil judge Niño Neira recognised that, independent from the legal requirements of the evidence, it was fully proven that the behaviour of the defendant still occurred and that acts of domestic violence were committed against this family.

These diverse and discordant opinions of the judicial representatives could be explained by two facts. Firstly, the endemic institutional crisis of the judicial power that is reflected both in the lack of preparation of their members and in the incapacity to work as an organic body in which judicial representatives generate consensus in relation to certain issues. Secondly, although it is true that the modification is a great advance it also gives to judges the attribution to 'evaluate [the violence] depending on the circumstance'. The apparent flexibility of the ground is not such if women have to face a judge with gender bias or simply with narrow criteria.

5. Family Violence Laws.-

5.1 The law 26260.-

This self-denominated law on 'State and society policy against family violence' was enacted in December 1993. Despite the feminists involvement, it is important to note that this was not a law on 'domestic violence' but rather a law on 'family violence'. It is intended to cover a wide range of situations of violence between family members. In this sense, it had the risk of taking the 'family institution' as the main focus of attention to the detriment of the problematic aspects of gender relationships which

are at the base of the problem of domestic violence. It also merged the different problems of children's rights and women's rights.

The law had two clear objectives. Firstly, at the level of 'state policies', the law intended to define some lines of action targeting specific state institutions. Secondly, it intended to open procedural routes to apply for protective measures to benefit domestic violence victims. These processes were of a civil nature with all that this involved (e.g. payment of judicial *aranceles* (tariffs) and the obligation to hire a lawyer's services to enforce the action). However, the most impressive failure of the law was that it did not take into account the judges of the peace neither *letrados* nor *no letrados*. This was a serious omission since most cases of domestic violence are processed in the criminal jurisdiction at the judges of the peace level, as previously mentioned.

5.1.1 Re-conceptualisation of violence and family relationships

The law brought a new legal understanding of violence between family members.

Article 2 reads:

'Acts of physical and psychological maltreatment between spouses, cohabitants or people who have procreated children in common even though not cohabiting and parents or tutors in relation to minors under their responsibility, constitute a manifestation of family violence'

The law uses the word 'maltreatment' that in the Spanish language it is a derivative of the verb 'maltreat', ie. 'to treat others badly by words and by actions'¹¹. 'Maltreatment' refers to the actions and not to the results. This is very important in a conventional legal analysis since it changes the perspective on domestic violence. Civil processes (ie divorce and separation) and criminal actions (*faltas* and bodily

¹¹ From the 'Real dictionary of the Spanish Language'

harm), as explained before, take into account the physical results of the violence and not the action itself.

The law also recognised psychological violence. That was a completely new feature in Peruvian legislation. However, this recognition has had until now very few practical effects. Civil judges have not accepted processes for 'protective measures' in which psychological maltreatment is alleged, mainly because there is no legal consensus on the appropriate means to prove psychological maltreatment (Rojas 1998, Loli 1993:16). There is a belief that the psychological maltreatment should be measured by the damage produced, which is not what the law states. Authors like Loli (1991:4) claim that threats, insult, recrimination, scorn, and permanent disqualification constitute psychological violence. A woman can prove psychological maltreatment simply by witnesses' declarations such as neighbours who often hear shouts and insults by the offender against the complainant. The law does not require evidence of how much these acts perturb the mental health of women, just that these acts are performed.

The 'Family' in the context of the law is also a new concept. Rubio (1980:6) states: 'civil marriage is the way of constituting a family with legal effects before the State'. There is explicit legal recognition of what constitutes the type of family that the law protects in detriment of others forms of family that exist in a multicultural country like Peru. The law brings a new understanding here too. It defines as acts of *family* violence those which happen between cohabitants and non cohabitants who have procreated children together. There is a new concept of 'family' and 'family relationships' protected under this law.

5.1.2 State policies

The law established in article 3 the actions that the State should develop to eradicate family violence with emphasis on the 'formative aspects and society awareness'. The state policies on the 'eradication of family violence' mentioned by the law are as follows:

- a) At educational level, to strengthen the children's formation of ethical values, particularly in the 'unrestricted respect of human dignity and women and children's rights'. (article 3, a)
- b) At media level, to develop campaigns on the awareness of family violence and the explicit condemnation of family violence (article 3, b)
- c) At academic level, to promote study and research on the causes of family violence (article 3, c)
- d) At legal system level, firstly, to establish 'efficient legal mechanisms' for the protection of family violence victims (article 3, d). Secondly, to establish Women's Police Stations throughout the country and to strengthen the current police stations with specialised personal training on dealing with cases of family violence (article 3, f). Thirdly, to train the police force, prosecutors and judges in the issue (article 3 h).
- e) At governmental level, to establish a co-ordination between the ministries of Education, Justice and Internal Affairs for the development of the action suggested by this law. (article 3, last paragraph)
- f) At council level, to establish shelters for the victims of violence and the development of the institutions for the treatment of the aggressors (article 3, g)

g) At NGOs level, to promote the active participation of all organisations specialising in the protection of children, women and in general 'family affairs' for the development of preventive activities and the control of protective measures, support and treatment of the victims and aggressors (article 3, e).

5.1.3 Legal processes for the victims protection.-

Law 26260 was generic and neither defined clearly the legal mechanism to apply for 'protective measures' nor the protective measures themselves. The law referred to a process of 'protection in favour of the victims of domestic violence' that could be started before the civil judge and enforced by the following people:

- a) The victim
- b) Either parent of the mistreated child
- c) Any close relative of the maltreated person
- d) the Public Prosecution Office
- e) Any person who knows of such acts' (article 10)

The civil judge had the power to 'decide on the measures most convenient for the pacification and permanent eradication of all kinds of violence', and consequently could order the 'temporary suspension of cohabitation and even any visits to the affected person'. (article 9). The law did not say more.

The law also mentioned the civil prosecutors, stating that '[they] intervene seeking a permanent conciliation between the couple and other relatives in conflict' and that they 'could apply the necessary protective measures'. It did not give more details. It was understood that it was also possible to apply for protective measures to the civil prosecutor (article 7).

In relation to criminal judges it was simply stated that they could order protective measures within the process of their competence (ie criminal offence) related to domestic violence.

5.1.4 Operating the law

During 1995 I carried out research to evaluate law 26260 almost two years after of its promulgation. My main discovery was that the only people who knew and used the law were the feminist organisations. Months had passed and the media had given some coverage to the law, however, just a few legal actions were performed using this law and all of them by feminist lawyers (Estremadoyro 1995).

As was mentioned the law was not clear. It established special procedures for the protection of family violence victims which involved a petition in front of the civil judges or the prosecutors applying for protection. The only characteristic that the law mentioned is that this procedure had to be 'extremely brief' (*summarisimo*). This created a confusion in the judges because there is a civil process ruled by the Civil Procedure Code with the same denomination, however, the law uses such a term in its literary meaning (ie 'as short as possible', Rojas 1994:4). This appears clearer in article 30, inciso d) of the same law :

'[It is objective of the law] To establish effective legal mechanisms for the victims of family violence, through procedures characterised by minimum formalism and the tendency to order preventive measures.'

Even the feminist lawyers were not in agreement as to which procedures to use for the best. The following are examples of three different interpretations that feminist lawyers gave to the procedure available under the law. All of them were processed before civil judges of the city of Lima.

Case No. I: Generic Protective Measure

On 12 February 1995, Elsa Becerra introduced a plaint in front of the civil judge for the 'suspension of the family violence acts' performed against her by her husband. This was the main demand. Within the same procedure, protective measures were applied for but under a parallel procedure based on article 608 of the Civil Procedure Code which rules the 'generic preventive measure' (*medida cautelar generica*). This means the opening of a secondary file (*cuaderno separado*) with the objective of assuring the efficient result of the main demand. This procedure should be resolved independently from and in advance of the main demand. Its advantage is that it is processed in a very quick way because it is decided without 'listening' to the defendant who is just informed about the judge's decision a few days before the protective measure is carried out. The measure is enforced by the secretary of the court and if it is necessary, with police support.

In this particular case, the judge Iris Pasapera of the 24 Specialised Civil Court of Lima accepted the petition of protective measure on March 3rd 1995, and:

'...order the expulsion of the defendant don Ricardo Masias Carrasco from the spousal home until the present process is decided, the retirement should be effective within the third day after receiving the judge's notification...'

In this case it was not necessary because the defendant left home just with the notification of the measure. This was a successful end to the legal action in which the defendant accepted the judge's decision without the necessity of any other form of coercive intervention.

Case No. 2.- Plaint on Suspension of Cohabitation.-

In this case the 'protective measure' was the main demand of the plaintiff and the process was followed under the rule of *procesos sumarisimos* ('extreme brief processes') of the Civil Procedure Code (articles 546-559).

The demand was for 'temporary suspension of cohabitation and visits' before the civil judge who declared without merit the plaintiff of 6 June 1994. This court file (No. 3884-94) was appealed to the Sixth Civil Division of the Superior Court of Lima who by resolution of the 7th October 1994 stated that the 'elements required by the law' were fulfilled (ie it was true that the situation of physical and psychological maltreatment against the plaintiff occurred). The *vocales* re-evaluated the evidence (complaints of '*Faltas* against the person' and psychiatric report on the aggressor) and:

Rejected the judgement of pages eighty four to eighty five dated 6 of June 1984 which declared without fundament the plaintiff: Reformed it declaring *fundada* (sustained) it and it orders the temporary suspension of cohabitation and visits between the spouses Mrs.... and Mr....'

The time elapsing between the judgement of the civil judge and of the superior court was four months. This is a standard time that it takes a case to reach a revised judgement by a higher court in Peru. It reveals that the idea of the law to provide efficient protective and preventive mechanisms does not correspond to the reality of the Peruvian judicial system.

Case No. 3: Plaint demanding the end of the physical and psychological violence

Here the demand is wider and the central request is the eradication of all acts of family violence. Protective measures were requested as part of the main demand¹².

¹² Under the Peruvian process law a *medida cautelar generica* that we reviewed in the first case has to be applied by the plaintiff's lawyer. The judge is not obliged to apply it without this request.

Maria Sotomayor introduced a plaint against her husband 'to abstain from performing any type of physical or psychological violence against the plaintiff'. It also requested that the judge order her 'free entrance and departure from the home' and the expulsion of her husband. In this case it was the plaintiff who had left home because of the violence she suffered and wanted to come back. The 14 Specialised Civil Court of Lima, after scrutinising the amount of evidence presented, (mainly police files about the plaintiff's complaints of physical aggression) stated by resolution No. 14 of 21st April 1995 the following:

'...the request that the defendant stops performing any type of physical or psychological violence against the plaintiff, and stop preventing her free entry to her home and attending of the common shop should be accepted (...) instead the request to expel the husband from home because it is extreme and not justified by the circumstances is not accepted, mainly because in this case the violence also has been performed by the woman (...) *FALLO* (it decides): to declare *fundada* (sustained) in part the plaint of page 22, consequently, the defendant Herless Braga Loza should abstain from any kind of violence against his wife, permitting her the free access to her home as well as the common administration of the grocery shop..'. The plaintiff should for her part, abstain from any manifestation of family violence against her husband...'

5.1.5 Evaluation of the law.-

a) Difficulties.-

The main difficulty was the *ignorance* of the law. This lack of knowledge was general and included judges, prosecutor, lawyers, maltreated women. People had never heard about the law or having heard about it they did not know how to interpret or use it. Additionally, the procedures to obtain protection of the victim were not clearly established. The law was generic and judges and prosecutors did not assume an active role in deciding how to process this request. In this sense, the petitions requesting the end of violence could not fulfil the objective for the effective

and immediate protection of the victim. To act at the judicial level, especially in the civil area, takes time and money and this wrests merit from the protective intention of the law.

The law recognised psychological maltreatment as an expression of family violence but failed to define it. Because it had not been a previous practise in the issue, judges required that 'psychological damage' was proved without a clear idea of the probatory means which could achieve this objective. In this sense, civil judges were not processing the *Medidas Cautelares* (protective measures) in which just psychological maltreatment was alleged (Loli 1995:4).

The law simply ignored the criminal jurisdiction. It mentioned and highlighted the role of the Women's police stations but it did not affect or improve the criminal procedures. Finally, it did not give the attribution to the judges of the peace to provide protective measures for the victim.

b) Achievements.-

The greatest achievement was its promulgation. It is the first time that a law tackling violence between intimates was enacted. In this sense, the law recognised, although not in an express way, women and children as the main victims of violence. The emphasis on the role of the Women's and Children's police stations gave evidence of this.

The law was a public condemnation of domestic violence, and although not very effective in practise from a legal point of view, it could have many levels of impact on society. Additionally, it was never before possible to request from judges the expulsion of the aggressor from home or to prevent his entry to the family's house by means of legal actions.

5.2 The Law 26763 and the DS 006-97-JUS:

It was soon recognised that law 26260 was never going to be used effectively and that something needed to be done to tackle its shortcomings. This came in the shape of a law No. 26763 enacted on 25th March 1997. What the legislator also did was to modify concepts and to adapt the law to the new legal structure of the country. The changes are such that in fact it is a 'new law' relating to domestic violence.

In order to avoid more confusion on the issue, the second 'Final Disposition' of this law gave authorisation to the Executive Power to publish a 'Unique Ordered Text of the Family Violence Law' in the following months. The executive had to merge the contents of both laws, that is, this new law with the few articles surviving of the original 26260. This happened on 2nd June 1997 through the Supreme Decree No. 006-97-JUS, self-denominated '*Texto Unico Ordenado* of the Law of protection on Family Violence'. It was a genuine merging, it did not add anything to the laws but the contents are better ordered.

There were two important events which influenced the promulgation of law 26763. Firstly, the creation during 1996 of the Ministry for the Promotion of Woman and Human Development and, secondly, the appointment of the judges and prosecutors of family matters within the judicial system. These judicial members were the original 'Children and Juvenile' judges and prosecutors who changed their name in order: 'to be adapted to the new modern proposal legal trends, since the family in its condition as the basic cell of society deserves the protection of specialised courts'(RA No. 025-CME-PJ, 10 January 1996).

Two tendencies were repeated and even reinforced in relation to the previous law 26260. Firstly, the law equated the abuse and abandonment of children with that of

maltreatment of women. This 'merging' of areas is even more ostensible at the level of the activities carried on by the Ministry for the Promotion of Woman and Human Development. Secondly, it continues a strong 'familist' ideology. Here there is a clear intention to protect the 'family' and not the individual in family relationships. This is confirmed by the addition of article 3, to include as content of the school curricula, the teaching of the 'unrestricted respect of...the family', next to the respect of the human beings dignity and women and children's rights.

5.2.1 State policies.-

As with the original law 26260, the law 26763 has two clear objectives: to promote state policies on the issue and to establish protective procedures. It, however, brought some new features that it is necessary to comment on. Firstly, the most relevant aspect of the modification was to endorse the Ministry of the promotion of Woman and Human development with most activities related to the law, while in the original 26260 there was an effort for multi sectors co-ordination (article 3, h).

The other significant innovation is the relevant role that is assigned to the *Demunas* (Local government office responsible for children and juveniles). The *Demunas* are legal advisory offices part of the 'National System of Integral Attention to Children' and were legally regulated in 1993 with the enactment of the Children and Juveniles Code. The *Demunas* were created based on the experience accumulated by NGOs working with shanty town organisations on children's concern (Alvarado 1997). The law has also given them the power to intervene in cases of family violence. Particularly, important is its role in conciliatory processes. Article 48 letter c) of the Children and Juveniles Codes states:

'[its functions are] To promote the strength of the family links, [to achieve this objective] it can carry out conciliation between spouses, parents and relatives, fixing norms of behaviour, maintenance and provisional custody [*colocacion familiar*], as far as there are no judicial proceedings.'

Article 30 of the TUO of the Family Law establishes: '*Demunas* can in exercise of their attribution, carry on conciliatory meetings with the objective to resolve conflicts originated by family violence'.

There has been a serious intention from the government to provide the *Demunas* with all the necessary formal and legal coverage. The Ministry for the Promotion of Woman and Human Development is responsible for the registers of the *Demunas*. The *Demunas* can be installed in any town council and in any public or private institution as far as they fulfil the legal requirements. One of these requirements is that the *Demunas* should be made up of graduate lawyers and other support professionals such as social assistants and psychologists. In December 1998, Law 27007 was enacted which gives the conciliatory agreement signed in front of a *Demuna* an 'executive' merit. Thus, it has the force of a judicial agreement or decision.

As was mentioned in 3.2 a significant contrast of this law with the original 26260 is its absolute silence in relation to the role of women's police stations. On the contrary, it stresses: 'The National Police, in all police stations, receive the complaints of family violence...' (article 4). This 'silence' has been justified by the fact that many police stations were not receiving complaints related to domestic violence under the excuse of the existence of the women's police stations. Another reading of this fact may be the tacit refusal by the authorities to create more specialised units.

5.2.2 The processes on family violence,-

While the other law was vague, this law is complex and to understand it a good legal training is indispensable. On the other hand, the law is very ambitious, trying to regulate different jurisdictions at the same time, creating a confused spectrum of possibilities. What are the processes and what are their nature, a beaten woman has to go to the prosecutor, to the police, to the civil judge, to the *Demuna*? The law 'offered' to the beaten women all of these possibilities of intervention:

a) The Demuna, is a legal advisory office in which extra-process conciliation can be carried out under the tutelage of the state. The nature of the action is civil and the agreement enforceable through the Family judge in the case of non compliance by any of the parties.

b) The Family prosecutor is the one whose role is more difficult to understand. In the criminal area, the prosecutors are responsible for starting the investigation of the crime. All police files on criminal offences are sent to the prosecutor. It is possible also to go directly to the prosecutor to report a crime. At civil level, their main role has been in family issues, especially in divorce and maintenance intervening in the process in representation of the state. In that case, it is the civil judge who appoints the civil prosecutor.

Under the law of family violence, a beaten woman can go with 'a petition' to the prosecutor to seek to 'stop the violent act' and can apply for a 'protective measure' (articles, 9-11). The process finishes with a conciliation between the parties. If any of the parties does not comply with the conciliation, this can be enforced before the Family judge. On the other hand, if the parties do not reach a conciliation, the prosecutor presents a 'plaint' in front of the Family judge, referring the case (articles

15 and 16). It is possible to understand that this is a special jurisdiction although the legal terminology used for the law is clearly civil.

c) The Family Judge has a special jurisdiction, though the nature of the action and the law terminology is civil. The action begins with a plaint to stop the violent acts in which protection measures can be applied. The action can be interposed directly in front of the judge or can be a derived action from the Family prosecutor.

d) Criminal Jurisdiction. At a first reading it is not clear whether the law creates a 'special criminal figure' involving 'family violence'. However, a deeper reading reveals that the law is just adding some elements to accompany processes of '*Faltas* against the person' and Bodily Harm when they have a component of family violence.

e) The concept of family violence. This law changes the definition of violence of the original 26260 law. There is a more technical style in its phrasing. Article 2 states:

'To the effects of the present law, is understood by family violence any action or omission which produces physical and psychological injury, maltreatment without lesion and including threats or serious coercion...'

The law comes back to the notion of the 'produced' injury. This in order to clarify that although this is a special law, it does not enervate the actions for *Faltas* and Bodily Harm. The law is about summing up elements 'to protect' people affected by the violence. The terminology in accordance with article 444 and 445 of the Criminal Code which refers also to 'maltreatment without lesion'. The law also mentions moral and psychological violence, offering channels to process these kind of complaints.

f) The people involved in family violence. The acts are those produced between:

- 'a. Spouses
- b. Cohabitants
- c. Ascendants

- d. Descendants
- e. Collateral relatives until the fourth grade of blood link and second by affinity (in-law relatives)
- f. People who live in the same home or if they do not are involved by contractual or labour relationships.' (Article 2)

The modification reduces the scope of people under its protection. It does not recognise violence between people who do not cohabit but have children together and excludes the ex-cohabitants. These are cases which were included in the former law 26260.

h) The protective measures. Both procedures, those in front of the Family prosecutor and those before the Family judge, seek to apply for protective measures. These protective measures are: the temporary suspension of the cohabitation; the temporary expulsion of the aggressor from the family home; the temporary prohibition of any kind of visit by the aggressor and any other form of harassment; inventory of common property and assignment of maintenance (arts.10 and 21,a). The law adds 'and any other measure of immediate protection which guarantees the physical, psychological and moral integrity' (art. 10).

In both procedures, advanced protective measures can be processed as *medidas cautelares*, already mentioned, these are resolved independent of the main demand. If the Family prosecutor is deciding over any protective measure these should be communicated to the Family Judge. An outline of the 'processes for family violence' is as follows:

1) Before the Family prosecutor:

1) Starting action: An oral or written petition by any of the persons mentioned in article 2. In the case of children, the action can be initiated also by 'any person who

knows about the events. The prosecutor also initiates a process after the submission of a police case file (article 9)

2) Protective measure: Prosecutors decide over any necessary protective measures and communicate their decisions to the judges (article 10).

3) Process: This has a central act which is the 'conciliatory meeting'. The aggressor is appointed under *apercibimiento*. This means that he can be forced by the police to attend the meeting (articles 13 and 14).

4) The end: The conciliation ends the process having the value of a 'decided case' (*cosa juzgada*), this means the pretension is finished and a new action can be interposed just for new events. The conciliatory agreement can be enforced before the Family judge in case of non compliance by any of the parties. If the conciliation fails, the prosecutor presents a plaint before the Family judge (articles 15 and 16).

II. Before the Family judge:

1) Starting action: A plaint by the victim or their legal representative or a plaint by the Family prosecutor. Here the law restricts the scope of the people who can introduce a plaint.

2) Protective measures: The same rules as with the prosecutors (article 23).

3) The end: A judgement which determines if acts of family violence have occurred and establishes: the necessary protective measures, the 'treatment'¹³ for the people involved, the civil reparation and the maintenance orders in the cases established by the law. The process can also finish by conciliation (article 23)

¹³ The law does not define the kind of treatment. It understands a psychological one. The question remains which institution will provide the treatment

5.2.3 Criminal jurisdiction.-

The law creates some confusion when referring to the criminal jurisdiction. At a first reading it gives the impression that the law is creating a 'new criminal type', that can be called 'family violence' or 'acts of family violence'. The confusion comes from article 4: 'The National Police in all police delegations, receive the *complaints for family violence* and carry out the preliminary investigations...'. However, article 8 states: 'The police case will be sent to the judge of the peace or the criminal prosecutor as appropriate', in which case does such a differentiation operate? It operates in cases of '*Faltas* against the person' and Bodily Harm.

It is possible to understand that what the law is doing is adding some elements to be taken into account when these processes are related to family violence. During my fieldwork in 1997, I was invited by the Cusco Women's and Children's police station to explain the scope of the law because it had created so much confusion at police level and my opinion was as mentioned above. In any case, if we lawyers are confused by the law, it is not difficult to imagine how difficult it can be for non-lawyers.

a) The police.-

The articles that the law dedicates to the police role suggests the recognition of 'special' attributions when intervening in cases of domestic violence. A more detailed reading reveals that what the law does is to assure that the police use their normal attributions when intervening in family violence. The law establishes:

- 1) All police stations should receive complaints of family violence (article 4)
- 2) The police are responsible for the case and not the complainants. It is has been a police practise not to continue with the investigation if the complainants do not pursue directly their cases. This is in fact, against the criminal laws (article 6).

3) The police continue to process the cases as usual. The *faltas* are sent to the judge of the peace while bodily harm goes to the Criminal prosecutor. The law adds that a copy of all file cases involving family violence should be sent also to the Family Prosecutor to follow the procedure described in the paragraphs above (article 8).

4) In case of *in flagrante* offences or extreme danger of its perpetration, the National Police has the attribution to enter in the aggressor's house, or into the place of the commission of the violence. They can also force the aggressor to attend the police station (article 7).

The law adds nothing new to the police attributions. However, in general, the police are very cautious to break into houses in Peru without a special order from their command or without a judicial order. Consequently, the problem is more complex than just to deny to family violence cases their real importance. In Peru, as Ugarteche (1998:27) comments, the law is for everybody except for those who have power and the police can be accused of 'abuse of authority' in the most unfair circumstances depending on who are the offenders¹⁴. The most serious case that I came across happened in 1989. A high functionary of the government was beating and threatening his wife with a gun. Alerted by the shouting, a police patrol broke into the house and took the man to the police station and the following day, they sent the offender to the criminal prosecutor. The man was freed the same day, the officer who commanded the police patrol was accused of abuse of authority. The young officer responsible for the patrol faced expulsion from the police force. Fortunately he had some influential friends who spoke in his favour. The declaration of the victim was also very important. Only in this way, could the police officer avoid being expelled from the police force.

¹⁴ Vegas (1990) and Ugarteche (1998:27) provide examples.

In all the years that I worked in the first Women's Police Station in Lima I witnessed that most men who were jailed for one night for maltreating their partners and who could pay a lawyer would later complain and threaten the police accusing them of abuse of authority. At the other extreme of the problem occur cases like this one related to me by Sergeant Garcia in 1990. A very poor woman who lived just around the corner came to the police station. Her husband, a drunkard, had expelled the woman and their children by beating and kicking her. Sergeant Garcia, took her gun and went to the dilapidated house and kicked the door. The aggressor was already sleeping, but she awoke him saying: 'you have one minute to stand up from this bed and come with me to the police station'. The man replied that he did not have his trousers on. Sergeant Garcia told him to put on his trousers immediately. 'In front of you?', asked the man, 'yes, in front of me'. He was taken to the police station. The aggressor was so poor that Sergeant Garcia was not afraid of reprisals.

The unwillingness of the police to break into houses contrasts with the repressive role that is assigned to them in certain circumstances (e.g. massive police raids in shanty towns). In addition to this ambiguity of the police role in society they face a lack of resources. The police work in poor conditions without appropriate budgets for maintaining police patrol vehicles. The Women's Police Station of Lima had two vehicles, both were broken. The police mechanic could repair one but there was no money for petrol. They did not receive any stipend for public transport and having such low salaries they could not move from the station. Their investigations were reduced to receiving the declarations of the parties in their offices.

b) Criminal judges and *letrado* judges of the peace.-

As was established in the original 26260, criminal judges have the power to order protective measures within the processes of their competence when events of family violence are happening (article 25 and 26). The important new feature brought by law 26763 has been to confer the same power to the *letrado* judge of the peace. As already mentioned, this was a serious omission of the original 26260 since most related domestic violence cases are processed as '*Faltas* against the person'.

The law also, in its first 'Final Disposition', is leaving open the possibility that some *letrado* judges of the Peace could, eventually, be able to receive petitions for protection measures under the special procedure established by the law. That is, could do the same as the Family judges do. The phrasing of this 'Final Disposition' though, is such, that it makes this possibility a very unlikely one. It writes: 'Exceptionally and when the overburden of cases' can justify it, the Judicial Power could confer this function to some *letrado* judges 'depending on the reality of their respective districts'. This decision should be subject to a previous study by the Superior Courts. So far, nothing like that has happened.

5.2.4 The *Reglamento* of the Family Violence Law.-

The *reglamento*, is a law of lower rank which specifies the 'operative' dimension of a general law. It is prepared and enacted by the executive power. It can be described as the 'rule of procedures' of the main law. It is well known in Peru that the *reglamento* are used to manoeuvre over key issues of a law, something that should not in fact be done. From that practise came the expression: 'what could not be done through the law, could be done through the *reglamento*'. On 25 February 1998, a *reglamento* of the Family Violence Law was enacted by Supreme Decree 002-98-JUS. In this case,

amendments have continued to be made, some are very positive. For instance, it reintroduces ex-spouses and the ex-cohabitants under the law's protection. It also establishes that in all police stations should exist a section exclusively responsible for receiving complaints of family violence. Personnel especially trained in the issue should handle such complaints. In this sense, it recognised the reasons underlying the creation of Women's police stations.

a) The intervention of the *no letrados* judges of the peace.-

Under the title the 'covering intervention of the Judge of the Peace', it mentions: 'In the places where there is not a *letrado* judge of the peace, the [*no letrado*] judge of the peace would assume his/her functions'. The document does not say more. This could mean that *non letrado* judges of the peace could also order protective measures within *formally* opened cases on '*Faltas* against the person' which, as will be reviewed in chapter eight, is a rare occurrence among judges in rural areas.

This *reglamento* was enacted 6 months after to my fieldwork although by the time that I left the zone not even the role of the *letrado* judges of the peace had been clarified after the recommendations made by the law 26763 described in the paragraphs above. There is one dilemma to resolve first and it is in which cases the *no letrado* judges of the peace are considered to have a covering role of the *letrado* judges of the peace considering that these judges fulfil different functions and are independent from each other, in such a way, that they report directly to the 'Specialised or Combined' courts of the capital of the province. Additionally, there is the fact of the flexibility of the *no letrado* judges of the peace appointments. They can be appointed in a district, in a 'rural town', in a *parcialidad*, or in an Andean

community. This element also makes difficult the understanding of this 'covering' role.

However, the real fact which makes this possibility a very unlikely one is the demand to the *no letrado* judges of the peace of a level of formalism and legal knowledge that corresponds neither to their rationality nor to the practices of the Andean people, as will be examined in chapter eight.

Conclusions.-

Historically, the law has been used to regulate patriarchy. It has contributed to the construction of a gender system with different values for men and women. Within marriage, the law supported the predominant position of husbands over wives and children and recognised the 'right of correction' in case of disobedience. This 'correction' included physical punishment. Consequently, the domestic violence was a constituent element of marriage, condemned only in extreme circumstances.

The criminal jurisdiction, however, recognised as a criminal offence bodily harm, independent of the relationship between aggressor and victim. In theory, a man who injured his wife could be punished. In practice, the notion of 'legitimate' violence exercised by the husband permeated the criteria adopted by legal representatives who obstructed women's complaints against their husbands. By analogy, women who were not legally married suffered the same discrimination.

In 1979, women achieved legal equality in Peru. Discriminatory family regulations were replaced by gender-neutral provisions. However, the understanding of what is a 'family' in legal terms remains deeply male and urban. Additionally, domestic violence remained an insufficient ground to apply for divorce if aggravated

circumstances such as 'cruelty' and repetition' could not be *legally* proved, thus some violence performed by husbands was still legitimate.

In 1987 the first Women's Police Station commenced operation in the city of Lima. The level of complaints about domestic violence showed that a good number of women would opt for the legal system if this offered a more appropriate means of intervention. Women's police stations defined themselves as specialised places for the reception of domestic violence cases, despite that the only legal support they had was the ordinary procedures of *faltas* and bodily harm.

From the beginning of the 1990s, domestic violence entered into public debate. In December 1993, law 26260 was enacted and was considered the greatest recognition of domestic violence. However the law failed in its application due to its lack of clarity. Additionally, it can be argued that a law self-denominated on 'family violence' has 'family relations' rather than gender relations as its centre. This approach was reinforced by a subsequent law, No. 26763 which ensured the 'unrestricted respect for the family'.

While 26260 was obscure, 26763 is an extremely complex piece of legislation which demands a professional legal training to apply it. Many claims are lost in the labyrinth and complexity of the judicial system, the differential jurisdiction and the lack of resources.

The law is rooted in a legal structure that is deeply urban, excluding the reality and resources available in rural areas, such as the *no letrado* judges of the peace. This structure does not even work well in urban settings. For instance, it has as main protagonist the family judges and prosecutors. These legal representatives are not appointed in all provincial capitals. It is also a structure that does not work for all

urban women, but rather for those who have the resources and information to obtain legal aid. The 'family violence laws' show that the effectiveness of any legal reforms are conditioned by the characteristics of the legal system in which they operate and that their success should be measured by the number of women who, in real terms, benefit from them.

CHAPTER SIX:

GENDER RELATIONS IN ANDEAN COMMUNITIES

Introduction:

The previous chapter concentrated on the law designed and negotiated from the 'centre'. The law had incorporated some feminist demands but when applied to the reality of the legal system failed to meet its objectives. It was also argued that it was designed to be applied in an urban environment. The three following chapters will contrast this deeply coastal-urban approach on gender relations, domestic violence and conflict resolution with the Andean communities's position.

This chapter has two main purposes. Firstly it looks at the sources of gender identities in Andean communities, finding the elements which inform women's lives and ultimately their decisions in relation to domestic violence. Secondly, it looks at the limits and possibilities of the Andean communities social organisation to manage conflicts such as domestic violence.

It understands by 'creation of gender identities' the following:

'The social construction of gender is the process by which the categories of male and female actors are organised and reproduced in subsequent generations, and the social institutions by which gender is expressed (for example, marriage, inheritance, ritual).' (Radcliffe 1986:106)

However, it also assumes that this social construction is a dynamic process that in the case of Andean societies is affected by the 'larger' society which influences the Andean women and men in their personal choices (e.g. the size of their families) and also influences the organisational form of the Andean community itself and the way it relates to the state institutions.

The chapter also pays attention to the degree of 'autonomy' of women within their social groups (ie women's possibilities and capacity to take decisions by themselves and not subordinated to 'family, kinship and community'¹) to understand how they negotiate their demands and in which forums. These ideas are contrasted with the vital importance of the married couple as central to the survival of the group and the importance for women of their membership in their groups.

1. Andean communities.-

As was mentioned in chapter four, Andean communities have their origin in the pre-Inca ayllus, as groups of people of common lineage under the lead of a *kuraka*. During the colonial times these ayllus experienced a great transformation. The dramatic demographic collapse of the indigenous population during colonisation justified a policy of resettlement of the ayllus. Sometimes in this process their original composition was respected but most of the time these original ayllus were joined to others to favour concentration of the labour force. Spaniards were responsible for giving these former ayllus characteristics closer to the Spanish peasant communities.

During the expansion of the land-states, the communities were more restricted to the higher valleys as large amounts of their communal land were seized. During the Republic an official register was created to give legal recognition to these 'Indigenous

¹ ie conceiving themselves as 'separable from other people', so 'she can assert rights as an individual' (Whitehead 1984:189, Yural Davies 1996:24)

Communities'. With the Agrarian Reform of 1968, the state changed the denomination of the communities to 'Peasant Communities'. The restructuring of the land-state system led to the creation of new communities through association of new peasants individuals, although most communities have a long existence. Some of them can trace their roots to before the Spanish conquest.

In the present work the term 'Andean communities' is used. This denomination is preferred by some anthropologists like Ossio (1992, 1995) because it highlights communities' identities as members of larger ethnic and cultural groups located in the Andes mountains. There are two main ethnic groups living in the Andes mountains at the present time, the Quechuas extending along the territory of Peru and the Aymaras populating the region of lake Titicaca on the border with Bolivia. The Quechuas grouped in communities denominate themselves with the word: *runakuna*.

There are almost five thousand communities legally registered in Peru and it is estimated that there are one thousand more without registration (Revilla 1994: 209). It is possible to define an Andean community as an association of families within a collective territory dedicated to agricultural, pastoral and craft activities. They are located between 2,000 and 4,000 metres above sea level. The major ambition of a community is to have access to terrain along the 'ecological floors', this is extending across a range of altitudes in order to have access to the different agricultural crops, appropriate to a variety of climatic conditions. Different families can have plots across the 'ecological floors' and it is here that the Andean concept of reciprocity and barter became fundamental for the survival of these groups. Life in Andean mountains is hard. The agricultural techniques are rudimentary without the employment of machinery such as tractors and for some poor farmers even without animals.

The communities are mainly self-sufficient and families are units of consumption and production. However, the demand for cash produced by poverty (understood as the exhaustion of the communal land for the younger generation) and a major exchange with the larger society (expressed by the demand for new goods) obliged their members to a major incorporation into the market economy, mainly as seasonal workers but also through commercial activities. The process of 'private accumulation' between families is not a uniform one, resulting in some peasant families being wealthier than others. This situation in some cases jeopardises the reciprocity between neighbours. At present families who are able to have a means of transport (e.g. trucks) are counted as being the wealthiest. Additionally, it is observed that in the lower communities, more linked to the 'larger society' women are experiencing an erosion of their traditional role as being mainly responsible for management of the domestic economy, becoming more subordinate to cash earning husbands. In higher communities, more isolated from the market economy, the forceful role of women is still respected and the traditional reciprocal relationships are indispensable for their survival (Villasante 1990:33).

2. Socialisation.-

Andean communities show clear patterns of sexual differentiation. Gender differentiation starts before the birth of the child in the ways people guess the sex of the future baby². This differentiation, however, does not place the feminine gender in a subordinate or undervalued relationship with the male gender. On the contrary every couple expects the first child to be a girl because it brings luck and prosperity. The woman is considered *taque* (larder) and this means accumulation, caring, and permanence (Valderrama and Escalante 1997:153, Ossio 1992:216-7). In some

² See Valderrama and Escalante (1997:153).

communities it is desirable to have more daughters than sons because women 'help' more and when married bring sons-in-laws who at the beginning of the relationship are expected to join the bride's family labour force (Ossio 1992:216).

Knox-Seith (1995:132-133) claims that children in Andean communities learn through observation and participation in cultural practices 'both that they are gendered and how to be gendered'. Dressing is one of the ways that is easy for children to learn to differentiate between men and women. Women's and men's dress emphasise gender difference 'giving them a very different appearance and shape'. Children also learn that women sit on the ground with their legs close to their body hidden by their skirts, men instead sit on the ground with their legs stretched out, otherwise they sit in chairs or on benches.

Gender differentiation is also emphasised by the division of labour. In the pastoral communities a baby girl accompanies her mother to graze the llamas and sheep. From that time she 'is learning'. When she is 6 or 7 years old she grazes the sheep herself (Valderrama and Escalante 1997: 155).

Ossio (1992) and Knox-Seith (1995) understand these marked gender differences in Andean culture as very positive for women. Ossio (1992:216) even claims:

'The sexual differences are a common characteristic between all societies, however, in Andean society it achieves the extremes such as it provides a system of parallel transmission of rights and attributes. It gives the impression that the sexes are two parallel and complementary worlds, that they are equally balanced, consequently it's not possible to claim that one dominates the other'.

3. Marriage.-

Andean culture is based on the conjugal pair. The wide production of Andean ethnography has strongly focused on the complementarity between husbands and

wives in Andean communities. They conclude that the concept of 'qhariwarmi', the Quechua word to name the conjugal pair, gives the idea that men and women are parts -opposite and interdependent- of the same unit. This 'dualism' has been revealed as the basis of the Andean cosmology: '*tunkuy uma qhariwarmi*' (everything is man and woman) and provides a model of Andean society as a whole (Platt 1986:241; Harris 1978:22)³. As a counter idea, singleness is negatively regarded by these societies (Ossio 1992:218).

Young people are expected to have sexual experiences before marrying. Normally this happens after a pre-arrangement between boys and girls. There exists abundant ethnography explaining these encounters and the variation between communities⁴. In the Quechua communities of the Southern Andes these teenagers 'games' are called *vida michiy* (*vida michiq*) or *tusuq*. In those encounters, boys normally steal a piece of cloth from the girls (normally their woven belt) and if girls do not recover them, it means an acceptance of a later sexual encounter possibly while the girls are grazing the animals and late in the evening. If they get on well together, and especially if she is pregnant, the boy and his parents enter into a conversation with the girls family to arrange the future cohabitation of their children. This includes specific rituals and stages. When there is not a 'good understanding' between the two families, it frequently happens that the new couple 'escape' either to pressure their families or to establish an independent life⁵.

Feliz (25, AC Chitapampa, Dist. Taray) related to me his experience in this way:

³ See Platt 1986 for Andean dual symbolism.

⁴ See Harris (1994: 52-4) and Ossio (1992:)

⁵ See Isbell (1978:119-136), Valderrama and Escalante (1992: 33-4, 63-4), Ossio (1992: 224-332) and Harris (1989, 1994)

We knew each other since children. Later we 'met' [as boyfriend and girlfriend] in the community so we had a plan: we had to tell our parents but if they would have not accepted we were going to escape. My parents went to meet her family, they entered in a 'good understanding'. I was 20 and Sonia 17. We followed the old custom, we took baskets of food, chiriuchu, fruits, beer. At 10 p.m., in the night my parents took all of these things. All the parents together lit a candle and prayed to God. They asked us if really we wanted to live together and how we had met each other. After that we started to live in my mother-in-law's house. It could be also in my parents' house but since I had still two younger brothers and two younger sisters it was more convenient at her parents⁶. During 1993 we finished our own house, and during 1994 we came to live here. We are civil and religiously married. That happened in 1995. My mother in law required us to and I had to work hard to have money for the marriage.

Another Andean custom related by anthropologists is called *chahua manta orqoy* or *chawuchan* and it literally means to take the women 'in row' (Ossio 1992:227, Isbell 1978:120). In other South Andean regions it is called *hanku tapukuy* (asking in row, Valderrama and Escalante 1992:146-7). In this case, the boy's parents decide on suitable candidates (consulting the coca leaves). Sometimes the boy refuses the candidates but the family locks him up until he accepts. The boy's family take food, coca and alcoholic drink to the house of the first candidate. In a positive negotiation the girl's parents accept. The last to know of this decision is the girl who is forced to stay in a room with the boy until she accepts him. It has been documented that many girls refuse and shout and beat the future bridegroom, in this case, she is no longer forced. But some of them accept the parents' will since it is allowed for a couple to split if they do not get on well. Most of my interviewees were in agreement that this is an 'old custom' and that the new generation has challenged it. Armandina (35, AC Tamacalla, Dist Limatambo, Anta) told me:

⁶ In most Andean communities, there is not a fixed pattern of residence. Depending on the circumstance could be virilocal or uxoriocal in the beginning of the marriage, later most couples decide for a neolocal residence.

One day I found my parents drinking with wealthier people. They were entering in agreement to make me live with their son. I was just 13. I had a godmother in the city who had explained about the menstruation and the possibility to be mother if I 'give myself' to any boy in the fields. I was listening to the arrangement. They were drinking 'trago' (cane sugar alcohol) and eating food. I suddenly started to shout to everybody 'I am not going to live with him' and I told my mother 'you live with him'. She treated me with beating but I did not mind. I stood up for my opinion.

Encarnacion (25, AC Maska, Dist Pisac, Calca) had been sent at 12 years old to work in the cities, first in Cusco and later in Lima. She was not aware of such a custom:

When I came back to the community after working as a domestic servant in Lima I met my husband. My husband took me to his home and in front of his dad he introduced me to him. From that we have just started to live together. He had told to his dad: 'Dad I want to live with a girl that I have already met'. When he took me there he locked me in the room I tried to escape but he locked it. To my dad he also had told it and they had drunk and cooked. They had already talked that we were going to live together and in this way he locked me in the room.

Encarnacion freely chose her boyfriend but as it happened in a more urban setting this did not necessarily have to lead to a major commitment. She felt trapped in that situation, disappointed with the fact that she was not consulted regarding future cohabitation.

For Lucia (26, AC Cuyo Grande, Dist Pisac, Calca) this custom is fully in disuse:

I met my husband in my town. He was my neighbour. In this way we fell in love. At present young people live together since they are girlfriends and boyfriends. There is no longer this custom that parents enter in an agreement. At least in my family something like that has never happened since I remember.

In Andean culture marriage is a process made up by ritualised stages. Firstly, there is a 'conversation' (*rimayku*) between the two families, from that process the couple start to live together. This period of cohabitation could last many years. The civil and

religious marriage come later, when the couple have saved enough money for the celebrations and when they are sure of their future cohabitation. In the past, as Ossio (1992:226) relates, the religious wedding preceded the civil one and in some cases there was never a civil wedding. Nowadays, the Catholic Church refuses to marry any couple without the civil certificate.

Alejandrina (30, AC Kuper, Dist Chincheros) expressed in this way:

I have cohabited since I was 19 years old but afterwards we got married. We always cohabited first and after we marry. If you don't get on very well you can separate, when there is no understanding. He gives you maintenance or we separate the children, the boys for the men and girls for the women⁷. We have to join money for the party of marriage. When we are married it is very difficult to split. Husbands change character sometimes they are bad when single but when married they get better on some occasions it is the contrary.

And Victoria (47, AC Maraspaqui, Tintque, Prov. Quispicanchis) told me: *When I was 16 we 'compromised' (started to live together) and we got married when we had two children.*

Even those who have migrated to more urban settings try to comply with the customs.

This is the case of Aquilino (24, AC Mahuaypampa, Paucartambo):

In 1992 I met Flor. She was working as a domestic servant in Cusco. From that house she left to live with me. We went to her community in Paruro with my uncle as representative of my parents. It took us two days to arrive there. It is very beautiful her community, they know how to live well (nice).

The women of the Mother's Club of the District of Taray, (Prov. Calca) were unanimous:

⁷ Kinship in Andean culture has been bilateral since pre-Colombian time (Silverblatt 1990). It is developed in two parallel lines male and female which produce particular rights and duties. Men inherit from their fathers and the daughters from their mothers (Anderson 1990:82-3). One aspect of these lines of maleness and femaleness is this separation of the children (Ossio 1992: 230-1)

In this district most old couples are married and the younger cohabitants, later they marry, when they have enough money for the party. Here we like big parties. Women always have partners. In this district sometimes women marry between 16 and 17 but normally when they are 18 or 20. In very high communities it is earlier than that.

4. Division of labour

'The sexualization of the cosmos is connected both as cause and effect to a strong sexual division of labour ... you might see women working with their husbands in the fields; in one courtyard you might see a woman weaving fine textiles, and in the next you might see a male weaver working on a similar piece with similar designs. In the evening you might stop at a house where a man is preparing dinner while his wife stays out to guard a partially harvested field. But if you talk to *Runakuna* about what they are doing, you will find that in their minds these tasks are associated with either one sex or the other- and this affects how the job is done, its relationship to other jobs, and the attitude with which it is undertaken.' (Allen 1988:73)

Knox-Seith (1995:136-7) reports that in the *papa yapuy* (potato plough) it is the man who deals with the whole range of agricultural tasks while women provide the meals. Other ethnographers, however, point out that this sexual division is not strict, and household and agricultural tasks are normally interchangeable (Harris 1978:30, Allen 1988:73). In my own observation I saw frequently women and men working together in the fields or either I saw exclusively groups of men or groups of women, especially in *faenas* (communal work). I also saw husbands taking care of the children or cooking because women were doing *faenas* (communal works) for the Mother's Club or because they were available to prepare the breakfast while the woman was busy with other activities. Men normally cook when women are out grazing the animals. A typical South Andean division of labour is presented in Appendix 7.

Casos (1990:32) states that it has been a progressive specialisation of women to be exclusively responsible for the domestic chores where the husbands now do not have

any direct participation. Before, she says, they partially participated, now with the increased necessity for cash, men are continuously away from home thus breaking the complementary relationships in the domestic environment. In these cases the domestic work is shared with their daughters when they are old enough. In peasant communities domestic chores are carried on with so much constancy and effort that there is no moment to rest. There is no running water, drainage or electricity. In more isolated communities (higher communities) husbands still carry on with tasks considered feminine such as cooking, taking care of the children and tending the animals (Casos 1990:32, Villasante 1990:33).

In terms of self-value of their work, Andean women differentiate between "llank'ay" that refers mainly to men's work in agricultural activities from "runway" that can be translated as 'housework' (in Spanish it will be translated with the word *quehacer* that includes housework and other daily activities, Villasante 1990:12-3). Consequently when we asked Andean women about 'their work', they referred immediately to those large agricultural activities such as some communal works or those activities in which they can earn some money⁸. Hilda (20, AC Chitapampa, Dist Taray, Prov Calca) told us:

Women always work in 'business' (selling things). When they perform the fuenas of vegetables, women cook, they also sell frozen potato. Women sell this. [After I asked about the domestic chore she replied] yes women sweep, cook, take care of the children, [she added while laughing] women work a lot!!

Radcliffe (1986:112) in an ethnography taken in the early eighties finds that men think of the agricultural activities, that they mainly perform, as 'to work' while activities not connected to this labour as 'not work'. Bourque and Warren (1981:118) found that

⁸ c.f. Cadena (1991: 10-1).

Andean people see the 'men's ability to work' as more important because of the use of physical strength. They can carry heavier tools and 'engage in more strenuous labour'.

We see, in Hilda's statement that this opinion is still prevalent. Women 'work' in the vegetable cultivation. She had also told me: *Men work in the agricultural chores, in the barley harvest. Men work more, because they are stronger.* Additionally, it is evident how the incorporation to the cash economy has affected the notion of work. Hilda -as other of my interviewees- acknowledges as 'work' when they can earn money, for instance, selling frozen potatoes. After this answer in which she did not recognise domestic chores as 'work', I asked her 'who awakes first and goes to bed later', after thinking she added *Women wake up first and they go to bed in the end. Children and husband go to bed first. Women are the latest in going to bed.* In a society where the capacity to work 'hard'⁹ is very important this sudden recognition of her own contribution gave Hilda a reason to be happy. In my conversation with NGOs in the Cusco area, they let me know that one target of their training 'on gender' with Andean rural women is to awake a greater awareness of 'women's work'. It is estimated that women in Andean communities work an average of 16 to 17 hours per day (Villasante 1990:13)

For women living closer to the tourist centres, craft production has become an important part of their lives. Alejandrina (30, AC Kuper, Dist. Chincheros, Prov. Urubamba) told me:

Everyday I sell craft, the whole day, I am going just to have lunch at noon. The whole week from Monday to Sunday. I sell things that I make myself.

⁹ See Radcliffe (1986:111).

In other cases this involvement with the tourist market is just seasonal. In our data this was the most common case. Encarnacion (25, AC Maska, Dist Pisac, Prov. Calca) told me:

When from Pisac we have contracts we paint little pieces of ceramic or leather. I did but there is not so much selling, I don't know why, maybe there are not many tourists. Most of us in Maska, we work on our lands, in the hills we cultivate.

Valentina (32, AC Chuquimarca, Dist. Limatambo, Prov. Anta) related to me the hardships that peasant populations face to be incorporated in the market economy.

On Sundays we sell our products between 9 and 11 in the market. We sell 'tostadores' (a ceramic pan to roast corn). The Women's Committee make them, we know how to make them since our grandmothers. We cultivate potatoes and the arroba (12 kilos) can cost 4, 3 even 2.50 soles pay the 'rescatistas' (agricultural products traders), also wheat, broad beans we sell them in the market by arrobas. We sell them to the 'rescatistas', we think that they have an 'arranged' scale. Those who have studied don't permit to be tricked and they bring to Cusco to sell. We bring an arroba to the market and it is not enough to buy anything. I have to carry on my back the 12 kilos, by necessity we don't have horses or donkeys. Sometimes we work as jornaleros on other's land because we have to buy the school stationary and books ('utiles') for our children. The 'jornal' is from 4 to 5 soles per day and for harder works 7 soles.

5. Reproduction.-

Current Andean peoples views on sexual reproduction differ radically from their perception of two decades ago. In the ethnography gathered by Bourque and Warren (1981:88) between 1974 and 1978 the following is reported: 'Having children is very positively valued by both women and men in Chuchin and Mayobamba. Both men and women say that children are the reason that people work'. This situation has changed because of the increased poverty but also because of the influence of aggressive state birth control campaigns. The argument used in the past to support a large family

(children bring wealth) now is used to reduce its size (children bring more poverty).

Casos (1990:30) comments:

...the previous generation regarded that 'with more children it is better'. At the present time the extreme poverty produces a constant preoccupation to limit the demographic growth...'

In Andean communities, there is not enough land to share with new members. To have more children means to see them migrate and look for their future elsewhere. Additionally, the access of peasants to education also means an extra economic burden to fulfil with the school requirements (stationary, supporting activities, etc.)

Knox-Seith (1995:154) states that Andean women regard having children as an overburden on top of all the other peasant hardships and regard birth control as a relief:

'Women inquired about birth control, saying: "I've had enough small children. (...) a woman's work is never done. Men go to the fields, tranquil, peaceful. they come home, and are done with their work. Women, they must rise early to cook. At night, they cook and wash up while the men rest. And all day long, they [women] have to put up with the *erqekuna* (small children)"'

My interviewees were unanimous about the necessity for birth control. Most Andean women have a good degree of autonomy in reproductive decision and also have a positive support from their partners. However, there are still men against birth control who pressure women to avoid it. My interviewees opine:

I don't want more children. I get controlled in the 'posta' (National health centres), my husband is in agreement. But there are husbands who are opposed, they are bad, they want women to have children every year. However the majority this year are controlled (se cuidan), now they have 2 or 3 children before they had 10 children. There has been a campaign of the Health Ministry, especially in the last years (Alejandrina, 30, AC Kuper, Dist Chinchero).

There are no 'posta' near by, but nurses from the Wanchaq's posta come over. We control ourselves even myself. There are men who are opposed, they reject because there are women who have used the Cooper T (IUD) and they have damaged their health. There are cases in which women got pregnant even with the Cooper T. I know two cases. I have been sterilised (ligado) and I feel well (Faustina, 30, AC Yungaypata, Dist Cusco).

We have to walk one hour or one hour and a half to the town. Yes there is a 'posta' in the town, two people give attention, two nurses. Women 'take care' [control] because now they have just had two children, I don't want to have more children, 3 maximum. To have children means to educate them well and to educate them you need to have money (Lucia, 26, AC Cuyo Grande, Dist Pisac, Prov Calca).

Women in our communities use birth control. I take care of myself with 'ligazon' [sterilisation] (Encarnacion, 25, AC Maska, Dist Pisac, Calca).

Most men understand and they permit their wives to use birth control, some don't. We have seen cases in which the husband because of jealousy did not accept it (Mother's Club Dist. Taray, Prov Calca).

Feliz, a young man from the AC Chitapampa (26, Dist. Taray, Prov Calca) was very much in agreement about birth control but he regarded women as incapable of dealing with the health officers by themselves:

In C'corao there is a posta. Women control and husbands permit them. It is better when the partners go with the women. I went with my wife because rural women are closed and sometimes it is necessary to ask and clear our doubts.

The last national census held in 1993 shows that the fertility rate in rural areas was 6.2 children on average per woman (while in urban zones it is 2.8). However the national percentage for age range in the same category is 0.8% in women between 20-24, 1.8% in women between 25-29. Women with more children are concentrated in the age range of 35-39 with 3.8%, 40-44 with 4.6% and 45-49 with 5.2%. This confirms the

idea that younger women are really considering the reduction in the size of their family even in rural zones.

However, Ruiz (1995:457) suggests that although the fertility rate has substantially decreased, Peruvian women still have more children that they would like to have. She claims that while the global national fertility rate is 3.5 the 'ideal' fertility rate (this is how many children women declared they would like) was 2.5. In the rural area the gap is even bigger, while the real rate is 6.2 women declared to want just 2.7 children. This result appeared despite the fact that 95% of women stated that they knew about birth control.

One reason is the lack of confidence in the health services provided by the state. There is a hierarchical relationship between medical practitioners and women in rural areas and women do not receive the necessary information that they need to be sure about safe birth control methods. Even more, in many of these services nurses and doctors do not talk the native language and Andean women do not understand well Spanish or are fully monolingual. On top of the daily problem with the health services, the last birth control campaign by Fujimori's government regarding surgical sterilisation proved to be disastrous for some women, as mentioned in chapter four.

6. Formal education.-

The illiteracy rate is still high in the rural zones of Peru, and even higher among women. 29.8% of the rural population is illiterate (compared to 6.7% in urban zones)¹⁰. From that percentage, 42.9 % is made up by women whilst 9.8% are men. In a 1981 study in the Cusco zone it was found that 34% of rural men were illiterate compared to 70% of women (Fernandez 1990: 373).

¹⁰ 1993 National Census. Peruvian National Statistic Institute.

The average years of study in the rural zones are 3.1 for women and 5 for men whilst in urban zones they are 8.5 for women and 9.6 for men. It has been estimated that just 4% of the rural population complete secondary school. Knox-Seith (1995:205) found very low success rates for Andean children. In the community of Chuchin (Prov. Calca, Cusco) 77 students enrolled in the two first grades classes of them just 31 passed (got the grade). 24 dropped out and 22 did not pass.

This is explained by the appalling conditions of the educational system in rural areas. There are few teachers, they are extremely low paid and 65% of them are without formal qualification. Materials with which to teach the children are almost non-existent. Additionally, the few materials that are available are written in Spanish. Teachers in first grade normally use Quechua to talk to the children but education is mainly in Spanish. The educational curriculum is not adapted for rural zones. Little of the educational content in the school is useful for rural children. In other words, there is a 'homogenous' curriculum for the whole country, this includes the school timetables that do not take into account the agricultural calendar. During busy rural periods many children do not attend school as they help their parents in the fields. (Knox-Seith 1995:203, Harvey 1988:108)

For Andean parents to send a child to the school means less help at home and more investment of cash. Additionally, communities are expected to build their own school, medical posts and other public buildings 'in an effort not expected of urban dwellers, especially of the middle class and above' (Carazas 1989:25-28).

The permanence of children at schools is not the same for boys as for girls. Knox-Seith (1995:206-8) finds that the percentage of enrolment of boys and girls in the first grade of primary school is quite similar but as school progresses there is a significant decline

in girls enrolment. This, despite that there is a similar proportion of girls and boys passing their grades. By the fifth grade this difference is considerable, from 48% of girls attending in the first grade just 28% remain in the fifth grade. This despite that -as Casos (1990:31) documents- peasant women forcefully defend their girls school education. They send their daughters to the school even though this means less help with the domestic chores. My interviewees were of the same opinion, for instance, Valentina (32, AC Chuquimarca, Dist Limatambo, Prov. Anta) told me: *'I send my little children to tend the animals when they are not in the school time. When they are in the school I tend the animals myself or my husband does'*. However, when a serious problem arises, it is the girls who are deprived of being sent to school. Victoria (47, AC Maraspaqui, Ttinque, Dist. Ocongate, Prov. Quispicanchi) told me proudly about having sent their children to the school although her oldest daughter could not continue because Victoria had twins and needed extra help at home: *'I have educated all my children. Just I did not send Delfina to the school because I gave birth to twins and she had to assist me'*. Delfina was illiterate and monolingual. However, the children she sent to the school included another three girls.

A positive value is given to formal education by Andean people, especially by women who did not have the opportunity to be educated themselves. Women actively participate in any school activities generating more funds while men have a more passive attitude their involvement being at the beginning, with the building of the school (Casos 1990:31-2). Andean peasants have a particular understanding of the concept of 'improving' Ansion (1989:46) states: 'the attitude seems to be: there's no rush, the important thing is to advance'. Victoria's experience (47, AC Maraspaqui, Ttinque, Dist. Ocongate, Prov. Quispicanchi) reflects this feeling:

I have not entered to the school but later I have learnt in the literacy programme. Before, when my children did the homework I used to do it the same, I copied and after ...I went to the programme.

7. Access to property.-

In Andean communities there are two types of property: individual and collective. Individual property is acquired in a process of accumulation. It starts at birth through gifts of different kinds. Later, a girl or boy receives cash at the baptism and *rutuchikuy* (haircutting) ceremonies. In the ceremony of 'marking of animals' children receive a calf from their godparents. When they marry they receive a 'donation' from their parents and later they receive their 'inheritance', normally when their parents are still alive but getting too old for the agricultural work and having to rely on their children for survival (Ossio 1992:133-4).

The rights to access to a process of 'individual accumulation' are the same for men and women although the opportunities to acquire goods can be different. In Andean communities women are the ones mainly responsible for herding. Already when they marry, women normally are the owners of variable numbers of animals received as gifts throughout their lives. The management of the herd permits women access to their own capital that they normally use to buy cloth for themselves and their children. Some widows are so successful in this 'enterprise' they are capable of remaining alone and supporting themselves without difficulties (Skar 1979:455). Men instead have been able to obtain cash income as waged labourers, working on others' land in neighbouring communities or travelling to lower valleys in the collection of main crops such as coffee. This money is normally saved or used in a major investment for the family.

7.1 Land Tenure.-

The land system in Andean communities is a very complex subject being the result of a historical process, described in chapter four, in which ancestral forms have survived next to a continuum of contraction and expansion of the communities land. Additionally, Andean communities have been subject to general state policies in agriculture and others more specific such as the Agrarian Land Reform. The result is a plurality of property modalities and forms of land transactions (Ossio 1992:129)¹¹.

Andean communities are based in territorial extensions legally recognised as collective property, this is the 'material basis for the communal organisation' (Plaza and Francke 1985:61). Within this territory exist three forms of land tenure:

1) The land privately possessed by families: most of the irrigated land is held 'privately'. This land can be inherited, rented, cultivated with others and sold between community members. This produces a process of 'plot accumulation' in which some commoners have many plots and others just a few or even none. This accumulation depends on the commoner's personal history and conditions which have permitted him (or her) more access to land. Access to the cash economy is important (getting better wages, being a craft-maker, having children who have migrated and who send money regularly) but probably the main condition is being part of a smaller family without many brothers and sisters to share the inheritance¹². Men and women -individually- have right to access to this kind of property. Just looking into this form of land tenure the Andean communities look more like having an associative form of family property,

¹¹ Ossio (1992:129-153), Plaza and Francke (1985), Urquieta (1993) and Peña (1998) try to clarify the issue.

¹² For a study of income and differential process of land accumulation see Watters (1994:134-145). Ossio (1992:134) refers in his study that the average of private plots in the Community of Andamarca (Ayacucho, South Andes) is 8.95 per commoner. However, he found one case of a 'landless' commoner and another who held 95 plots. Normally a plot is of one hectare.

however, even this private land is under the control of the community as a whole. It is the community who manage the resources such as water and commoners have a set of duties toward the community that they have to fulfil.

2) The land of collective use: forest (wood) and natural pasture are of free access for all members who pay an annual 'quota' to the communal 'box'.

3) The communal land is adjudicated by quotas to the registered commoners (*empadronados*). This type of land is normally the one called *secano* (dryness) located around 3,000 Mts. It is called this because the only source of irrigation is the rain. This land is divided by sectors which are alternately cultivated. They are of rotational use: every sector is cultivated for about 4 years after that entering into a period of 'resting' for 5 years to 8 years (to naturally recover nutrients). A sector 'in production' is distributed between the families by plots of equal size. The usufruct is for the family.

Over this land the community has full control. If the commoners are absent or are not fulfilling their communal obligation they can be deprived of their plots. Additionally when a commoner dies without direct heirs the plot returns to the community and is distributed again between new members. In this form of land tenure as well as in the previous one, women do not have a direct right over them because it is adjudicated to the head of the family that under the Agrarian Reform legislation was understood to be the man.

At present, most of my interviewees recognised that the main form of acquired land within the community is by means of inheritance. As Feliz (25, AC Chitapampa, Dist. Taray, Prov. Calca) told me: *'The land is just inheritance from the parents.* Lucia (26, AC Cuyo Grande, Dist. Pisac, Prov. Calca) expressed a similar situation: *'My father*

gave me my inheritance. The community now don't give anything although my husband is registered (empadronado), There is little communal land'. Lucia mentioned that it was her 'father' and not her 'mother' who gave her the land as would have been the traditional pattern of inheritance. This supports the appreciation made by Cadena (1991) who gives evidence of unequal patterns of inheritance between sons and daughters among Andean communities. Her study reveals that 60% of men inherited land compared to 40% of women, consequently women have become more landless than men. Francisca (49, AC Ccorao, Dist. San Sebastian Prov. Cusco) expressed this unfair situation to me:

I don't have my own plot, I help my mother and she shares with me. We are all alone, my sister is also a widow... Our sons help us with the land. The 'comuneros' should have the same portion of land but it is not the case. For instance, to me they have not given me a piece of land however all of commoners we have the same obligation. The parents of my mothers have a good amount of land and after my mum got married with a man from San Geronimo (another community) they decided to give less land to my mother because she was a woman, because they said she was not going to work as a man. To her brother, the only boy in the family, they gave him more and the authorities support them in that decision. So, the grandchildren of the women have every time less.

This situation has been reinforced by the main problem of the Andean communities: the scarcity of land. Plots have become even smaller because of inheritance. There is now an over division of the plots (Tamayo 1992:99). Additionally, very few communities still have *secano* land to share between the new members. Aquilino (26, AC Mahuaypampa, Dist. Paucartambo, Prov. Paucartambo) expressed to me his views on this process and the impact on the young generation and on the situation of women. In his personal history some of the dilemmas affecting the survival of Andean communities come across. Aquilino's father is a drunkard who until now maltreats his mother. His father is considered a 'bad commoner' and the little land that they hold is

low in production since his father does not care. When children, they starved and survived by other commoners charity. At 14 years old Aquilino migrated to the city of Cusco to work as a domestic worker and later left for the Concepcion valley (low jungle) to work in the coffee and coca crops. After he met Flor he decided to establish his family back in his community. He found it so difficult to get a piece of land and even though he got some land from the community he can not see a certain future for their own children. In relation to the land tenure system he related the following:

One part of the widows land -when the husband dies- returns to the community (the same happens with the male widows). My grandfather (his mother's father) did not have any small children and his wife was dead too. All the land came back to the community.

Children do not inherit. When they register as commoners they obtain a portion of land. They say that a 'comunero' can not eat from two plates.

To the new people they do not even give us a small piece of land. We have to wait 5 years to receive a piece of land and we have to pay 100 soles and give 'trago' (sugar cane alcohol) in order to be registered.

When a person steals or you fight with the 'comuneros' they make you problems. They put you in the second shift and in the third one they expel you from the community.

The old commoners instead, mainly those in the Steering Committee got the best land, there is just poor land for us.

The scarcity of land produces many conflicts in the Andean communities. I observed on my visits that the young generation were expecting the elders to die or were willing to push for the expulsion of a member with the expectation of getting more land allocated. In the community of Mahuaypampa (Prov. Paucartambo) I came across Francisca who was threatened with expulsion by the other community members because her husband had raped her 13 year old daughter (daughter as well of the rapist). The husband was sent to prison but Francisca was considered a 'bad woman' for having failed to protect her daughter from the abusive father. Her husband was definitely expelled from the community since this kind of criminal offence -very rarely reported in Andean communities- had provoked the community's indignation.

Francisca claimed in her defence that as soon as her daughter told her she called on her in-laws to intervene but they did not do anything. The atmosphere was of deep resentment against her but the possibility of her expulsion -without taking into consideration that this attitude was affecting Eva and her siblings- was exacerbated by the necessity for land. I listened to people speculating about the future reallocation of this possession. The expulsion of Francisca did not happen but she left the community taking her children because she felt rejected and isolated.

8. Widowhood.-

The case of widows is significant since it gives evidence about women's autonomous position in a particular society. What can women do without a man?. In Andean Communities, the conjugal pair is basis of the organisation and the cultural representations. 'Singleness' is outcast. Remarrying is an alternative but is not always feasible, in a society where to marry is almost compulsory there are few older men and women 'available'. Widows or separated mothers (who have not 'remarried') are in a disadvantageous position especially to fulfil their commoner requirements. The communal work, so called *faenas* has to be done by men as Lucia (26 AC Cuyo Grande, Dist Pisac, Prov. Calca) informed me: *in the 'faenas' a woman can not replace a man*. In that case, if widows do not have a grown up son they have to hire somebody to represent them in the *faena* causing a detriment to their own economy. If they do not have enough money to pay the community *quotas* (a fixed cash contribution to a communal fund) they have to pay with other goods. There is no exemption for widows (and neither for widowers). Francisca (46, AC Ccorao, Dist. San Sebastian, Prov. Cusco) told me her story:

There are many abuses against women when they are alone with their children, when they are trying just to get bread and to behave correctly.

All the comuneros made war against me, they almost threw me off my land, they were causing conflict, the same authorities, because I was alone they wanted to take advantage.

When a woman is alone nobody helps her and on top of that she has to fulfil all the tasks as a comunero and in this way they have to fulfil the hardest tasks. I had to participate in everything even without money they asked me for something. 'You have grown cuy's (guinea pigs) so you have to give for the 'inauguracion de las obras' (opening celebration of finished communal works) they told me.

Men are the ones who are against women, no women were against me. And this situation has not happened just to me they have tried to abuse other women too.

We are many women alone or widows like me. In 1989 we were 30 widows and now this number has increased to 40.

The conflictive situation against Francisca could be aggravated by the fact that at 13 years old she was sent as a domestic servant to Lima coming back to the community in her middle twenties already married to a man from the coast. However, she was not exaggerating about the hardship that widows have to face, as other interviewees confirmed to me, but it is also well known that some widows are well respected in their communities (although they are not exonerated from the community obligations). In fact, all widows and widowers are treated 'as equal' as another comunero but it is precisely this 'equal treatment' that has a tone of gender discrimination, since in these societies there is a strong division of labour.

There are no systematic studies on the condition and quantity of widows in Andean communities. My interviewees informed me that there are more widows than widowers in their communities but the number varies significantly from one community to another.

9. Communities social organisation.-

9.1 Kin networks.-

The Andean families are essentially 'independent economic units', however, self-sufficiency is achieved not by isolation but rather from the mutual-contribution networks that Andean families develop (Mayer 1977:72). The concept of 'reciprocity', that is, the social institution in which every service should be returned in an equivalent manner, can be traced to pre-Inca times and has constituted the basis and survival of Andean people. In summary, the real wealth of a commoner is his/her relatives and the aid network that he/she can establish with other neighbours. In this extent Mayer (1977:72) comments: '...each household is the focus of a variety of labour and ceremonial exchanges with closely related households within the village, with people living in other communities, and so forth'.

Two factors favoured the consolidation of networks. In Andean communities kinship is bilateral, that is, can be traced from both parental lines in such a way that most Andean communities members are related. The other factor is that the communities are mainly endogamous. Statistics point out at least 60% of marriages occur between people of the same village. In the past endogamy was even higher (Mayer 1977:62).

The ritual or ceremonial relationship most important is the institution of godparents (*padrinos*). This generates a system of duties and obligations between godparents and godchildren and between godparents and godchildren's parents. A person gets godparents at baptism, the haircutting ritual and marriage. Godparents are very important in the process of individual accumulation. They provide different goods and even cash at these events. *Padrinos* are also spiritual guides of their godchildren and have an important role in the intervention of domestic disputes. One or both spouses

call the godparents for advice and guidance in serious disputes and their opinion can be very influential on the future behaviour of the couple (Peña 1998:162).

Amongst forms of 'reciprocity', the 'ayni' is the most practised. It means that services are returned in *the same* manner. The most common of the aynis are the agricultural ones. For instance, a godson goes to his godfather's plot to work with him to help with the harvest, later the godfather will pay with his work (or with a hired worker) exactly the same number of days that the godson worked for him. The same happens in other areas such as religious activities in which the *majordomo*, the person responsible for the celebrations, receives help in the form of food and drink from other community members. It is expected that the *majordomo* will return the same contribution to every one of these people when they have to hold the same post. There are other types of reciprocity that differs between communities. Mayer (1977:63), for instance, comments on *voluntad*, *waje-waje*, and *minka*.

9.2 Communal Organisation.-

Until the 1969 Agrarian Reform Law, the traditional hierarchical structure of the Andean community was held by a combined system of religious and bureaucratic positions. The highest bureaucratic official in the village was the *municipal mayor* who was elected by all married residents, both male and female. It was followed in importance by the *Junta Communal* (Communal Board) made up by a *personero* (main officer) and six other members democratically elected for a period of 4 years by all community members. They had as their main responsibility the defence of the communal land. The *lieutenant governor* was the representative of the government

authorities of the provinces and dependent on the district governor. His main function was to keep public order -a responsibility that remains until present (Isbell 1978:83-4).

As was mentioned in chapter four, the Agrarian Reform was carried out with the objective of eliminating pre-capitalist forms of productive exploitation such as the 'latifundio' (land estates). Andean community people were intended to 'be rescued' from their historical backwardness. In the places where co-operatives followed the expropriation of land-states, the Andean population was organically incorporated into the new bureaucracy of the co-operatives. Little space was left to develop alternative forms of organisation or to keep some traditional forms (Watters 1994:166-7). In 1968 the government suspended all types of election stating that all bureaucratic posts were to be appointed. In 1969 the Agrarian Reform Law abolished the *Junta Communal* and appointed a president of administration and a president of vigilance. In 1970 a government decree (D.S. No. 37-70 A) shaped the definitive internal structure of the community which was later ratified by 1987 Law No 24656 ('General Law of the Peasant Communities'). Women were displaced from traditional posts of prestige and authority (Isbell 1978:30,216).

The communal structure which remained after the Agrarian Reform and was confirmed by subsequent laws is as follows:

- a) The General Assembly, made up by all the community members 'head of the households'. It is the highest organ of decision.
- b) The Communal Steering Committee, made up of a president, vice-president and four more members. It is responsible for the management of the community. The president is the legal representative of the community.

c) Other specialised committees such as the Vigilance Council who receive the commoners complaints in relation to community affairs.

Women's participation, however, has improved noticeably in the last years. Casos (1990:45-6) comments on the substantial increase of women's presence in the general assemblies in some communities. One common case of women's participation is when women represent their husbands in their absence. In other communities, instead, it is expected that women participate with their 'voices'. Other communities have gone further and women, as well as their husbands, can vote. In the community of Kjunucunca (Prov. Quispicanchi) the women's presence in the General Assembly is more than 60%.

However, women's participation in the General Assembly is far from being as active protagonists. Casos (1990:46) reports that women attend the assemblies mainly to avoid being fined because of the absence of their husbands. This is a new space where women have always been excluded, consequently, they express a lack of confidence in giving their opinion and in talking in loud voices. Women normally talk between themselves at the back and have an opinion on many subjects. On other occasions, it is difficult for them to follow the discussion because they are distracted by their children, or they have not been informed in advance about the agenda or because of the constant switch to Spanish terms¹³. Casos (1990:46) observes, that women overcome their shyness and speechlessness when communal decisions affect the survival of their family. Then, women in complaining tones, challenge the assembly.

¹³ The language of 'the public domain' and the 'language of law' is Spanish. In communal assemblies when the themes have to do with the 'larger society' (e.g. market decisions, legal requirements to fulfil) Spanish terms have to be used. In these cases it has been reported that women feel incapable to intervene because the use of the 'official Spanish' is not in their domain and they feel excluded.

In my field study I found the following cases of women's participation in the General Assemblies:

a) All women participate in the General Assembly -

Women go to the Assembly and when they have to talk they talk. When voting, both husband and wife vote. If my husband votes different than me it does not matter. Some time we make shifts, when he is going I don't go. But in the 'faenas' a woman can not replace a man. (Lucia 26, AC Cuyo Grande, Dist. Pisac, Prov. Calca)

In the account of Lucia, we observe a community which has opened to women's participation. Without asking however, Lucia pointed out women have achieved a considerable egalitarian participation up to a certain point. They still can not replace their husbands in the communal works, while men can replace women in similar work within the Mother's Club¹⁴. Additionally, Francisca (46, AC Ccorao, Dist. San Sebastian, Prov. Cusco) opined that there is resistance by the male members to value women's contribution: *'In the Communal Assembly all the women have 'voice and vote' including the wives but when a woman gives her opinion, they comment: how are you to follow a woman's talk'.*

Women have gained space within the 'male sphere' and this is probably after training themselves in their own organisations, but there is still a deep gap. As Valentina (32, AC Chuquimarca, Dist. Limatambo, Prov. Anta) told me: *'In the Assemblies women do not talk and they are the same who go to the Women's Committee'*

b) Widows participate in the Assembly.-

Just the widows participate in the Communal Assembly and just in order to be present because they don't participate talking. The wives don't go. The 'dirigentes' (steering committee officers) don't want the women to go. They say that women don't talk and they don't know how to talk...[in

¹⁴Failure to participate in *faenas* are sanctioned with a fine.

fact] *Women talk, they know how to talk but sometimes they get confused because they don't know what are the concerns of the assemblies (Hilda, 20, AC Chitapampa, Dist. Taray, Prov Calca).*

In the widows' cases no effort is made to facilitate women's participation or even understanding. Many widows participate because there is nobody else to represent the household but they are systematically ignored. Feliz (25, AC Chitapampa, Dist. Taray, Prov. Calca) explains this situation:

In the General Assembly, I demand, why they are going to marginalize the women. The widows are obliged to go but not the wives. All of them should participate in this way they know what is going on with the community and its problems. Sometimes husbands don't tell them so it is good that they attend.

The widows have voice and vote if they are empadronadas (in the community registers). Women don't talk very much, they feel afraid to talk when they are in front of people. They talk behind but they don't ask to talk

Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca) explained:

In the Communal Assembly just the widows participate. I have a husband and I can not participate. Women do not know anything, they don't listen, do not speak. They say that women can gossip. Men don't let women talk because they say that women are gossiping.

c) No women's participation.-

Núñez (1975a:397) reports that in some Cusco communities, as part of their socialisation process, sons attend the General Assembly with their fathers and they occupy their post when their fathers are incapable of attending. In these cases if a male member died it is expected that a son would replace him. The data of Núñez was taken in the 70s in the same geographical area as the Casos' study in which the author registers an increased women's participation in General Assemblies. It is noticeable how the communities attitude in relation to women's participation has changed. The

data of Casos was taken during the nineties and the researcher herself was still working in the zone at the date of publication. I came across just one case of 'non-participation'. Victoria (47 AC Maraspaqui, Ttinue, Dist. Ocongate, Prov. Quispicanchi) confessed to me that in the general assemblies not even the widows participate. In her own case, her husband was an alcoholic but '*not even for that they accept me*'. Victoria belongs to a high community five hours walking distance from the District of Ocongate (Prov. Quispicanchi).

Anthropologists have insisted on the *formal* aspect of the male representation in the General Assembly¹⁵. They claim that the General Assembly never take a decision the same day that a matter for voting is presented at the meeting. Important decisions are expected to be taken at the following meeting. It is understood that heads of household have to go back to their families, but especially to their wives for consultation. In this sense, decisions reached are expected to express other family members' concerns. Feliz, one of my interviewees however, did not think that all men discussed communal affairs with their wives and because of that, women's active participation is important. The increased incorporation of women into General Assemblies reflects that communities are gradually understanding the importance of women's political representation into the main communal body.

9.3 Women's Organisations.-

Many authors identified as the main factor for the proliferation of grassroots women's organisations, the international economic crisis which hit the population from 1975 and reached its peak during the eighties (Watters 1994:180-1). Guzman (1994:24-5) states that with the decrease in family incomes, poor urban women were compelled to enter the labour market -generally in conditions of great deprivation- and in

¹⁵ Nuñez (1975a:391-401, 1975b: 623-30, Casos (1990:45-5), Peña 1998:137-141)

developing collective strategies to reduce living costs. A significant percentage of women in poor urban zones were organised into survival organisations, such as Comedores Populares (communal kitchens) Mother's Clubs, Committees of the Programme of Vaso de Leche (Glass of Milk), health groups receiving support from NGOs and the Catholic Church. Some of these organisations were also promoted in rural zones.

In many Cusco areas, rural women were mainly organised by initiatives of institutions linked to the Catholic Church. This was not a spontaneous organisation of women and in the beginning was quite resisted by male members and women themselves as a reaction to an unknown experience promoted 'from outside'. Casos (1990:53) states that the new organisation broke the 'traditional rhythm of life' performed by women with the nuclear and the extended family. Some conflicts appeared as a consequence of this new women's role, especially because to participate in the organisation demanded from women time taken from other productive activities.

The main women's organisations in the Cusco region have been Mother's Clubs and Women's Committees. They have had a variable development through the years but they are fully active at present. Additionally other organisations have developed around them, such as Health Committees and Communal Kitchens. Women's organisations have also influenced women's participation at other levels such as the 'Parent's association' in the schools. (Casos 1990:54)

Most of these organisations have been mainly formed for survival activities receiving food support from the state and the church. These aid programmes have been many times qualified as 'clientelist'. However these organisations are also spaces of socialisation and learning. Women have benefited enormously gaining confidence to

leave home and to organise themselves. This represents a great deal of autonomy in relation to their previous role mainly confined in their households. Victoria 47, a monolingual woman with 12 children (AC Maraspaqui, Ttinqe, Ocongate, Prov. Quispicanchi), has enthusiastically participated in women's organisations all her life. She told me that they were 'organised' by a Catholic NGO lead by the Company of Jesus (which still works in the zone). She has a very positive evaluation of the organisation as a space of personal development and as an alternative to their exclusion from the communal bodies. She comments:

In the Communal Assembly men do not let women participate...Men talk in this way because they are ignorant and because before women were confined in their homes. Women who just remain in their homes, they are not well. Sometimes women have a sad life, in our families we don't live well. There is always this sadness, but the women who go out they live very well.

Casos (1990:57) found the same in her research. She asked one woman why she went to the women's organisation. She answered: 'I come to learn anything, ..., to talk about anything, when we come to the organisation, we forget our problems and the anger of our home'. These organisations mean for women a refreshment from the hardship of daily life. A different space where they can learn or just simply perform different activities. On my visit to the Mother's Club of the Dist. of Taray, I noticed that some women had not brought the knitting that is supposed to be an activity of the club. They just attended to sit down, talk with the others and from the expressions in their faces, simply to relax. On my visit to the Mother's Club of AC Q'enqo (Dist. Coya Prov. Calca) I met women walking slowly toward the place of the meeting (an open green area), chatting in groups, when they finally arrived they sat down in peace, still talking between themselves. They looked like they did not bother so much about who

was going to talk and who was going to start the meeting. Just one of them had brought potatoes to peel.

Also evident is the necessity of women to make themselves 'visible' and be taken into account by the men of their communities. In a society where to 'work hard' is highly valued these women celebrate the possibility of increasing their productive role and contributing even more to the families (Villasante 1990:30-1, Casos 1990:55). Encarnacion (25, AC Maska, Dist Pisac) told me:

All Maska's women belong to the Mother's Club. It is good that there is a Mother's Club because we all participate and meet in the Assembly. The women work well, I think better than men.

There is also the aim to emulate the men's protagonistic role. This woman said when asked her reason for attending the Mother's club: 'To learn, to know, to know what happens 'outside', we are no longer like babies just in the home, as the men we walk'. Most women have been successful in this objective and nowadays the work that women perform in their organisations is well appreciated by the men of their communities. There are even husbands who encourage women to participate. Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca) expressed:

I am the Health promoter. I call the women for the vaccination, I go to the communities. My husband is in agreement that I am the Health promoter. He told me you have to continue you can learn and you can assist other women. The 'comuneros' have said that it is better that the health promoter be a woman in this way she can help pregnant women when giving birth. Sometimes comuneros don't trust in men. In the Mother's Club they have told me 'being a woman you help us more'.

In Casos' opinion (1990:54) the firm attitude of women has forced the communities steering committees to recognise the benefit of their work for the development of their communities. However, there are still a few men who are opposed to women's

involvement with these organisations. I even found one case in which the man beat his wife to prevent her attending these groups. Dominga (38, AC Tamacalla, Dist. Limatambo, Prov. Anta) told me that her niece, a girl of 17, was seriously beaten by her drunk husband (a man in his early twenties) every time that she attended the Women's Committee. Dominga was the president of the Women's Committee of her community and visited them to make it clear that it is an obligation for women of the community to attend those meetings but Dominga found him completely drunk. Dominga believes that Juan always beat her niece whether there was an excuse or not. Another woman, Alejandrina (30, AC Kuper, Dist. Chinchero, Prov. Ollantaytambo) acknowledges some men's disagreement on the issue: '*Some husbands do not want their wives to come to the Mother's Club because they say a woman wastes her time there*'. This is expressed in women's desire to show the product of their efforts. This woman confessed: 'if we don't work well men are going to laugh about us, they are going to say "where is what you have worked?, we want to see, just because you are lazy you go to the meetings"' (Villasante 1990:30).

Such an exigency discourages some women from participating because they feel that to participate in women's organisations is an excessive burden of work on top of their household responsibilities. For instance, Lucia (26, AC Cuyo Grande, Dist. Pisac, Prov. Calca) told me: '*I don't participate in the Mother's club, we have to make so much 'fuenas' [communal work] and I don't have time*'. For other women, this extra work that they perform in the organisations is a challenge that they take with enthusiasm. As Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca) told to me:

I participate in the Mother's Club. There are different programmes. For instance, in the Pronamachs ('Programa Nacional para el manejo de cuencas hidraulicas', a state agency for the development of rural areas) we have to sow pines, eucalyptus, capuli, peach (within a regional reforestation plan).

In many cases, the material compensation that women receive for their work is not in proportion to the contribution that they make to government programmes and development projects. The same Encarnacion comments: *'We get 'herramientas' (agricultural tools) picks, spades, wheelbarrows from the Mother's Club. I got a spade and I have to work otherwise I will lose it. After seven months working then I got the spade'*. Anderson (1994:40) comments:

'Women's voluntary labour has been used to cushion the crisis in other ways. They have helped to maintain community organisations when male leaders tired of campaigns whose objectives were continuously frustrated. They have become intermediaries between the local community and municipal governments as these latter attempt to distribute what little resources they have for infrastructure and public sanitation.'

Despite that the experience reveals that women have been able to recreate a space and develop more 'deeper' expectations (Casos 1990:54), these organisations have almost dwelt on their productive contribution and it has been difficult to see them moving toward more gender orientated strategies. This is recognised by Villasante (1990:31) who claims that women have concentrated on looking to themselves as 'people who work and give an economic contribution toward their families'. There are some advances in the area but this is being done gradually¹⁶. As my interviewees confessed hardly any women take personal problems like domestic violence to women's organisations and this gives an evidence of the priorities that Andean women have set in their agendas.

¹⁶ See Villasante (1990) who reports on Women's Committees in Cusco. Among these organisations there were Mother's clubs which decided to rename their organisation. This change has not just been on the surface and some of these committees have started to include workshops in self-esteem and even the subject of domestic violence has also been included by NGOs working in the area

Conclusions:

Andean society is strongly 'gendered', however such a differentiation between male and female roles in society does not bring a negative valuation of women, on the contrary, women are associated with prosperity and good luck. The Andean world vision is based on the conjugal pair. It is around a married couple that the life of the communities is based. Singleness deserves social exclusion. Kinship is bilateral, based in both parental line and generates important networks of mutual aid. 'Reciprocity' is the language of survival in Andean communities. It means affection and fraternity but also generates links of control and harmonisation. Some 'spiritual' relatives such as godfathers are going to have a great influence over their godchildren and especially over the married couple. They will be called on to intervene in domestic disputes and their opinion can influence the behaviour of both members of the couple.

Andean women have always been forceful members of their communities, one evidence of that is their principal role in the household economy management. Another is their own economic autonomy expressed in the accumulation of a personal patrimony separate from their husbands. Their presence as widows or separated women is also socially acceptable, although in these cases, women's situations can be more or less precarious depending on their economic position with makes them capable of fulfilling all 'commoner obligations'.

At the level of political representation, women held important posts within the traditional structure of the communities and used to participate in the general meetings of the communities the same as men. However after a process of 'modernisation' carried out by the Agrarian Reform women were displaced from those 'visible' responsibilities within the mainstream of community life. It was legally stated that

households were represented by the 'head', this is by husbands. This jeopardised the economic independence of women making the husband representative of the land holding. The Agrarian reform also made difficult the process of 'private accumulation', affecting mainly women who were as capable as men to be owners of goods and land. It has been documented, however, that Andean communities managed to resist some kinds of 'modernisation' and property continued to be transmitted by 'parallel line' leaving women with their private rights over ownership intact and emphasised the 'representative' character of the 'head of the household', encouraging the members to discuss the Assemblies concerns with their wives.

By the 1970s women had developed a protagonistic role through their own organisations. As a consequence, in the last years women have started to regain a place within the General Assembly but still their participation is not very active, incapable of dealing with a domain for decades confined by men in a men's language. This surprises the women who whilst feeling confident in their own organisation, feel less able to understand the way in which community issues are decided. A decisive element for such a secondary place is that most women have a low command of Spanish (or are fully monolingual) and the language of the larger societies and the public affairs is Spanish. The result is that women can not understand many issues discussed in the Assembly and/or regard themselves as incapable of dealing with official authorities and procedures.

The important place that women have in Andean households, however, is suffering some modification in those communities more incorporated in the market economy. The Andean family has been basically a unit of production and consumption and women have had the main role of managing the family resources. A major need for

cash means for women a major dependence on the husband earning money (mainly as waged labourer) since she remains in the community taking care of children and land. In these cases symptoms of subordination have been reported.

An important aspect that appears in a review on Andean communities life, is that the communal bodies and women's organisations were created with specific agendas. The first one to deal exclusively with all community management aspects, the second one was born around survival activities. Particularly, since the Agrarian Reform, communal bodies are exclusively concerned with organising land and labour in the community and for ensuring that all members fulfil their commoners' obligations. They are not spaces for wider conflict resolution.

In relation to women's organisations, it has been a great achievement for women to be able to organise themselves. However, women's organisations are very much concentrated in productive activities and in the creation of women's political leaderships within their communities. It has been a long journey to win these spaces 'for women as women'. This is being achieved gradually. Still these organisations are not spaces in which a woman can bring a 'personal' problem, such as domestic violence into the agenda.

CHAPTER SEVEN:
DOMESTIC VIOLENCE IN ANDEAN COMMUNITIES

Introduction.-

The previous chapter reviewed the general position of Andean women in their societies. In this sense, Harris (1978:32) concludes that if there are elements of social relations that should be considered as 'patriarchal' in Andean communities these are not located primarily in the household as a 'unit'¹ and that Andean women are forceful members of their communities. Nowadays they are excluded from the communities' managerial bodies. This situation limits the ways in which women can reflect their interests within their communities but at the same time, it observed that community organisations are not designed to fulfil the role of justice management for those issues considered 'personal' problems such as marital conflicts.

Domestic violence does exist in Andean communities. Contradictorily, these events are very rarely presented in anthropological studies. For instance Allen (1988:79) who spent some years in a Cusquenian community noticed the permanent lamentation of women for being beaten by their husbands, contradictorily, men deny this accusation and Allen herself, claims that she was never a witness to an incident of wife beating. In a more recent publication, two anthropologists, Harvey (1992) and Harris (1992) rethink the issue of domestic violence based on their data taken in the 1980s. Both fieldworks did not have as an objective the study of domestic violence, consequently there was not a methodology designed specifically to raise the issue. In relation to the

¹ See also Ossio (1992)

Peruvian studies, it is only in this last decade that it is possible to find a sustained publication on 'gender' issues in rural zones. Reports like Casos (1990) and Villasante (1990) in the context of development projects bring important information about the women's lives in their communities. References to domestic violence appear but they are very marginal and are not articulated into a discussion on the issue. Consequently, the present research can not rely on a a substantial body of existing data on the subject, and this has been the main challenge of this chapter. Its main enquiry concerns the way in which people perceive domestic violence. If domestic violence is a ground for complaint then to which forums are those complaints referred. The interviews were structured with these aims in mind. In the background of this enquiry was a wider question, whether the Andean women's experience of domestic violence is comparable to other Peruvian women's cases and how much is it possible to think in a national strategy to challenge the problem in accordance with Peruvian feminist proposals. The chapter is structured at two levels, the first one deals with the scenario of domestic violence and the second one focuses on the forums for intervention.

1. Recognising domestic violence.-

It has always been an impossible task to find out how much violence women experience in real terms. It is widely understood that the official statistics on domestic violence are just the 'tip of the iceberg' of the problem and most cases of domestic violence go unreported (Tamayo 1991). Consequently, it was not the focus of this research to know how much violence happens in the Andean communities of Peru, but how much violence the people think happens and how serious they consider the problem to be. All my interviewees acknowledged the existence of domestic violence

in their communities. However, the degree, the extent and the circumstances in which a man can beat his wife are perceived in different ways:

- a) *Most women in CCorao are beaten* (Francisca, 46, AC CCorao, Dist. San Sebastian, Prov. Cusco).
- b) *There are a lot of problems of violence* (Alejandrina, 30, AC Kuper, Dist. Chinchero, Prov. Urubamba).
- c) *There are many women who are beaten* (Cristina 53, RT² Ttinque, Prov. Quispicanchi).
- d) *There are many problems of husbands who beat their wives* (Hilda, 20, AC Chitapampa, Dist. Taray, Prov. Calca).
- e) *There are some husbands who beat their wives.* (Feliz 25, AC Chitapampa, Dist. Taray, Prov. Calca).

Most of my interviewees believe that domestic violence is undoubtedly linked to drunkenness:

- a) *There are a lot of problems of men beating their wives because the husband is a drunkard.* (Hilda 20, AC Chitapampa, Dist. Taray, Prov. Calca).
- b) *There are many problems of violence, because of drunkenness, because of alcohol, most of them are for jealousy* (Alejandrina, 30, AC Kuper, Dist. Chinchero, Prov. Urubamba).
- c) *Many men beat when they are drunk* (Luz Marina, 19, AC Yungaypata, Dist. Cusco, Prov. Cusco).
- e) *Most men who drink beat* (Faustina, 30 AC Yungaypata, Dist. Cusco, Prov. Cusco).

Some of my interviewees emphasise the persistence of these practises through the generations:

- a) *There have always been these beatings. My mum says that her grandmother was beaten a lot by her husband.* (Faustina, 30, AC Yungaypata, Cusco, Cusco).

² RT = rural town

b) Always have been maltreatment problems. When they make the 'chacra' (cultivating the plots) they come drunk and provoke these problems. When they are sober they just insult us, with the mouth and generally when they have another woman, they criticise us over everything they are not satisfied with, they say the food is not good and so on. (Women in the Mother's Club of Taray, Calca).

c) It always happens that there is beating, that the man beats. (Mother's Club, Dist. Taray, Prov. Calca).

d) Always have been beatings at home. I saw my mother being beaten. (Francisca, 46, CCorao, San Sebastian, Cusco).

However, there were some people who were convinced that this was a problem of older generations and that the new ones, mainly by education, have managed to overcome such negative behaviour.

a) In my age these things almost do not happen because we have studied completed secondary and also some institutions have trained us and have taught us how to live in the community... In the generation of my parents it happened, they drink 'trago' (cane sugar alcohol) and 'chicha' (maize beer), because of lack of education people commit mistake, by ignorance, because they don't analyse the things. (Feliz 25, AC Chitapampa, Taray, Calca).

b) Younger people have less problems of violence, the old couples have more problems of violence (Alejandrina, 30, Kuper, Chincheros, Urubamba).

c) The old men were worse [more evil] (Faustina, 30, AC Yungaypata, Cusco, Cusco).

d) In the past people did not study because of that they beat more. (Juan 33, AC Yungaypata, Cusco, Cusco).

In relation to this generational issue, it was not possible from the judicial records to elucidate if this affirmation was accurate or not since they did not always show the age of the parties. The Pisac judge believes that complaints come from all range of ages. For instance, in my visit to Tinta (Prov. Canchis), of the three women who came to complain in one afternoon, one was in her middle fifties, the other in her middle forties and one in the early twenties. The judge of the peace of Zurite (Prov. Anta)

believes the same but he notices that 'younger people' are more willing to formalise their complaints about domestic violence cases in the judge's place. He told me: *older people just come to tell me directly at my home about their problems but they don't want to present a complaint.*

To contrast this overwhelming finding of male violence I asked people if there were women who beat their husbands. I received the following answers:

Alejandrina (30, AC Kuper, Dist. Chinchero, Prov. Urubamba) thinks that although women can have the same 'excuses to exercise violence against men they never do: *When the men get drunk or make wrong their works women never beat them.* Others of my interviewees, instead, acknowledge that women can be violent in the same circumstances as men, that is when they are drunk. Faustina (30, AC Yungaypata, Dist. Cusco, Prov. Cusco) told me: *Women who drink sometimes beat.* Hilda (20, AC Chitapampa, Dist. Taray, Prov. Calca) makes an important observation: *some women drink and fight when both are drunk they fight more. So both beat each other, but the most injured is the woman.*

For Agueda (26, Women's mother club, Dist. Taray) women can be violent precisely to avoid being maltreated: *women also beat when they are defending themselves when the husband is beating them. Sometimes they beat each other when they are drunk...sometimes men deserve to be punished, why women have to permit to be beaten?* In Andean communities it is encouraged that women retaliate against their husbands if they are going to be beaten or should escape to avoid being beaten. Most of my interviewees who confessed to have been beaten did not receive such attacks passively. This is also reported by Harris (1994:48, 60) and Harvey (1994:66).

2. The context of violence:

2.1 Drunkenness: 'I am not me'.-

"My stepfather started to beat us, my mother and me. He beat us every time that he got drunk... When he was sober he loved me again: 'little boy just when I am drunk I am bad!'" (Valderrama and Escalante 1992:149)

From a feminist perspective, the link between 'drunkenness' and violence is just contingent. Drunkenness is a state in which emotions are exacerbated and inhibitions lost. In this context it is easy that men who are anyway violent and disdainful toward their partners get into physical assaults. In Latin America, the most common scenario is men drinking between men. In this typical macho atmosphere remarks on gender hierarchisation and gossip about each others wives are favourite subjects of the evening (Estremadoyro 1993, Harris 1994:52). However, in Andean communities the relationship between drunkenness and beating can not be discarded so easily for the following reasons: firstly, from the judge's of the Peace's records, in almost the totality of cases of domestic violence men are reported as being drunk or having been 'partying' previously. This is a high incidence of drunkenness associated with domestic violence and it strongly contrasts with our data collected in the Women's Police Station of Lima where men beat their wives when drunk in just 32% of cases, while they beat them when sober in 68% (Estremadoyro 1993:71). Secondly, judges of Peace's general opinion is that domestic violence in rural areas appeared because of drinking problems. Thirdly, my interviewees were unanimous in identifying drunkenness as the main cause of domestic violence. Consequently, in their perception these are two interconnected subjects. Hilda (20, AC Chitapampa, Dist. Taray, Prov. Calca), was radical and told me: *nobody beat sober, all of them beat drunk*. Francisca

(46, AC Ccorao Dist. San Sebastian, Cusco) also commented: *I realise now that I have grown up that men are nervous and sulphuric when drunk.*

For Juan (33, AC Yungaypata, Dist. Cusco, Prov. Cusco) the alcohol provoked problems not just at the level of domestic relationships but also among commoners. Consequently he thinks: *there are fights and beatings because there are drunkards it is necessary to leave the alcohol.* And Faustina (his wife, 30) added: *the alcohol has to disappear.* Both Juan and Faustina became evangelists some years ago. They are forbidden to drink by religious practise. They confessed to me that since they became evangelists and left the alcohol their relationship as partners and their relationship with their children has improved significantly. However, Juan was able to recognise that: *it does not just depend on the alcohol, it also depends on the character of the people. There are people that have a strong character.*

Feliz (25, AC Chitapampa, Dist. Taray, Prov. Calca) told me that there are some commoners who drink a lot but they are just 'the 30%'. He also recognised that *women also drink, they drink between themselves. Those women are the most that have problems.* Lucia (26, AC Cuyo Grande, Pisac, Calca) was of the same opinion: *some women have the vice of drinking and the babies cry of hunger.* Both think that these women are more likely to have domestic violence problems.

Women of the Taray Mother's Club (Prov. Calca) believes that: *most men drink but some of them drink more than the others. There are many cases of maltreatment because husbands are drunk.* However, they were able to recognise: *but there are also some men who beat sober when arguing for anything.*

Francisca (46, AC Ccorao, Dist. San Sebastian, Prov. Cusco) qualified her father as *a normal man* when sober but capable of major violence against her mother when drunk.

Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca) did not know what to do with her husband. When sober he was a supportive partner who even encouraged her to assume more responsibilities within the communities, such as accept the post of 'health promoter'. When drunk, he was able to injure her to such an extent that once she had to be sent to the hospital. She expressed to me: *my husband always beats me when he is drunk, sober he never beats me. The next day he excuses himself, 'because I was drunk I beat you'.*

The 'Andean drunkenness', *la borrachera andina* has been a concern of many anthropologists interested in Andean culture and it has been quoted in these studies. For instance, Harvey (1991, 1992, 1994) has concentrated her attention on the issue for many years and others have dedicated complete volumes to analyse the *borrachera* from different perspectives (e.g. Saignes 1993).

Heath (1993), Saignes (1993) and other authors, claim that the consumption of alcoholic drinks in the South American highlands is as old as the pre-Inca times. The moments for alcohol consumption were always collective and related to religious-magic celebrations. In this way, they entered in contact with the sacred. The arrival of the Spaniards also disrupted this aspect of native life. The 'Catholic calendar' brought more 'occasions' for drinking because there was an increase in the religious celebrations. Drinking was also promoted in the places of tribute-labour particularly at the mining centres, in the belief that drunkenness gave the Indians the courage to enter to the shafts (Saignes 1993).

Drinking was also used to 'to recover the collective memory' (Saignes 1993:58-62). During the celebrations Andean people recalled the history of their past civilisation and their gods. Saignes (1993:61) suggests that the contact with the sacred enabled

them to bring back 'from the unconsciousness' this silent memory, although a more logical explanation is that in a drunken state people were less inhibited to express what they normally kept silent in front of the colonisers. Next to the collective and celebratory character of the Andean drunkenness, incidents of violence between commoners and of men beating their wives were reported from very early chronicles¹.

Some of these characteristics remain until today. Drinking is socially acceptable in celebratory groups. Men drink more than women and often women and children become 'guardians' of the man who is drinking. A man who drinks frequently or who drinks alone receives social reprobation. People fight when they drink remembering previous disagreements. In some places of the South Andes mountains exists the custom of *tinkus* and *chaxwas* ('ritual battles') which mimic war confrontation between two different *ayllus* (or groups of communities). These fights are always carried out in a state of drunkenness (Harris 1994). After drinking on such occasions some husbands beat their wives, as Harris (1994:48) would say 'some frequently, some only occasionally'.

For Heath (1993:184) the link between collective drinking and wife-beating in Andean culture is certainly not clear. Harris (1994) has reflected on such an association finding some possible explanations. She looks at the 'ambiguity' of the representation of masculinity in Andean culture. Andean society is strongly based on the conjugal pair who are thought of as a complementary and interdependent unit in which no part is more important than the other. This belief was confirmed by my interviewees. When I asked Alejandrina (30, AC Kuper, Dist Chinchero) who commands at home, she did not hesitate in answering me: *at home commands the man*

¹ Bernardino de Cardenas in 1630 pointed out about 'drunk husbands' maltreating their wives (Saignes 1993:51) and Huaman Poma de Ayala mentioned this event in the sixteenth century (Pease 1980, II:804)

and also the woman. They mutually command each other, otherwise if just the man command what would be the woman's function?.

Harris would argue that next to these egalitarian beliefs there is another set of symbolic representations providing different information on man-woman relationships. This is the image of bull, as the strongest, and the 'condor' as predator of women. The image of 'bull' is taken by the author from the *tinkus* battles. The bull is celebrated for its tremendous strength and drunk men on those occasions make explicit references to themselves as being bulls while their opponents are 'feminised'. As we already reviewed in the previous chapter, there is a high value on men's physical strength, celebrated both by men and women, since to survive in the Andean mountains but especially to plough the arid and hard soil of the mountains depends on a great amount of physical strength and this task corresponds to men.

However, it is the image of the 'condor' which really 'breaks' the symbolism of 'complementarity' in the couple. Harris (1994) analyses a widespread Andean myth in which a condor abducted a girl to be his wife, the girl refused to accept him and became 'dry bones'. The author related this myth to the teenagers sexual encounters in the mountains and the subsequent transfer of the girl to the boys house. As the condor, the boy takes his wife to his home (or to his parents home) The author suggests that although the girl is completely in agreement with such an 'abduction', the image of the 'condor' as predator of women is confirmed. In Northern Potosi, where the author's study took place, there are resemblances of this condor myth during the marriage ritual. This analysis has sense in places where the pattern of residence is virilocal, that is, the girl moves to the boy's family house but it does not match with most of the Peruvian South Andean communities in which the pattern of

residence is uxirolocal, this is husbands are incorporated to the women's side (Ossio 1992). This is one of the reasons why it is expected to have more girls than boys because it brings more labour force for the family. Most of my interviewees had a uxirolocal pattern of residence during the first years of marriage until the couple saved some money to build their own house, in other cases the pattern of residence was neolocal from the beginning.

However, further to claim that this myth or symbolic reference can be applicable to a particular region it is necessary to reflect on the relevance of such arguments to understand domestic violence in the Andean region. Without intending to be cynical or disrespectful but purely descriptive, in all my years in contact with Andean women facing domestic violence I have never heard any of them relate that her husband beat her because he thought he was a bull or a condor. The same author warns about this situation when she comments: 'I have never heard an explicit connection made between the condor identity of the wife-taker and the fact that men beat their wives', it is a deduction that she made from 'circumstantial evidence' (Harris 1994:55). Maybe the most important point of such an analysis is to understand that in Andean communities with a strong emphasis on the unity of the conjugal pair, there are other aspects of this man-woman relationship that are more controversial and that break this image of complementarity. This confirms Moore's (1994) ideas that 'contradictory and conflicting' discourses on gender can coexist in the same culture.

There is a second element that Harris (1994) analyses that contributes to make the 'generic status of domestic violence' in Andean communities 'troubling' and 'ambivalent'. It is the issue of drunkenness. Harris (1994:58) called it the state of 'otherness', in which the level of alcohol consumption should be appropriate to enter

into 'contact with the sacred' by producing an altered state of consciousness. Harris (1994:58) explains:

'It is when they have separated themselves through collective drinking from everyday life and when normal inhibitions are lowered that men embody and enact the sacred powers on which the life of the community depends, which are given form in the bull and condor.'

Heith (1993:177-8) claims that a man who drinks stops to be himself 'to be other'. The author quotes some phrases from his informants: 'Please do not be offended, it is not Mamani who is talking, it is the alcohol who is talking', or 'do not blame him, it is the *chicha* (maize corn) which obliged him to do it'. For Heith, this expresses a kind of 'possession', the 'other' intrusive is the 'alcohol' itself. This substance can have a 'malign' character and the drunkard can enter into a violent behaviour.

The violence is 'split off from everyday life' but it is part of a highly valued ritual in which 'losing control' is considered necessary as a homage to the sacred entities. Violence, then, the author will suggest is a risk to pay for perpetuating the ritual and the empowerment with the divinity. Consequently, domestic violence is not condoned by anybody in Andean communities but it is understood in such circumstances. Harris (1994:59) adds:

'Violence in Northern Potosi in general is neither excluded nor denied, neither used as a source of legitimacy nor expelled onto a putative periphery, but is located in an 'other world' in which it is harnessed to social reproduction, but at the same time recognised in all its ambivalence'.

These ideas contribute to understanding why despite the fact that domestic violence is considered 'deviant' at a discursive level by Andean people, it is also tolerated in practice and why women hesitate to make husbands responsible in a more assertive

way. These words of Harris (1994:52) expressed all of this contradictory status of domestic violence in Andean communities:

‘...mostly people do not approve when men beat their wives, nor do men boast of it openly...In practice, a man is usually very sheepish the following morning as his wife gives full vent to her indignation while she prepares the breakfast, or as he finds himself alone with a hangover, his wife having gone to ‘visit’ a kinsperson. He says ‘I was drunk. I don’t know what got into me’.

2.2 Other scenarios:

My interviewees, however, provided additional information that permits clarification of the ambiguous features of domestic violence. When I asked Alejandrina (30, AC Kuper, Dist. Chinchero, Prov. Urubamba) whether she had personal knowledge of a domestic violence case she immediately referred to her own case, and this is her story:

Before getting married we fought a lot, now my husband behaves well, he realised that he was wrong because of our children. At that time when he was drunk he beat me. In the beginning of our relationship there was no understanding. Between us we arranged, we never go to the judge. But now we don't fight like before. Our parents intervened and told us that we have to live well. He used to accuse me of not selling enough (she sells their own handicraft in the market) but when he was sober he never complained just when he was drunk he argued with me.

Sometimes men make the 'chacra' (agricultural work) and drink and help each other ('ayni') Now my husband paints [ceramic] at home. He has stopped drinking because his hand shivers and he can not paint. But even if he drinks he no longer makes problems, he promises me before drinking that he is not going to cause me problems. Even crying, singing he sleeps quiet. He realised that the children got worried and afraid. This was before we got married but slowly he has changed and now is a serious person.

We can see in this narrative, that the context of the violence is not set by the drunkenness but by the fact that the husband was resentful of his wife, demanding her to work even harder. After failing to arrange ‘between them’ parents are called to

intervene convincing the man of his wrong attitude. The man still drinks but has promised not to beat her more. If he would be in the 'uncontrollable state' paying tribute to the ancestral deities, how could this arrangement made in a sober state work during the alienated state of drunkenness? A question that our anthropologist has not answered.

Having said that, it is necessary to clarify that this thesis does not attempt to find the explanation of domestic violence in Andean communities but rather to explore people's perception of the issue and the decisions that they take to resolve this problem. With this intention in mind we find other scenarios in which domestic violence occurs.

2.2.1 Jealousy.-

Of all causes associated with drinking that my interviewees pointed out, jealousy was the most common. It involves the violent protest of husbands who accuse women of having affairs, usually without any basis in reality.

Francisca (46, Ccorao, Dist. San Sebastian, Prov. Cusco) saw her mother being beaten by her father who when drunk, accused her of having affairs. Juana (43, Women's Mother Club, Taray, Pisac) told me that she had to separate from her husband who drunk accused her of going out with other men. Victoria (47, AC Maraspaqui, RT Ttinque, Prov. Quispicanchi) told me that one of her neighbours is beaten by her drunk husband who while doing it, reminds her of a previous partner.

Complaints about imagined unfaithfulness by wives as the main pretext to beat women is also reported by Stolen (1987) in her study in the highlands of Ecuador while Harvey (1994:75) arrives at a similar conclusion in her work about the district of Ocongate (Prov. Quispicanchi).

2.2.2 Male infidelity.-

Another circumstance in which men beat women when drunk related by my interviewees is when a man is *losing himself with another woman* (Lucia, 26, AC Cuyo Grande, Dist. Pisac, Prov. Calca). That is, they are having an affair. Harvey (1994:67) states that in this case men become 'vicious' toward their wives 'especially when their lovers are not really under their control'. Consequently, the wife pays for the 'other woman's deeds'. For my interviewees the reason is more simple. Men who are having an affair feel bored with 'everything' that the wives do (Mother Club, Dist. Taray, Prov. Calca).

Additionally, Sanchez (1990:45), referring to the highlands of Ecuador, claims that men who are unfaithful tend to justify themselves accusing their wives of doing the same. In my experience as a legal advisor in domestic violence in an urban setting it was obvious that men who beat, beat more when they are having affairs.

2.2.3 The 'demanding' husband.-

Another circumstance in which men beat their wives when drunk is to reprimand them for not fulfilling their agricultural or household tasks. Women told me that some men when they get drunk 'remember' what they consider women's faults. Victoria (47, AC Maraspaqui, Ttinque, Ocongate) told me that her husband did not beat her often but when he did it was because she did not perform her agricultural tasks: *I did not do the tasks that my husband left me because I preferred to look after my children I did not fulfil the agricultural tasks like sweeping the manure or cultivating in the plot. Because of that he beat me.* Alejandrina (30, AC Kuper, Chincheros Ollantaytambo) told me that men argue with women because they don't perform the housework as they want so when drunk they beat them. Francisca (46, AC Ccorao, Dist. San Sebastian,

Cusco) told me: *if a woman loses a lamb men get very nervous and when drunk they beat the woman.* Women from the Mother's club of Taray (Pisac) were of the same opinion: *Men also get angry when we are not cooking well.*

In January 1997 I was travelling with an NGO team to the AC of Q'enqo, (Dist. Coya, Prov. Calca) to participate in a 'training activity' when suddenly, in the middle of the road, two cows and one calf were suffocating and couldn't move. A pregnant woman was next to them shouting and crying for help. While this was happening she constantly repeated 'what is my husband going to do to me?'. The cows had eaten a herb that becomes poisonous if, when still wet, it receives sunshine. It is a very common problem during the rainy season in the highlands. It demands extreme care to prevent the cows grazing when the herb has not dried out. This quite advanced pregnant woman, alone, was taking care of two cows, one calf and one bull. The team managed to save the two cows but could not revive the calf. Later in the day when we were coming back we found the husband on one side of the road with the dead calf, waiting for somebody to give him a lift to donate the dead animal for a festivity. He did not look angry or worried, on the contrary he was grateful to the team who managed to save the cows, however, some members of the team wondered what would be his reaction against his wife, especially if he got drunk.

2.2.4 Women's complaints.-

Sanchez (1990:35-6) claims that in Andean culture the 'complementarity' has a very special meaning in relation to work and men can become particularly vicious when their wives do not fulfil their expectation of 'mutual help'. This could explain why Andean men get angry with their wives but does not explain why women, having the same grounds to complain against their husbands do not beat them and on the contrary

they are many times beaten because they reprimand their husband for their wrong attitude. In this sense, my interviewees acknowledge that a woman can be beaten by her husband when she reprimands his wrongdoing while he is drunk. Hilda (20, AC Chitapampa, Dist. Taray, Prov. Calca) told me: *women complain when men do not work and because of that the fight starts*. Alejandrina (30, AC Kuper, Chinchero, Urubamba) told me that between the couple are disagreements and this *'bad understanding make men to beat'*.

Other women confessed to me that when men are drunk they are very careful not to complain about their behaviour until the next morning in case the husband reacts violently against them.

2.2.5 Gossip.-

My interviewees would claim that 'to gossip' is often connected causally with the other 'excuses' for beating. To gossip, said my interviewees has to do with 'to envy'. People gossip, 'invent things about you and others because of envy'. The 'gossip' reveals the intervention of others in generating men's excuses to beat their wives or to exacerbate their feelings and willingness to beat. It is mainly through the gossip that the excuse of jealousy is reinforced or created.

Agueda (30, Mother's Club, Taray, Calca) told me : *'what happens is that men listen to gossips. When they drink together they warn each other about how a woman was in her youth'*. Dalmecio (27, AC Ampay, Pisac, Calca) confessed in front of the Pisac judge and me that he had beaten his wife because he had listened to gossip about her, so when he drank he got so angry'. Valentina (32, AC Chuquimarca, Dist. Limatambo,

Anta) believes that *there is gossip because of envy, because we are living well with our partners so other men bad advise.*

It was the same Valentina who told me that sometimes mothers-in-law can gossip too. She told me: *there are some bad mothers-in-law, they tell their son, your wife has maltreated your children, they have beaten them or she has not listened to my advice so when they get drunk they get angry.* However, Valentina was the only one who mentioned 'mothers in law' as 'gossipers'.

There is a common belief that in small communities to gossip and to envy have particular characteristics. Urbano (1992:x) claims that in social groups where the reduced socio-economic conditions are more or less equal between their members, people who envy express their incapacity to acknowledge other's success, and the deeds of their virtuousness and effort. They 'deny the individual the capacity to overcome the adversity'. (Urbano 1992:xii). In my interviewees' opinion, 'to live well' with a partner awakes the other men's envy.

3. Personal narratives of violence.-

The following are personal stories of violence as they were conveyed to me. Of course they are already 'filtered' by my transcription and in some cases, also by the double translation from Quechua to Spanish and then to English. However, I want to offer to the reader a more vivid image of these women's experiences. These stories were part of longer conversations as was explained in chapter three. I would like also to call attention to the forums of intervention. I choose four personal stories, one was a woman who suffered violence in the past and who never used any forum. The others are three women of different ages (late forties, late thirties and middle twenties) suffering problems of domestic violence. Two of them never went to the judge before

however they tried to use other forums such as kin and even communal representative without success. The last one did go to the judge. Judge's intervention and the promises of the husband to stop the violence was successful but just for a certain time.

I) Victoria (47, AC Maraspaqui, P.R. Ttinque, Prov. Quispicanchi):

Twenty years ago my husband used to beat me, but always we arranged between us. I never went to the Lieutenant Governor or to the judge because I felt ashamed in front of my family. When adult my sons intervened. He did not beat me frequently, and it was always because of my children, because in order to look after my children I did not fulfil the agricultural tasks that he told me to do. For this reason he beat me. I am an orphan, I have neither father nor mother, I have not had anybody who gave me respect. I don't remember that my father beat my mother, I was the last one and since I remember they were old. They lived well, maybe my other brothers and sister have seen something. My husband used to beat me with the feet, hands, punch me but only when he was drunk, when sober he never beat me. I also answer him back and beat him, but I feel afraid to take a stick or a stone as other people advised me to do. I felt afraid, I thought that this could hurt him and could hurt me, the pain would fall over me and I would feel the same.

II) Filipa (late 40s, she does not know her age, AC Utapia, Dist. Tint, Prov. Canchis). I

met Filipa in the judge's place. She looked bruised on her face, she cried while speaking. She walked 40 minutes to the judge's place. This is her story:

My husband has beaten me because my daughter in law was very bad in the health centre. She got an infection after giving birth and I am taking care of the new born. My husband got mad because I was assisting my daughter in law and the baby. He gave me a punch that made me fall down on the floor and with his knee he beat me in the stomach... [some days ago] My husband received 5 soles in advance for his work and gave it to my daughter. He kept this money to drink. So I asked to my daughter for this money to buy sugar for my daughter in law.

When he has agricultural work [juena] he always beats me I have always to hide. I have never complained before. My sons and daughter always tell me not to denounce him, we all are married you would make us feel ashamed.

My husband is very rude, he has suffered an operation on the stomach and he beats on his stomach and says I am very 'macho'. When he beats me my sons stop him. My parents are dead and I don't have any

relative to look to for help. The Lieutenant Governor is our son-in-law so my daughter did not want me to go to the judge's place. I have gone to the president of the community and he denied me help because my husband drinks with the President. My husband has never apologised to me, he accuses me of making him become upset and of not feeding him. His sister reprimands him 'how could you beat your wife in this way...

III) Dominga (38, AC Chilca Dist. Ollantaytambo, Prov. Urubamba). I also met her in the judge's place:

Every trip he beats me⁴, now he just throw me away during the trip. Last night he beat me. He beat me a lot when he came drunk at 1 or 2 in the morning. Last Friday he was watching the television and he entered and tore all my clothes and threw me away from the home, he locked the house it was around 10 or 11 at night. Even with my son he feels jealous. Our godparents have called him but he refused to talk with them. He beats me as a man and he says that he is not going to come to the judge. Once he beat me and he broke my eyebrow and I got a scar. I have lived with him for 24 years always he has beaten me...This is the first time that I complain in 25 years. People told me 'how long are you going to let him beat you', that's the reason that I have came. I want to separate from him because he has always beaten me.

IV) Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca):

My husband beats me too much. We have gone to the 'juzgado' [judge's place], the judge has given us 15 days to think if we really wanted the separation. I did not come back. I feel ashamed now to enter again to the 'juzgado'. We have signed an act in order than he did not beat me more.

Once I left him to go to Cusco (Department capital) leaving my children for 15 days, I would have left him for good if I did not have my children. I think that maybe he can have another woman, but people do not tell me anything. His friends make him drink, they require him. He always beat me when he is drunk. Sober he never beats me. On the following day he does not tell me anything just that because he was drunk he beat me. Now he has suffered like a heart attack and he is not beating me because doctors have forbidden him to drink.

I am from another community Cuyo Chico, here in Maska the house belongs to him for this reason he throws me away and is jealous of other men.

⁴ They come regularly from their community to the district because they have a 'chicheria' -place to sell maize beer

The first time that he beat I did not say anything, I remained humble. Later I reacted and for that I went to the judge. When I went to the judge he stopped beating me for 6 months until May 3rd. It was in Cruz Velakuy, here we had a party and I was dancing with a dancer and when we came back from the party he beat me, he broke my head with a bottle and the neighbours took me to the hospital, and everybody reprimanded him, my aunt, the doctor who assisted me and from that moment he got sick.

3.1 Witnesses of violence.-

One striking aspect from the interviews is the constant narrative of people having seen their mothers being beaten. In some cases this violence also reached them as children. It gives the impression of truth to some of my interviewees opinion that violence was recurrent in older generations and things are changing in the communities.

Francisca (46, AC CCorao, Dist. San Sebastian, Prov. Cusco) told me:

My father insulted and beat my mother, once he took a stick and by treachery he beat her, he made her bleed, once he left her unconscious. We shouted desperately but nobody listened to us. At this time my mother stood up and escaped to the mountains bleeding. When my father was sober he was a normal man. He also beat us, sober and drunk for stupid things that he imagined. He maltreated my mother for anything, he accused her' you are with other men.

Hilda (20, AC Chitapampa, Dist. Taray, Prov. Calca) told me of a similar situation: *I saw my mother being beaten by my father for nothing. After that I felt sad but it remained between them, my mother never went to the judge.*

Lucia (26, AC Cuyo Grande, Dist. Pisac, Prov. Calca) has similar memories:

When I was a child my dad beat my mum, I don't know why he beat her, I think he was drunk without any reason. When he was drunk he also beat us, when we lost a lamb, a cow he beat us with lash and stick. He hurt us. When he beat my mum we were very worried and tried to avoid it...When my father beat my mum just between them arrange it. They apologised to each other. Until I was 15 he beat her but later he

didn't and it was always when he was drunk. He also threw out my mother from home and offended her.

Lucia could not remember 'any reason' for this beating, in her understanding, there was no reason or maybe there was no logical reason that somebody could 'understand'. In view of this 'lack of cause', drunkenness is the only explanation for the behaviour.

Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca) was a beaten wife herself, but also saw her mother in the same situation:

My dad beat my mum so much, because of that she got sick and she died in the Regional Hospital. I was 12 or 11 when my mother died. I don't have other sisters or brothers. I remember when he beat her a lot once he pulled her and my mother beat him with a stick. He just beat her drunk...My mum got hepatitis, pulmonary, my mother drank because of her worries and she suffered a heart attack.

Encarnacion thought that her mother died because she had been maltreated. Later in her narrative it appeared that her mother drank. She is convinced that it was the fact of being maltreated which produced her mother's sorrows.

Aquilino (26, AC Mahuaypampa, Dist. Paucartambo, Prov. Paucartambo) had a hard life, trapped in an endless circle of violence which affected everybody in his home.

This is his story:

When my father beat my mother she never denounced him. Once with a knife he cut her 'part' (he refers to the genital zone) because of jealousy. My mum called the neighbours, the families came and took him to Paucartambo (the Province's capital) to send him to prison. But my mother 'stood' in his favour and in the evening sent a lamb to prevent him going to prison. We were maltreated and traumatised. Until now my father beats my mother when I try to avoid it he offend me....In her last pregnancy my father caused my mother to abort by beating her. He beats her all the time when he is drunk which he is almost daily and when he comes back at any time of night he makes her cook.

We were completely abandoned, we did not eat well, we ate rotten corn, our clothes were torn we walked from house to house. My dad

did no allow us to study, my mum registered us in the school but my dad took us from there, and sent us to take care of the lambs. If we lost any animal he beat us, with the horse lash he beat me, also to my brother, my mum. My mum treated us well, hidden she bought things for us, notebooks, pencils, she paid the school fees. With my younger sisters and brother he was worse. When we were eating he threw us out, he completely maltreated us. When my sister Leonarda was just a child he hung her from the beam because he was furious with her. We had to call our uncle and in this way we rescued her. Whilst he hung her he sent us away.

He 'sold' my sister Leonarda when she was 13. He was drunk and drinking with other families he arranged it. She did not know the man who she was going to marry. He was from another community. Now she is living there. Her husband is not bad, he is young. she is glad now and lives happily. She always comes to visit us, to help us, and we share what we have between us, we live like in a family.

Aquilino used the term 'sold' to refer to the Andean custom of *chawhua manta orqoy* mentioned in the previous chapter. Some 'old' customs conflict with the interests and sensibility of the new generation. In this case, Aquilino, as a maltreated child understood his father's action as another form of violence against his sister.

Aquilino also says that now they are living as in 'a family' as if his father's behaviour had deprived them of one. Now that they are in peace, they are a family. I spent some time with Aquilino and his family in the community. I knew more details of his life because Clarita had known him since he was 9, when she took him to Cusco to stay with her family because of his situation. Aquilino is a loving father and a kind husband as I could observe myself. Clarita confirmed my impression.

Other women have stories to tell about other relatives:

Francisca (46, AC CCorao, Dist. San Sebastian, Prov. Cusco) told me:

My sister's husband beat her terribly, if he continued to live he would have killed her. If my sister did not cook on time he beat her. Thank God she is a widow now, she suffers with her children but is not beaten. She was widowed eight years ago, when she was 32. She had five or six years of marriage, throughout these years she was beaten. Every year

she gave birth, with babies of two months she was pregnant again. He did not allow her to use birth control, he wanted to have all the children. He beat her sober too. I did not see him beating her. I intervened after when I saw my sister and complained to him why he beat her. He answered me your sister is the guilty one, she does not follow what I am telling her, she did not cook on time. She never complained in front of any authorities, just with the relatives.

Victoria (AC Maraspaqui, RT Ttinue, Prov. Quispicanchi) was herself beaten in the first years of her marriage. Her husband is an alcoholic. Now she is worried about her daughter, Delfina:

Delfina's husband used to beat her because the fox ate a lamb and also he beat her because of jealousy. He was jealous of his own brother...once he punched her and made her nose bleed. She did not tell me the truth she told me I fell off the horse I took her to the health centre but we did not go to the judge.

Delfina had been expelled from her own house by her in-laws during her husband's trip to the lower jungle as a waged-labourer. When her husband came back his family told him that Delfina had affairs with other men and because of that they had thrown her out. He believed them.

Numerous people also brought to my attention cases from their communities. For example, Luz Marina (19, AC Yungaypata, Dist. Cusco, Prov. Cusco). She herself did not have problems of violence but she admitted that she did not like being married. *It is better to remain alone. My husband and I do not understand each other very well, we always argue.* She told me that the arguments are because he beats their child who is just 10 months, sometimes he slaps him. Their godparents have advised him but he does not change, when the baby cries he sometimes gets angry. When I commented to her that we were interested in knowing whether in her communities there are problems of husbands who beat their wives, she was willing to relate the following cases:

To this little girl's mum (she pointed to a girl of 2 years who was playing around us) her step father beats her so much. They fight daily, sober, they don't drink. They have lived together five months. The man is very bad, his brother killed his wife with a knife. He killed her when drunk.

She also told us: *the Lieutenant Governor always beats his wife. Last night he beat her. Always he beats her when he is drunk.* While we were talking this man's daughter came to us. She is 10 years old and was carrying a baby on her back, in a *keperina*. She told us that her dad had beat her mum because somebody stole the 12 litres oil container. Later they enquired to the 'paqo' (a kind of Andean magician) and he told them that it was one of the neighbours. Again appeared the attitude of blaming women for acts that are not even in their sphere of control.

4. People's reactions to domestic violence.-

Domestic violence is not viewed positively in Andean communities. None of my interviewees condoned it. For most women, violence is experienced with sadness and resentment and it is experienced in a very personal way, as part of their 'own destiny'. Some of my interviewees told me that they had prevented men beating their wives or had successfully helped others in the face of a threat of violence. However, an analysis of the communities' institutions reveals a lack of a group attitude against domestic violence. This is one of the expressions of the 'ambivalence' in which domestic violence is placed in their communal life (Harris 1994).

Valentina (32, AC Chuqimarca, Dist. Limatambo, Prov. Anta) told us:

Some people in the community feel sad because of these problems but others laugh, they say women are so silly in her case I would have left my husband a long time ago. Some other women advise: 'you have to cope with that for your children because this has happened since our grandmothers'.

It is common to listen to men referring a woman as 'silly' for continuing to live with a man who beats her. Women instead are more cautious of such a view, like Leonarda (28, Santa Cruz de Sallac, Urcos, Quispicanchi) who said that she always criticised men who beat their wives but she feels ashamed when sometimes her husband beats her.

In relation to beaten women's reaction, Hilda (20, AC Chitapampa, Dist. Taray, Prov. Calca) expressed the following: *Some women cry, other's fight back. They don't want to be beaten more, they say is not good, some of them think of separating others of escape and others of drinking a poison. They think in this way because their husbands beat them so much and they can not cope with this life.*

As a counter idea I asked people what they thought made a 'good marriage'. These were some of their answers:

The pretty ('bonito', Spanish expression used in the highlands to refer to 'the good' or 'the best') *is to live without beating, just arguing with the mouth* (verbally) (Alejandrina 30, AC Kuper, Dist. Chinchero Prov. Urubamba).

To live well is to understand each other, to plan things together, without men drinking (Hilda, 20, AC Chitapampa, Dist. Taray, Prov. Calca).

It would be good to live without beating. There are some couples who live well. (Women from the Mothers Club, Dist Taray, Prov. Calca).

I found the narratives of Faustina (30) and her husband Juan (33) in the community of Yungaypata (Dist. Cusco, Prov. Cusco) quite relevant because their conversion to 'evangelists' has prevented them from drinking alcohol which normally people identify

as causing most problems of violence in the communities. The evangelic movement is becoming increasingly accepted among Andean people at present. Their opinions are as follows:

We don't live well fighting, if the drinking did not exist everybody would live well (Juan).

When there are no fights you find happiness, you live in peace (Faustina).

They don't know the Lord's gospel because of that they don't change but there are a lot who know it and because of that they no longer beat their wives. For instance Belen (a neighbour) is no longer beaten because her husband has converted. Within the Church (Evangelist) we are not allowed to drink (Juan).

For me it has been easy to stop drinking because God has chosen me. Some of the community don't understand (Juan).

For others it is very difficult, but for us it has been very quick, we don't drink even 'chicha' (maize beer). Before both of us were drunk and my children were neglected. We have been in the Evangelic Church for 7 years. We were Catholic first. (Faustina)

The Catholic priest doesn't talk deeply about the Lords gospel and because of that they 'walk' commonly (Juan) [Juan referred to the lack of virtue in the Catholic priests' behaviour that contradict their own Catholic dogmas].

We don't participate in the Catholic festivities but we do participate in the communal assembly meetings and communal work (faenas). We don't make 'earth payment' (an agricultural ritual) or something like that. Now they don't tell us anything, they understand us, but in the beginning they made us problem⁵. They wanted to throw us out. Now almost the half of the community are Evangelist before we were just 3 now we are like 30 (families).

We can see how Faustina and Juan were rejected for behaving 'differently from the 'traditional pattern' of the community, but their lives have been an example for others. Many people have converted because they saw Faustina and Juan improve their lives, working together and living in peace. This has happened in other communities as

⁵ People who refuse to drink in communal festivities can be very badly thought of by the rest of the group since to drink is part of ritual to pay homage to saints and earth for good crops. Harris (1994) and Harvey (1994) reported the danger of isolation and even risk of expulsion that non drinkers in Andean communities faced.

well. To give up alcohol is a sign of changing times within Andean communities that are able to ignore an ancestral custom in the belief that this will improve their life. After their conversion, Faustina and Juan have performed important posts within the community.

5. Resolving domestic violence: circuits of intervention

As was mentioned, cases of domestic violence are lived mainly as a personal problem and alternatives to stop the situation do not follow a pattern. On some occasions the situation is called to the attention of parents and godparents and 'in extreme cases' women go to judges and/or to lieutenant governors. There is no communal space to bring this problem to the group attention. This situation is clearly expressed by Valentina (32, AC Chuquimarca, Dist. Limatambo, Prov. Anta): *Women don't say when they are beaten. We hear that they are beaten because the houses are together. The most they do is call the parents-in-law and the parents. Only when it is very serious they go to the police station or to the judge. They never take this problem to the Assembly.*

According to my interviewees the structure of the forums of intervention is as follows:

5.1 'Between us'.

My interviewees were unanimous in recognising that most domestic violence cases are solved just between the couple. They commented:

People never go to the judge in these cases. Nor to the Lieutenant Governor. Between them they solve the problem but now women are thinking of going to the 'ronda' to get justice⁷. (Victoria, 47, AC Maraspaqui, RT Ttinque, Prov. Quispicanchi).

⁷ Rondas, 'peasant guards' were originally organised by the same landowners in the north Andean zone

Some cases go to the police station some others 'arrange pretty' (arreglan bonito) (Alejandrina 30, AC Kuper, Dist. Chinchero, Prov. Urubamba).

It is just like they manage to forget and when they are hurt (physically) between them they cure. With 'trago' (sugar cane alcohol) they put in the wound, with the wax, with crushed tile. When they beat each other so much, they go to the godparents most of them don't go to the justice. Between the family they arrange. (Faustina, 30, AC Yungaypata, Dist. Cusco, Prov. Cusco).

Between them just 'arreglan' (reach an arrangement). (Luz Marina, AC Yungaypata, Dist. Cusco, Prov. Cusco).

The problems are solved the following day after the beating and when not, they go to the lieutenant governor (Francisca 46, AC Ccorao, Dist. San Sebastian, Prov. Cusco).

Between us we just 'abuenamos' [make 'good' to each other] We enter in a good agreement... When there are beatings you remain one day upset but after is gone and you 'abuenas'. With too much beating they separate (a woman from the Mothers' Club, Dist. Taray, Prov. Calca).

Most of these cases we resolve between us. If there is more understanding both change and they get along well after that (A woman in the Mother's Club, Dist. Taray, Calca).

of Peru. They were responsible for the land state security, mainly against the actions of rustlers. After the Agrarian Reform, the peasant guards continued in operation to protect community land. During the 1980s government promoted "rondas" to stop the incursion of the Maoist group 'Sendero Luminoso'. Cusco was a relatively safe zone from the action of Sendero, though the region of Ocongate (Prov. Quispicanchi) faced high incidents of delinquency. A NGO linked to the Catholic Church promoted the creation of peasant guards in the zone. The peasant guards of Ocongate are made up of all the commoners, women and men. They have a general meeting every month to bring complaints and also people who have been captured committing offences. In these meetings the behaviours of the offender are exposed in front of all the members who decide what punishment to apply to them. The sanction consists of beatings or cold baths in lakes. No men who beat their wives are brought in front of the ronda in this area.

5.2 Kin intervention.-

Andean communal life is based strongly in the extended family network. Peña (1998:199-206) places the kin intervention as central in the resolution of 'private/family' problems in the Aymaras communities of Puno. In the classification proposed by Peña, a case of 'maltreatment' can be resolved by the parents of each partner who performed as a representative of their children, the godparents who performed as 'mediators', and the same parties in their search for a 'good arrangement'. The means are dialogue and the opinion. In some cases, the 'arrangement' can be formalised by writing in front of communal authorities or the judge of the peace. In the present study, I did not find a strict pattern of family intervention although it is noticeable how important is the role of parents and godparents to prevent and solve cases of domestic violence.

Here are some of my interviewees opinions:

Some of them [member of the couple] tell it to the godparents, to the parents. Sometimes they advise to separate others don't (Alejandrina 30, AC Kuper, Dist Chinchero Prov. Urubamba).

Godparents reprimand them to stop drinking. Some of them don't follow the advice and keep drinking. In this way the godparents finish feeling tired of talking to them, they don't longer reprimand them (Faustina, 30, AC Yungaypata, Dist. Cusco, Prov. Cusco).

Parents or godparents also intervene if the couple ask them, in other cases just between them resolve. (Francisca, AC Ccorao, Dist. San Sebastian, Prov. Cusco).

Also they told to godparents, sometimes. (Hilda 20, AC Chitapampa, Dist. Taray, Prov. Calca).

Parents intervene, if they don't exist then godparents, if they can't then they go to the judge. (Feliz, 25, AC Chitapampa, Dist. Taray, Prov. Calca).

My interviewees were in agreement that relatives intervene if the couple, probably more often the beaten women, ask them to intervene. However, I found cases in which parents or the wife's mother went to judges asking for intervention because their daughter was being frequently maltreated by her husband.

5.3 The communal organisations.-

People were in agreement that communal organisations neither provide an opportunity nor the space to talk about 'domestic' problems. Steering committees can deal with or be involved in conflicts in the community but always related to land tenure management. I found in my review of the judge's records only few cases in which the communal authorities presented a case of abandonment or maltreated children or wives to judges of the peace.

Women's organisations are overtly dismissed by my interviewees as a forum of intervention. Alejandrina (30, AC Kuper, Dist. Chinchero Prov. Urubamba) vice-president of the Mother's Club in her community was radical in telling me: *In front of the Mother's Club there are no denunciation about violence, women don't tell if the husband beat them. Neither in the Steering Committee of the community. Women go straight to the police or to the judge.*

I enquired from Victoria (47, AC Maraspaqui, RT. Ttinue, Prov. Quispicanchi) if the rondas in Ocongate (Peasant Guards) intervened in these kind of cases. She confessed

to me: *No the ronda don't take these cases into account, they just review stealing and 'abigeatos' (rustlers), if there is this kind of problem they go to the judge.* Cristina (53, RT Ttinque, Dist. Quispicanchi) also told me the same. This impression was confirmed to me by members of communities' steering committees in the sense that they don't deal with 'family' cases.

In the study of Peña (1998:298) the communal authorities have a 'passive' role in relation to 'private/family cases'. Their main function is the elaboration of written documents containing the terms of the arrangement that the family has arrived at previously. Just on a very few and serious occasions the steering committee is obliged by the circumstances to intervene in family cases. Peña is in agreement that the communal bodies have as main role the management of the communities and eventually to resolve conflicts involving land tenure and commoners obligations. Harris (1994:59) mentions that women in Northern Potosi present complaints before communal authorities because of being beaten by their husbands and the authorities 'have to adjudicate'. Depending of the circumstances the husband is 'fined or sanctioned'. She does not inform us further.

5.4 The legal representatives.-

5.4.1 A 'serious case'.-

My interviewees were in agreement that just the 'serious cases' go to the judge and sometimes also to the lieutenant governor. I enquired of some of my interviewees what was their concept of a 'serious case'. Women from the Mothers' Club of Taray (Prov. Calca) told me: *when it is not possible to bear with that because daily we are beaten* (Mother's Club, Taray). Juana (43), also from the Mothers' Club, added that

she was one of these 'serious cases': *It happened to me that my husband beat me so much. He is a drunkard, now he is lost, all the time drunk walking in the streets. The beating for me was daily. He just come straight, he though that I was with other men, even he beat the chairs.*

For Alejandrina (30, AC Kuper, Dist. Chinchero Prov. Urubamba) a case is 'serious' depending on the intensity of the injuries: *When the beating is too much and he burst the eye or the face.* For Francisca (46, AC Ccorao, Dist. San Sebastian) this is a matter of personal situation. She told me that a woman goes to judges *when she thinks that she can no longer bear it and there are women who can bear more than others.*

5.4.2 Lieutenant Governors.-

Lieutenant Governor is the lowest representative of the Internal Affairs Ministry. He (always a man) is the police representative in their communities and fulfils some of their functions. Lieutenant Governors are appointed in a General Assembly and later officially confirmed by the *Sub-prefecturas* (district representatives of the internal affairs ministry). Lieutenant Governors work closely with judges' of the peace because they are responsible for judicial appointments. They can also report cases to the judges.

In places substantially distant from a judge's place, lieutenant governors can be considered a kind of 'substitute' of the judge. People's confidence in lieutenant governors, however, depends on how impartial they suspect this authority will be in their case. Women who suffer domestic violence problems would not look for the intervention of a Lieutenant governor if this officer also beats his wife or is a close relative or friend of their husbands. Here are some of my interviewees opinions:

Faustina (30, AC Yungaypata, Dist. Cusco, Prov. Cusco) told me: *they go to the judges of the peace just when there are arguments with other families. First they go to the Lieutenant Governor and later if they don't reach an agreement they are sent to the judges of Cusco.* Francisca (AC Ccorao, Dist. San Sebastian, Prov. Cusco) was of the same opinion: *When a woman is beaten very hard or has been badly punished she go to the lieutenant governor.... The lieutenant governor based in the law, in the article that he has in the hand, they call them the attention and they told them it should not be in this way. When is more serious it is remitted to the judge.*

For Encarnacion (25, AC Maska, Dist Pisac, Prov. Calca) this is a problem of individual choice: *Some of them go to the judge others to the lieutenant governor* For Lucia (26, AC Cuyo Grande, Dist. Pisac, Prov. Calca) lieutenants are the only choice available: *There are some women who their husbands beat them, they go to the lieutenant governor.*

5.4.3 Judges of the Peace.-

Most of my interviewees, however, mentioned judges as those mainly responsible for intervention. As Alejandrina remembers (20, AC Kuper, Dist. Chinchero, Prov. Urubamba) *People go to the judge when it is serious and when they don't have anybody, they do not have parents. When they have them they just arrange between them.*

Hilda (20, AC Chitapampa, Dist. Taray, Prov. Calca) told me: *some women go to the judge to complain or to separate. These are the less. When people fight they go to the judge when they fight drunk. They go to the judge of Taray.* Women from the Mothers' Club of Taray (Prov. Calca) told me: *they go to the judge with the seriousness of the beating either to separate or to arrange in a good way.* Feliz (25,

AC Chitapampa, Dist. Taray, Prov. Calca) was very well informed of the last legal change: *Sometimes in these fights they go to the judge. Recently it has been enacted a law and maltreatment should not occur at home. Women can defend themselves now.*

My interviewees have a positive impression about judge intervention. In domestic violence cases they consider that husbands attitude toward the judges is very important for a successful end. Encarnacion (25, AC Maska, Dist. Pisac, Prov. Calca) told me: *if the man listen to what the judge is telling him then he does not longer beat. Most of them obey the judge and they don't beat more. Some of them change their character but some don't. It is better to go to the judge.*

Women from the Mothers' Club of Taray told me: *Most of men change when they go to the judge, some of them go to the police too, they make themselves to be taken there* (it means that because of their actions they are taken there). However, they also acknowledge: *there are women for whom it is worse, the husband threaten them 'walking you go to the judge'* (it means you have enough energy or time to go to the judge but not to do other things)

Alejandrina (30, AC Kuper, Dist. Chinchero, Prov. Urubamba) had a very positive opinion: *In the judge of peace they always arrange. When they are spouses they reach a pretty agreement. It is good that there is a judge of peace because all that provoke problem regret their behaviour and they realised what they are doing.*

5.5 The endings.-

The most noticeable disparity that the domestic violence law has with the reality of the Andean people is that it presupposes that the normal ending of a domestic violence

case is separation and that people who suffer domestic violence are in the position of 'victims' this is vulnerable in the hands of perpetrators who are evaluated as permanent and dangerous aggressors. As Harris (1994:59) has analysed, the violence in more Western cultures is regarded as a 'breakdown of normality', like an 'intrusion from outside'. In the Andean communities it is treated as 'alternative state', a risk that some men face because of drunkenness. For Andean people even marital violence can be 'repaired' or 'mended' through dialogue and advice. Consequently, for the people of Andean communities, there are simply two ways of ending a case of marital violence: 1) the highly expected: 'pretty arrangement' or 'good understanding' and 2) when the situation is not 'controllable', the separation.

5.5.1 A 'pretty arrangement'

It is very common to hear about *arreglar bonito* (to 'arrange' in a smooth way), or *buen entendimiento* (good understanding) talking with Andean people in different situations. Alejandrina (30, AC Kuper, Dist. Chinchero, Prov. Urubamba) told me that *'to arrange pretty, it is that between them there is an understanding. They apologise to each other. For the women in the Taray Mother's Club: this means to keep living together without beating.*

The 'pretty arrangement' is the expected end in any kind of forum, even if it is just between the couple' although it presents more formalities when the 'amendment' is between the extended family or in front of judges. Peña (1998:200) points out that the means to reach a 'pretty arrangement' are dialogue and advice. This can astound people working in domestic violence from a gender perspective since the principle is there is no ground to justify any kind of violence against women. However, observing the dynamic of the 'negotiation' in these cases, we realise how the objective is the real

'amendment' of the situation and not the legitimisation of men's abusive behaviour. This is noticed also by Harris (1994:59) and Peña (1998:201).

This was the way that Luzmila, the judge of peace of Pisac dealt with the case of Maria Eugenia and Dalmecio. Maria came to the judge to tell her that her partner beat her 'so much', for nothing, he did not even give her a reason to explain his behaviour. Her family had already intervened and 'he apologised' but continued repeating his action. The judge made an appointment for them to attend a 'conciliatory' meeting. The judge started asking Maria to repeat her complaint, after she finished, she asked Dalmecio to explain why he behaves in this way. He said he beat her because he listened to 'gossip' about her and that she did not do anything to stop these gossips, so when he is drunk he remembers. Luzmila, then reprimanded the way that he is behaving claiming that since he compromised with her he had to forget what she was in her past, then she started to explain all the negative effects of beating his wife, her resentment and the possible effects on her health that could make her 'a weak and ill woman': 'You have to think of the consequences of your acts' she adds. Luzmila was appealing to his 'good understanding' to make him aware of what he was doing.

The 'pretty arrangement' involves a kind of negotiation in which, despite just one party being injured, all the people involved are prompt to recognise their responsibilities in the events. This is not just applicable to domestic violence, this pattern is the same in other cases involving physical aggression. For instance, before the judge of Taray I witnessed an uncle who had been beaten by his drunk nephew. The uncle accepted the nephew's apologies and promised to offer more moral and economic support to his nephew. Something similar occurred in another case before the judge of Pisac. I witnessed a woman promise not to continue a despising attitude in

front of a poorer neighbour who, while drunk, had insulted her and threatened to beat her. He confessed in front of the judge to feeling hurt because of the woman's arrogant attitude toward him and his family, consequently, the woman promised to be more respectful to him.

What is clear from my interviewees is that in the 'pretty arrangement' in domestic violence cases it has as its objective stopping the violence. For us as outsiders, it would be difficult to trust in the commitment of a man who merely explains away his action on the grounds of being drunk, but Andean people have confidence in such agreements, including women, as was the case of Alejandrina (30, AC Kuper, Dist Chincheros), mentioned previously. Every time that her husband got drunk he accused her of not selling enough products and beat her, when sober he did not even complain verbally. Their relatives intervened and he stopped beating her. He still joined the drinking bout but before going to drink he promises her not to cause her problems. Her husband come back home 'crying, singing' and goes to sleep in peace.

5.5.2 Apologising.-

'To apologise' is a very important step in the 'arrangement' between two parties in conflict. I observed this 'ceremony' of apologising many times in my visits to the judges' places. I was surprised by the formality of the event. It has the appearance of a ritual. It is called in Quechua 'disculpakunaquichis' (giving apologies). Judges of peace always finish a conciliatory meeting, in which a written or verbal agreement has been reached, with this 'procedure'. After the parties have signed the agreement or have ended the discussion with a clear commitment by each party, judges request the offender for a 'disculpakunaquichis'.

The offender stands up and expresses in detail how ashamed he or she feels for his/her behaviour then acknowledges and values the affectionate relationship that he/she has with the injured person (normally a relative or a neighbour) and that in front of 'Our Lord Jesus Christ' promises not to do it again and 'humbly' asks for forgiveness and sits down. The judge then invites the injured party. She or he expresses how humiliated or injured he/she has felt because of the other party's behaviour especially coming from a person with a 'close link'. She or he reprimands and advises the other party for the sake of their relationship not to do it again, then the offender stands up and both parties give each other a strong hug. Minutes ago both parties could be arguing bitterly about terms of compensation, or were remembering bitterly the circumstances of the aggression and other offences that happened in the past that have accumulated resent between them, but after the ritual, everything is 'mended', and a sense of peace pervades the judge's place.

The cycle of aggression-reconciliation has been analysed in the study of domestic violence from a gender perspective. It is understood that a woman is in a way 'seduced' again by her aggressor under the promise of a compensatory love proper of the reconciliatory stage, and that will last until the next beating. Between Andean people there is not such a seductive game, the violence does not disrupt the dynamic of the relationship. Most Andean women are not afraid of their husbands when sober, they are afraid of being beaten when they drink. If they manage not to be beaten after a drinking bout they will not even bother to complain about the drunkenness as happened in Alejandrina's case. There is really a sense of confidence in the other person, the conviction of the aggressor and beaten woman that the violence was

performed in that state of 'otherness' and that a man's genuine regret of his action could prevent him to being violent when drunk.

The Andean preference for the 'arrangement' (the *arreglo*) faces sometimes a great disagreement with the official legal system, especially when the injuries are 'serious' in the legal medical understanding. In Ollantaytambo, I came across a case from the community of Huilloc, one of the oldest Cusquenian communities. A young man had been seriously injured by his brother when both were drinking heavily during a festivity. The injured brother complained to the judge who, following the formal procedure, sent him to the legal recognition. The medical examination, performed in the Health Centre, reported more than 10 days of medical resting. The judge called the parties to explain to them that he was obliged by law to send the case to the criminal judge because it had reached the level of a serious offence. The injured brother begged the judge not to do it. He just wanted 'to arrange' with his brother, this involved payment for the medicine and some other compromises, and that his brother 'apologise' to him but he did not want his brother sent to the criminal court.

5.5.3 Separation as an option.-

A separation was perceived by my interviewees as a very remote possibility. They told me:

Most couples keep living together, very few of them separate. And if they do separate it is just for three months and they come back again (Alejandrina, 30, Kuper, Chinchero Urubamba).

Despite the beating they keep living together, on very few occasions they split, I guess it will be a 1%. They say this is my luck and in this way they accept it. Just

commenting they say. 'It is my husband, I have to cope'. Others say I don't want to cope' and they split. Others say even if he kills me I am not going to separate (Francisca, 46, AC Ccorao, Dist. San Sebastian, Prov. Cusco).

In some cases the 'pretty arrangement' is not followed by the husbands, and in many cases it takes more than one 'pretty arrangement' to see any real change. Maria went to the Pisac judge with the intention of separating from her partner Dalmecio. She thought that he was not going to change since he had apologised before for his behaviour in front of his relatives and although he stopped for some time, he had started to beat her again. After the judge's intervention, Maria insisted on returning to her parent's home at least for a period of time to evaluate whether Dalmecio really had the intention to change his attitude. After some weeks I knew from the same judge that they had got back together and so far she had not heard of any problem between them. They were still together three months later when I left the zone and the judge knew that they were living 'well' now. The case of Encarnacion was different. She had been in the court twice already and everybody, starting from the judge had advised her to separate that her husband was not going to change. Encarnacion explained to me that she still continues with him because doctors told her that he is ill and have warned him to leave the alcohol. She feels safe when he is not drinking. It is also reported by my interviewees and by Harris (1994) in her work, that women faced maltreatment from their husbands in the first years of their cohabitation or marriage but in one way or another the violence has stopped and they are able to live together in peace.

Consequently, when a woman goes to a 'forum' her wishes are for her husband to change. This will be the 'ideal' as women in Taray Mothers Club expressed to me.

Case files confirm this situation. This is when a woman turns to a judge most of them want a 'good understanding' with her husband. This differs from the attitude of urban women who when they reach the legal system, they really intend to end their relationship. For instance, in the Women's Police Station of Lima 41.8% of women expressed a desire for separation while just a 9.9% were looking for their husbands to change their attitude (Estremadoyro 1993:47). This does not mean that all these women manage to separate but that they were convinced that the only alternative to their situation was to finish their relationship. Instead Andean women evaluate the judge's place as another forum in which it is possible to go for a 'pretty arrangement' because they do not have close relatives or because they are giving it a 'last' try after the relative's intervention failed.

Conclusions:

Anthropologists like Harris (1994:48) suggest that the 'generic status of wife-beating' in Andean communities 'is hard to evaluate'. There are some men who beat their wives, and there are many women who have faced beatings by their husband's at some point in their relationship. However, at least at discursive level, wife beating is highly disapproved and explanations narrow down to the fact that most men (my interviewees would say almost all of them) beat when they are drunk.

Andean men do not have an overt attitude to use violence to 'keep women in their place'. It appears that men need to hide their intentions and resentment under the excuse of drunkenness, culturally supported as a state of alienation, in such a way that most men who beat when drunk feel very ashamed the following morning exonerating themselves in front of their wives for the fact of being drunk: 'I don't know what got in me'. In an analysis of domestic violence from a gender perspective, the

'drunkenness' would be just a 'contingent explanation' for a typical expression of gender hierarchy (Harris 1994:52) . In Andean communities, it is more difficult to disregard it because it gives the strongest explanation to understanding the tolerance of domestic violence occurring in such a state. In this sense, Harvey (1994:66) goes further concluding that Andean women although they complain and fight back against physical attacks by their husbands, 'do not make them directly responsible for the violence'.

This chapter has not attempted to provide explanations for the existence of domestic violence in Andean communities but rather to find out if domestic violence is a ground for complaint and in which forums this complaint is carried out. This enquiry reveals that the decisions to seek alternatives to facing domestic violence are deeply individual and depend entirely on the woman's tolerance of the violence. Attending a forum is entirely at a woman's discretion, as to how much she can 'cope' with. In this sense, our interviewees are in agreement that most incidents of domestic violence are resolved between the couple. However, if incidents are repeated, it is a common practise to ask the relatives to intervene. This is the 'first forum' of intervention and although in my fieldwork it did not show a formal and strict pattern, it is considered very important. Parents and godparents, would use 'dialogue and advice' to make both sides enter into a 'good understanding' which in cases of domestic violence has the objective of preventing the continuation of this attitude by the husband. Sometimes relatives can intervene without even being called by the same women. Another important aspect revealed is that communal organisations are not a forum for domestic violence problems. Consequently, if there are not relatives or these fail in preventing the violence, women will go to the judges of the peace for help. At the judge's place,

the high expectation of women is to prevent their husbands from beating them, in only a few cases will women go to the judge looking for separation.

Andean people do believe in 'arrangement' and 'restoration' and my interviewees gave evidence that the interventions of relatives and judges had worked with husbands who become violent when drunk. There is also the evidence that when some of them stopped drinking, for instance through conversion to the Evangelist Church, the violence stopped too.

There are some paradoxes in the situation of domestic violence in Andean communities, however, it is not an objective of this work to resolve them but rather to acknowledge the way in which Andean women perceive domestic violence and understand it should be resolved. On this point there is a major disparity with what is proposed in the domestic violence laws (which reflect the feminist perspective). In such approach the aggressor is a criminal and women and children are strongly recommended to separate themselves from such danger. Instead, in Andean communities, women are not afraid of their husbands when sober and it is difficult to imagine an Andean woman regarding her husband as a criminal. The fact that men express their confrontational aspect of the relationship in a 'state of otherness' 'exonerated' them to break the idiom of 'complementarity' that keeps the Andean couple together even through the most difficult circumstances.

The following chapter will focus on the role of the judges of the peace that performing as *justiciable* bodies (Santos 1994:28) are identified by Andean women as appropriate to resolve domestic violence problems.

CHAPTER EIGHT:
JUDGES OF THE PEACE AND DOMESTIC VIOLENCE

Introduction:

As was mentioned in chapter four, the judge of the peace, a typical colonial institution, came to fulfil a space left empty by the disintegration of the original communal organisation and the loss of the social legitimacy of the *kurakas*. Indigenous people accepted this institution and assimilated it to perform the function of conflicts resolution.

Centuries have passed and Andean communities have not re-institutionalised the justice management within their own social organisations. The communal bodies have a managerial function and if they have a capacity to adjudicate conflicts these are mainly concentrated around land tenure and commoners obligations. Additionally their decisions always have to be supported by the general assembly. Women's organisations are concentrated in productive activities and do not constitute a space to which women can bring their 'personal' problems.

In relation to domestic violence, some situations are called to the attention of kin networks. However, in serious cases, my interviewees stated, it is the judge of the peace who became the main forum of intervention. The review of the judge's records reveals that these 'serious cases' of domestic violence are the highest cause of complaint in the judge's overall work load.

This chapter acknowledges the main role of judges of the peace in conflict management in Andean communities, and particularly analyses their intervention in domestic violence cases. It looks into the limits and the possibilities of these judges to reflect women's expectations in relation to the issue. At the same time, it pays particular attention to their role in preserving social relations more than adjudicating a 'legal status' to the cases. The final objective is to contrast the characteristics of such an intervention with the expectation that the formal legal system (including the expectation of feminist lawyers) has of the way domestic violence cases should be resolved at national level.

Before discussing the role of the judges specifically in cases of domestic violence it is necessary to look into the general context of the *Justicia* of the Peace.

1. Formal characteristics of the *Justicia* of the peace.-

The *Justicia* of the peace in Peru constitutes the basic level of justice administration. It is exercised by judges not lawyers and it is an unpaid function. Its name expresses its function basically conciliatory, of 'peace makers', a characteristic that has not changed with time. In this sense, Loli (1997:83) claims that if the inhabitants of small towns in Peru were asked what kind of judges they know, their answer would be 'the judges of Peace of their district'. She thinks that a similar inquiry made one hundred years ago would have had the same answer.

Loli (1997:83) states that the judges of the peace, marks in our society the coexistence of 'two styles of justice administration, ostensibly contradictory, based in different rationalities'. In Brandt's opinion (1995: 94) the judges of the peace hold 'concepts, procedures, objectives, values and standards' different than those of the rest of the judicial system. For most of the Peruvian population the justice of the Peace is the

only level of justice administration attainable because of the costs, distances and type of conflict in which they are involved. Additionally, judges of the peace make up almost the totality of the judicial system of Peru. There are around 5,800 of these judges in the country representing more than the 70% of the judicial system (less than 30% of the judges in Peru are lawyers) and resolving more than half of the judicial conflicts in Peru (Loli 1997:108, Brandt 1990: 87, Revilla 1994:81-2)

In spite of its importance, judges of the peace have hardly been in the focus of the state's attention. The few times that it has been targeted is when some judicial higher representatives and lawmakers have been worried about their 'lack of coherence' with the rest of the 'professional' judicial system in Peru. Certainly, there has hardly existed a preoccupation to consider the *Justicia* of the peace from the perspectives, necessities and expectations of the users.

Studies such as those of Brandt (1990) and Revilla (1994) reveal that the population has a very positive opinion of judges of the peace which contrasts with the very negative evaluation in relation to the rest of the 'judicial pyramid'. It is stated that in front of the judges of the peace, 'there is a search for an effective solution to the concrete case' (Revilla 1994:81), avoiding legalism and formalism that the population that they attend, mainly peasant, does not have the capacity to understand and which would not be useful. In this sense, Brandt (1990:368) finds that the 64% of the cases processed before judges of the peace finished in a conciliatory agreement ('arreglo'). Brandt (1995:96) suggests than privileging the 'mediation' more than the 'adjudication' the judges are sharing the 'values and interest' of the 'users'. He thinks that particularly Andean people, expect that the intervention of the judges will restore the 'equilibrium' that is expected to exist in such a small social group. In the judge's

intervention values such as 'solidarity and mutual responsibility within families, neighbourhoods and communities' are seriously taken into account.

This ambiguous treatment of the Justice of the Peace has conditioned the coexistence of a variety of statutes regulating their role. Some of these are as old as the 'Rules of the judges of the Peace' which were enacted in 1854. The following is an analysis of the characteristics of judges of the peace emanating from the legislation. It will be compared with the reality of judges of the peace 'on the ground'.

1.1 Jurisdiction (*Competencia*):-

Jurisdiction in the civil area has been traditionally defined by the patrimonial estimation of the main claim or by the importance of the rights involved in the civil transaction (e.g. divorce) and in the criminal area by the gravity of the unlawful behaviour. In this way, it has been assigned a hierarchical status between the judges and courts. The courts considered more important deal with higher monetary matters or with interests or rights which deserve higher state tutelage, both at civil and criminal level.

Judges of the peace has an assigned jurisdiction that has not changed radically from colonial times. This jurisdiction is defined by the low material estimation in the civil cases, and those cases which deserve a 'moderate correction' at criminal level (Article 142 and 143 of the 1812 Constitution of Cadiz). Until the 1920s, judges of the peace were exclusively a conciliatory stage they did not have the capacity of adjudication. Within that decade judges were entitled to adjudicate both at civil and criminal level although in 1940 that attribution was removed for criminal cases and reinstated only in 1991. Despite having the attribution to decide on cases, there is still a strong belief that in front of a judge of Peace cases will be resolved by conciliation. This

conciliatory character of the judges is stressed in the article 65 of the current Judicial Power Organic Law (the 'LOPJ');

'The Judge of the Peace, essentially is a Judge of Conciliation. Consequently having the attribution to propose alternative solutions to the parties with the objective of favouring a conciliation, although it is forbidden to impose an agreement'.

The law, however, has clearly entitled the judges of the peace to adjudicate in the following jurisdiction:

In the civil subject.- Article 65 of the LOPJ establishes:

'If the conciliation is not successful the Judges of the Peace will know of the following procedures within the patrimonial appreciation established by the law:

- 1.- Maintenance only in the case when children are legally recognised by both parents [in other cases higher courts are responsible].
2. *deshuicio* and *aviso de despedida* [procedure of landowners against tenants].
3. Payment of money.
4. *Interdictos*: procedures to secure or recover goods.
5. Immediate interventions when children have committed antisocial acts and with the exclusive aim of making provisional and urgent orders about the custody of children abandoned or in moral danger situations. When this immediate intervention is concluded he/she should submit the case to the Children's Judge [now called Family Judge] or another related judge.
6. In others in accordance with the law'

Judges of the peace also performed as notaries (*Notario Publico*) when there are none of these public representatives available within 10 kilometres (Art. 68 of the LOPJ).

This text of the law gives the impression that conciliation is a very wide attribution that can be applicable in any case and only when it fails can judges adjudicate those areas assigned by the law. However, article 67 of the LOPJ states that judges are forbidden from conciliation and decision in cases related to the marital link (separation, divorce) and nullity of juridical act and contracts, as well as, inheritance

rights, constitutional rights and others established by law. In reality, judges have always preferred the conciliation even in cases which are, in theory, outside the scope of their jurisdiction (Brandt 1990, Loli 1997, 104, Peña 1998:175-186). Additionally, most rural judges avoid giving a case a formal procedural route. Loli (1997:104) reports that just a few judges who have some knowledge of the law and main codes feel able to resolve a case, the rest preferred conciliation. On top of that, judge's of the Peace performance is not supported by coercive bodies as in higher ranks of the judicial power (e.g. judicial police) and there is a conviction in the judges that the good will of the party is what really works. In my study, conciliation was preferred in all the cases.

In the criminal area, article 440, subsection 6, of the 1993 Criminal Code establishes that judges of the peace are responsible for *Faltas* procedures (minor criminal offences). These procedures are as follows:

Faltas against the Person (those affecting the physical integrity of a person, 441 to 443 of the Criminal Code).

Faltas against patrimony (e.g. theft, 444 to 448 of the Criminal Code).

Faltas against 'good habits' (e.g. slanders, 449 to 450 Criminal Code).

Faltas against public tranquillity (452 of Criminal Code).

One of the most controversial aspects of the judges preference for conciliation is at the level of 'faults' (Loli 1997:104, Revilla 1994:86). As was mentioned when talking about *letrados* judges in chapter five, a criminal case can be finished by a sentence, by a prescription or by a *desistimiento* (the withdrawal of the action by the complainant). In criminal cases conciliation is not recognised as a procedure stage. Such an agreement is understood as a *desistimiento*. Loli (1997:105) believes that this

situation enervates the 'real access of the exercise of the rights' since judges close themselves off from any possibility of coercion against the offender. This is considered particularly relevant in cases of domestic violence. Brandt (1995:96-99), however, suggests that the option for conciliation should be appreciated from the perspective of the users. In most cases, to conciliate matches the 'values and interests' of the people involved, including those of women.

In my study, all 149 judges who attended the training courses organised by the Cusco Superior Court in February 1997, believed that conciliation was the reason for being a judge and could be exercised and promoted in any cases, whether it is criminal or not does not have any relevance. These were their answers to the question 'what are the judges of the Peace's functions in cases of *Faltas* against the person':

120 judges believed that they had only the attribution of conciliation.

27 judges recognised that they had the attribution to deliver a sentence when the parties did not conciliate.

2 believed that they could conciliate but if this failed the case should be passed to a superior court for resolution.

A further enquiry, however, revealed that 138 believed those cases normally finish by conciliation (ie some judges who acknowledge the capacity to adjudicate did not perceive it as necessary in order to solve the cases), 8 believed that the cases could finish either by conciliation or by sentence, and 3 of them that the cases could finish by a conciliation followed by a *desistimiento* by the complainant (ie only these judges linked the conciliation with its real meaning within criminal cases).

1.2 Territorial Jurisdiction (*Jurisdiccion*):-

There is not a strict criteria to establish appointments of judges of the peace. They can be appointed in a district, small town, a peasant community or even a shanty town in urban zones. Territorial boundaries and appointments are the exclusive decision of the Superior Courts. The law simply establishes in article 61 of the LOPJ that all 'populated centres' (*centros poblados*) should have at least one judge of the peace. Demographic volumes to define a people's settlement as a 'populated centre' are established by the Judicial District Executive Councils. These councils are headed by the presidents of the Superior Courts (Arts. 95-97 LOPJ). On some occasions, the Councils accept the suggestion of 'representative sectors' of the population to create new appointments of judges of the peace. A peasant community can have the initiative to negotiate the creation of a *juzgado*¹ through their district town council. Town councils then send the respective petition through the judicial channels (normally first to the provincial court judges and then to the Superior Court)²

The 13 provinces of the Department of Cusco have the following number of *juzgados* of Peace³

PROVINCES	No. Juzgados
Acomayo	48
Anta	13
Calca	12
Canas	15
Canchis	14
Chumbivilcas	16

¹ The Spanish word *juzgado* refers both to the physical place where a judge performs his/her function and to the appointment itself.

² Interview with the President of the Superior Court of Cusco, Dr. Francisco Olivera

³ Based on the Cusco Superior Court records

Cusco	6
Espinar	8
La Convencion	36
Paruro	37
Paucartambo	17
Quispicanchi	26
Urubamba	8
TOTAL	256

In reality, this number is just a reference. Some *juzgados* are not operative because judges are no longer in the post for various reasons. It is not possible to know exactly how many judges are actually functioning since there is not such a thing as 'visiting inspectors' in the Superior Courts, not only because of the lack of resources but also because of the difficulties in accessing some areas. For the 1997 election of judges of the peace, the Superior Court required the town's mayors to prepare a *terna* (a list of three candidates with the suggested names for a judge and two *accessitarios*⁴). Reviewing the Superior Court records this has not happened in 85 cases⁵. In some places, I proved that there was a lack of interest by the town councils to promote candidates to judges of the peace and/or there were no people available in the district to perform the post, since it is an unpaid but demanding job. The lack of proposed candidates does not necessarily mean that the judge's appointment was vacant, in most cases the former judge was still functioning.

One could think that the territorial jurisdiction is a quite straightforward criterion, however, I found all sorts of situations that could only be explained by this informality

⁴ 'Accessitario' is a deputy judge, is legally obliged to replace the judges when the latter can not perform the post for any reason. They can also work with the judges as secretary or assistant.

⁵ Anta 3, Calca 14, Canas 3, Canchis 3, Chumbivilcas 3, La Convencion 29, Paruro 12, Paucartambo 15, Quispicanchi 3.

surrounding the justice of Peace in Peru and its lack of connection with higher levels of the judicial pyramid. Since most of the cases are resolved by conciliation it does not have any relevance in practical terms by whom or in which *juzgado* a person resolves his/her case.

For instance, I found new *juzgados* of Peace which were relatively unknown by most of the population, especially in those places with distant peasant communities. This was the case of the judge of Ccorao (Prov. Cusco). The population did not attend the *juzgado* and in 4 months the judge had dealt with only 10 cases. The same happened with the Yucay judge (Prov. Urubamba). The community of San Juan, two and a half hours walking distance away, had never attended the judge's office.

Other cases were the judges' lack of knowledge of their correct territorial jurisdiction. Sometimes judges are not familiar with the 'formal' boundaries of their territorial jurisdiction. In my study, this happened with the judge of Ccorao (Prov. Cusco) who told me that his jurisdiction included the communities of the District of Taray. Taray is a neighbouring district that belongs to the Province of Calca. His confusion comes from the fact that NGOs and state officers based their work on what they denominated the 'Cuenca of Ccorao' this is the population around the Urubamba River between Ccoaro and the 'Sacred Valley'. This comprises 21 peasant communities some of them belonging to the province of Calca. These communities are frequently calling for 'joined work' in the town of Ccorao this being of easier access for the training teams. This has generated the perception in the judge that these communities were also in his territorial jurisdiction. In other cases, there are peasant communities whose communal land lays within two provinces boundaries.

There exists also an informality promoted by the same legal system representatives. This due to the inaccessibility of some judges' places or simply the lack of resources to send case files to the right judges. This determines that police stations prefer to work with the closest judge. There are few police stations in the highlands and these are almost exclusively located in the larger districts of the provinces (normally with more commercial activities). Consequently, if an incident has deserved the intervention of the police the case file would be remitted to the most accessible judge. For instance, in the whole province of Calca there are just two police stations, one in the capital of the province and the other in the district of Pisac. All the police files of the zone are sent to the Pisac judge even though people involved are living in other districts with their own judges. The same happens with the judge of Chinchero in the province of Urubamba.

Another situation was the people's preference to attend one judge to another. To establish the kind of relationship that Andean people have with the judge they need to trust him/her. We will come back later to this idea. In my study this happened for instance with the judge of Pisac (Prov. Calca) and the judges of Maras (Prov. Urubamba) the first one received cases from Taray and the second one from the Community of Mahuaypampa, places with their own judges. The judge of first nomination⁶ of Ollantaytambo (Prov. Urubamba) was the one who received almost all the cases of the district. The secretary of the judge of Second Nomination told me that they receive on average only one case per week while the first nomination received an average of 20 cases per week. Something similar happened in the district of Ocongate.

⁶ Depending on the amount of population and the kind of activities the superior courts can appoint two judges of Peace in a district. In that case, the first appointed judge is called the judge of First Nomination while the other judge is named as the Second Nomination.

In other cases, the judge is simply not available on a regular basis to attend the population as I proved myself. I finally met the judge of Huayllabamba (Prov. Urubamba) and of Saylla (Prov. Cusco) after three visits, this was also reflected in the light case loads that these judges had. The San Sebastian Judge (Prov. Calca) 'abandoned' her post, as I was informed. In relation to this last district, it is the Pisac judge who deals with these cases. Additionally, people from the community of Mahuaypampa (Prov. Ollantaytambo) told me that the judge is never in his post, as a consequence, they normally go to the Maras judge. The same happened with the judges of the Carhuayo District in the province of Quispicanchi.

1.3 The Appointment.-

Article 69 of the LOPJ mentions that towns councils, peasant communities, native communities, amongst other 'representative social sectors' are entitled to submit proposals for candidates to be judges. In reality, and in agreement with Revilla (1994:84), the people have little participation in appointing the judges. Some judges are personally invited by mayors to make up the *terna* whilst others are elected more democratically with the participation of the social organisations (e.g. 'Defence Committees', 'District Committees'). In fact, and as most of the judges interviewed declared, the post of judges of the peace is not very much in demand because it is unpaid. Consequently, it can happen as it did in Taray, Lamay and Pisac that it was not possible to find 'ternas' to be submitted for the November 1996 election⁷. As a consequence, the previous judges had to continue in the post.

The *ternas* are presented by town councils, but final election is the competence of the judicial District Executive Council. In the November 1996 judge's selection, the

⁷ Judges were elected for the period January 1997-December 1999.

president of the Superior Court, with an innovative spirit and/or knowing about the incorrect behaviour of some judges decided to amend the *ternas* of the proposed candidates. Consequently, in some cases, candidates proposed as *acesitarios* were appointed as judges and those proposed as judges were appointed as *acesitarios* or were not considered at all. This surprised the candidates themselves, especially those who were not expecting to be judges.

By law, the post of judge of the peace is for a term of two years. In reality, this period is just a reference. For instance, the judges elected in 1993 continued in their posts by a Superior Court resolution made during 1995. They were not ratified (which is a different procedure which includes the re-examination of the judge), they were ordered to continue in their function for 2 years more. In 1997 the 'old' judges were still in the post because new judges had not been appointed. The situation of my interviewees was as follows:

In 14 cases they were postulated as judges and obtained the post.

In 8 cases they were postulated as *acesitarios* but were appointed as judges.

4 were previous judges.

In one case the person appointed as judge was not part of any of the *ternas* prepared by the town council. The *ternas* were sent to the provincial court (*Juzgados especiales o mixtos*) responsible to submit the *ternas* to the Superior Court (as procedure). In this case, the court amended by his own initiative the *ternas* and a non candidate was appointed as judge. This generated great resentment in the population.

1.4 Requirements.-

There are two type of legal requirements for the post.: a) general for any judge, b) specific for the appointment of judge of the peace.

a) General Requirements: article 177 of the LOPJ mentions:

- being Peruvian from birth.
- being citizen in the exercise and enjoyment of the civil rights.
- to have an irreproachable behaviour.
- not being blind, deaf, mute, mentally handicapped or, to have a permanent physical incapacity.
- not to have been condemned or not being prosecuted for any criminal offence.
- not being in a state of bankruptcy.
- not having any of the incompatibility established by law.

B) Specific Requirements: article 183 of the LOPJ mentions:

- being older than 30 years.
- being a resident of the place.
- to have at least completed primary school.
- to have a known occupation.
- to speak Quechua, Aymara or any other dialect of the zone.

When necessary, the District Executive Council is entitled to exonerate judges of the requirement to complete primary school and -inexplicably- of the knowledge of the native language. In practice, Superior Courts considered indispensable knowledge of the language of the area. However, there are other requirements in which the courts can be more flexible, like the age. In my research, I found that the judge of First Nomination of Ollantaytambo (Prov. Urubamba) was only 28 years old and the same applied to the judge of the adjoining communities of Collana-Chequerec also from the province of Urubamba. This could be explained by the fact that the former LOPJ established an age limit of 25 (art. 46 ex-LOPJ) but also, and according to comments

of the Superior Court representatives, by the 'necessity' to have 'more educated' candidates for judges⁸. In the rural areas the younger generations have had more access to formal education including university degrees. In the cases mentioned, both judges were university students, one was studying law and the other education.

The following shows the requirement that the judges in this study fulfilled.

Age: 2 judges were under the minimum age requirement being 28 years old. 11 judges were concentrated in the age group 30-39 years old. 7 judges were between 40 - 49 years old and 7 were 50 or over.

In the study of Loli (1997:92-3), based on data gathered in 1981 within a wider national scope, it was found that 61% of the judges were concentrated in the range of '50 or over'. The rate was even higher when considering only more remote areas. In these places, due to the low formal educational level of the candidates, the Superior Court regarded age as indicating a higher acquisition of 'common sense' and 'prudence' to resolve cases. When analysing larger towns, however, this rate changed to a major concentration of judges in the band between 31-50 years (44.3%). The percentage of judges under 30 also increased to 15.6%. Loli claims that the age diminished with the major 'level of development' of the towns. In this study I found more judges between 30-39 years old. This tendency probably will continue even in the highlands of Peru due to the increased access to formal education.

Formal Education: The level was higher than what is normally expected from judges of Peace in rural zones. 9 judges (32.2%) had undertaken some kind of university study: (two women had a professional degree: one was a vet and the other a Bachelor of Law, 5 were school teachers and two were university students). 2 judges (10.7%)

⁸ See also Loli (1997:92)

had received a technical education after full secondary school (2 were farm technicians and 1 was a retired policeman) 10 judges (35.7%) had secondary education and 6 judges (21.4%) had just primary education. Loli (1997:94-5) comments that some years ago it was only expected that the judges knew how to read and write, though, because of the high rate of illiteracy in rural populations, it was difficult to find 'qualified' judges.

Despite that a judge could prove a high formal level of education it was obvious that this did not correspond to their real knowledge. The judge of Maras, for instance, had secondary studies but hardly could write. This situation was even worse for those with just primary school education. Even the more qualified, such as school teachers, demonstrated problems with written Spanish. This is explained by the poor quality of education in the provinces of Peru that results in access to formal education not guaranteeing a good training. Additionally, the school curricula does not take into account the reality of rural areas, consequently, the usefulness of these studies is very reduced. However, it is necessary to remember that the main language in use in this setting is not Spanish in this sense, it was more important for the judges to have a good command of the native language than of the official (and legal) language.

Residence: 23 judges were originally born in the area of the *juzgado* and the other 4 had spent most of their lives there. However while 22 judges were 'full-time' residents of the *juzgado*, 5 of them had more than one place of residence, normally due to their children's education or to their own education or business which obliged them to have a place of residence in Cusco (capital of the Department) or in another larger urban centre.

Occupation: 12 judges declared themselves exclusively 'farmers'. They use the Spanish word *agricultores*, which means people who work in agriculture regardless of their social condition. A peasant, *campesino*, can refer to himself or herself as an *agricultor* as does a person with a larger holding of land. All of these *agricultores* were members of Andean communities or *parcialidades*. For instance, the judge of Chinchero was a member of the community located in the district itself but he has managed to accumulate a significant amount of land as has his wife. Instead the judge of the *parcialidad* of Yanama (Prov. Quispicanchi) was clearly of *campesino* (peasant) status. 8 judges were engaged in some kind of commercial activity, most of them had a small grocery shop in their town. 2 judges were retired. 2 were school teachers. 2 judges had an activity linked to the legal profession: The judge of Yucay (Prov. Urubamba) who works for the province prosecutor and the judge of Pisac (Prov. Calca) who works for a notary. One judge was a craftsman.

Sex: 6 judges in my study were women (22.2%) of these 5 held a university degree. They were the best qualified in my sample. The other woman was a respected peasant leader. Loli (1997:108) comments that female judges based their 'legitimacy' on their level of education. In the 1997 election, the preference of the Superior Court of Cusco for female candidates is noticeable. This follows the general judicial tendency to include women within the judicial career. Most of the judges and prosecutors of Family are women. However an important reading of this data is that for women to be good enough to be elected as judges it is necessary for them to have a superior formal education compared to the male competitors.

1.5 Conditions of the job.-

1.5.1 Work hours.-

Article 62 of the LOPJ mentions that the judges 'dedicate the necessary time' to perform their duties. The judges are not expected to be dedicated full-time to the post mainly because it is an unpaid activity. However, judges in this study spent a great amount of time in the *juzgados* or tried to be available most of the time. Sundays and other market days were considered very important by the judges since on these days Andean people come together in the main square of districts or larger towns to sell or barter their products. The judges in this study dedicated the following time to the *juzgado* :

9 judges worked from Monday to Saturday part-time and on Sundays the whole day.

9 judges worked from Monday to Friday either part time or full-time. On Sundays the whole day.

8 judges work 'on demand'. These judges were *agricultores* or had a grocery shop in the same town. In these cases the parties look for them at their homes or in their place of work when necessary.

2 judges declared they just worked on Sundays.

1.5.2 Charges.-

Article 70 of the LOPJ establishes that the judges of the peace are not paid, except for those legal activities that have to be performed outside the judicial site, however, judges are permitted -and advised- to collect some money from the parties as a kind of payment. In the 1997 training course in Cusco it was suggested that the request for money should be in accordance with the economic condition of the parties. In the

peasant zones there was a consensus to charge 5 soles (approximately one pound⁹) for a conciliatory procedure (*comparendo*): 2.50 from each party. This was the criteria employed by most of the judges in my data. However, many peasants face great effort in paying even that small amount of money. I observed that the judges did not compel the people to pay them in these cases.

It is when judges perform as notaries, legalising documents or elaborating commercial contracts, that they obtain higher incomes. Judges are allowed to charge in all of these cases although their fees are minimal compared to what is charged by a specialised notary.

Sometimes the judge charges fees as a kind of fine or punishment to the offender. I observed this attitude in the judge of Pisac (Prov. Calca). In cases of domestic violence, when there is a conciliation, she charged 5 or 10 soles exclusively to the violent husband and commented to him that to be 'abusive' to his wife had 'a price'.

1.5.3 Work load. -

The amount of work in every *juzgado* is variable. It depends on the number of inhabitants, on the proximity to peasant communities, on the availability of judges, on the judge's prestige, on easy communication or closeness to urban centres, on the town's integration to the market economy, on the closeness to other authorities (e.g. police station) and even on the life style of the inhabitants. For instance, the judges of Tinta (Prov. Canchis), Pisac (Prov. Calca), Ollantaytambo and Chinchero (Prov. Urubamba) have a very high case burden. They are well established districts with tourists and commercial activities and of easy access and a regular transport network.

⁹ In Peru 5 soles 'buys' 50 rolls of bread, or a gallon of petrol, or 2 minutes national phone call

Brandt (1990) claims that judges of the peace each process an average of 100 cases per year and that this number made up more than a half of all the judicial cases in the country. In my study and just based on documentary data (the review of judicial records) the number of cases processed is higher even though the records do not necessarily reflect the real amount of cases in which the judges intervene.

The following table presents the average of cases that judges assist based on two data: firstly, the amount of cases that judges calculated they assist (based on my interviews). Secondly, the information obtained from the judge's records. This difference is important. Except for one case, the judges acknowledged intervening in more cases than is apparent from the register. There is good reason to believe the judge's declarations. The justice of the Peace has traditionally used verbal procedures. In this sense, judges do not believe that the register should reflect all their work load. Judges do not record all the cases that they receive. The Pisac judge, for instance, could listen for half an hour to a person and just give him/her the notification for the appointment of the other party. In some cases people did not come back and in the judges' register this complaint did not appear. In domestic violence cases, she listened to women and gave them a citation for their partners. Most of the time the appointment was attended by the couple. She spent not less than half an hour discussing the problems that they were facing and normally gave them a 'time to think'. She did not record any of these stages. If this couple did not come back for a written agreement nothing was registered. She always wrote down the conciliatory agreements but she only recorded a complaint if the complainant specifically requested her to do so. I observed the same attitude in other judges. Additionally, some judges did not even write out the conciliatory agreements. This mainly occurred when the judges were hardly literate.

	NUMBER OF CASES SOURCE: Records	NUMBER OF CASES SOURCE: Interviews
1) PROV. ANTA		
Dist. Ancahuasi	3 cases per week, 78 cases in 6 months ¹⁰ .	5 to 6 cases per week
Dist. Limatambo	records not available	5 cases per week
Dist. Zurite	4.7 cases per week, 123 cases in 6 months.	10 cases per week
2) PROV. CALCA		
Dist. Coya	2 cases per week, 54 cases in 6 months.	2 to 3 cases per week
Dist. Lamay	incomplete records	2 to 3 cases per week
Dist. Pisac	5.9 cases per week, 154 cases in 6 months.	15 cases per week
Dist. Taray	1.3 cases per week, 34 cases in 6 months.	2 to 3 cases per week
3) PROV. CANCHIS		
Dist. Combapata	records not available	15 to 20 cases per week
Dist. Tinta	7.5 cases per week, 195 cases in 6 months.	15 to 20 cases per week
4) PROV. CUSCO		
C. C. CCorao	records not available	This was a newly created <i>juzgado</i> , in six months it received 10 cases
Dist. Saylla	incomplete records ¹¹	2 to 3 cases per week
5) PAUCARTAMBO		
Dist. Colquepata	1.4 cases per week, 36 cases in 6 months.	2 cases per week
Dist. Huancarani	2.3 cases per week, 60 cases in 6 months.	7 cases per week
Dist. Paucartambo	incomplete records	1 to 2 cases per week
6) QUISPICANCHI		
Dist. Andahuaylillas	2.3 cases per week, 73 cases in 6 months.	2 to 3 cases per week
Dist. Carhuayo	incomplete records	1 to 2 cases per week
Dist. Ccatca	2.2 cases 58 cases in 6 months.	2 cases per week
Dist. Ocongate (1st. Nom)	0.8 cases per week, 23 cases in 6 months.	1 to 2 cases per week
Dist. Ocongate (2nd. Nom)	3 cases per week, 78 cases in 6 months.	3 to 4 cases per week
RT Ttinqe	2.9 cases per week, 76 cases in 6 months.	6 to 10 cases per week
Parc. Yanama	records not available	scarce cases, in one month could have 2 cases

¹⁰ This table and the following in 2.1, 2.2 and 2.3 are based on the scrutiny of judge's records for a period of six months (January - June 1997). At the 'old' judges places I also looked into the 1996 records (when these were available) and in some judge's places I could review a further two months (July and August 1997) but I did not use this for the calculation only as complementary information.

¹¹ Despite that these records did not show a consistent sequence and I have not included them in my calculations they were valuable source of information to evaluate the criteria employed by these judges to resolve a case.

7) URUBAMBA		
Dist. Chinchero	6 cases per week 156 cases in 6 months.	15 cases per week
ACs Collana/Chequerec	records not available	1 case per week
Dist. Huayllabamba	1.2 cases per week, 32 cases in 6 months.	5 to 6 cases per week
Dist. Maras	records not available	2 to 3 cases per week
Dist. Ollantaytambo	10.8 cases per week, 282 cases in 6 months.	20 cases per week
Dist. Yucay	3.2 cases per week, 84 cases 6 months.	1 to 2 cases per week

1.5.4 The judge's place: *el juzgado*.

Article 63 of the LOPJ states that town councils provide an office for the judges of the peace and also that the 'Judicial Power' provides them with furniture and stationary. In reality, the appointment relies almost exclusively on the judges' own resources. Most judges use their own home or a space in a relative's house as office. In some places the effort to adapt these spaces as close as possible to the image of a *juzgado* is evident. Others places, instead, were far from a 'proper' judge's space. For instance, to enter to the place of the Taray judge it was necessary to cross the farmyard where they kept ducks and pigs. It was the only place that the judge had available. In 7 cases the judge's place was clearly used for other purposes mainly as a storage room. Furniture and typewriters are not provided. Four years ago the Superior Court gave to the judges a pair of chairs and a table. However, some of the judges who received them did not pass them on to the new judges. The judges's places in this study were as follows:

12 judges were using a space in their own house as office.

In 7 cases the town's councils had provided an office for the judge.

5 judges were renting a room in someone else's house as an office.

4 judges were borrowing a space from their relatives or acquaintances.

Additionally, the *juzgado*, shares the living conditions of the town, district or community. In most of the rural zones of Peru there is no running water or electricity. Houses are built with adobes and the floor is compressed soil. Few town councils offices are built of concrete.

2. The users.-

All the studies on justices of the Peace in Peru stress the general positive value that the rural population has to the intervention of these judges (Revilla 1994:214, Brandt 1990:168, 1995:95). Brandt (1990:168) particularly found that 58.6% of people in the highlands prefer these judges as 'first forum' when a conflict with a 'neighbour, family member, or other person over a debt or some other dispute' arises. This forum was preferred over others such as community leaders, lieutenant governor, the police, or the provincial court judges (Brandt 1995:95).

In Loli's opinion (1997:97-102) there is a strong belief in the rural population that the *juzgados* are spaces where it is possible to 'resolve a problem' independent of its nature, in such a way that a great number of conflicts processed in front of the judges of Peace do 'not even have a legal status', however, the judge is open to intervene 'as far as the parties are in agreement'.

2.1 Women as main users.-

One of the most revealing aspects when studying the Justice of the Peace is to find women as main users of this forum. In my fieldwork, I found that the rate of women taking their cases before these judges was as high as 59.8%. In a previous study, in 1981, the percentage was of 58%. (Loli 1997:98).

Loli (1997: 97-102) suggests that the nature of the problems that Andean women face makes the justice of the Peace a more appropriate forum to process their demands. Women's main concerns are related to family affairs and only occasionally do these cases have a 'legal status'. That is, the 'women's cases' would not have any impact at higher levels of the judicial apparatus but are taken into account in the kind of justice management performed by judges of the peace. The language is also a great constraint since at other judicial levels Spanish is the used language and a large number of women in the highlands are not sufficiently fluent in Spanish or are fully monolingual.

Additionally, women often do not trust in the community authorities such as the members of the steering committees or the lieutenant governors. These functionaries 'drink' with their husbands and sometimes also beat their wives too, as my interviewees related. Additionally, the same steering committees of some communities feel much apart from such 'family problems' and concentrate exclusively on managerial aspects of the communities. On only a few occasions the steering committees intervene, this is when the situation is affecting seriously commoner obligations or commoners have requested their intervention in extreme situations such as the abandonment of children.

In the present study we find women attending judges of the peace mainly for the following reasons 1) because they are beaten by their husbands, 2) because they are claiming maintenance for their children, 3) because they have been abandoned by their husbands, 4) because they have been morally offended by neighbours, 5) because their land has been damaged, 6) because their daughters are beaten by their husbands (sons-in-law). Loli (1994:91-102) presents similar conclusions in her work.

Men, instead, made up 30.8% of claimants and they attended the *juzgados* for quite different reasons: 1) physical aggression (normally by other men) in drinking bouts, 2) payment of debts, 3) to sign agreements involving goods and property transactions.

The last two causes reveal the representation of men in the market economy.

9.4% of the complainants were married couples acting as parents. For instance, to write 'permission of travelling' for children who are going to work as domestic servants in houses in the cities. Sometimes they subscribe 'marriage agreements' normally when their daughters are pregnant or they speak in the name of their daughters when they have been abandoned by their partners. I found also couples acting together in issues relating to common property but this situation was more the concern of those who were town district residents. The results are as follows:

	WOMEN	MEN	PARENTS
1) ANTA			
Dist. Ancahuasi	63%	28.3%	8.7%
Dist. Zurite	73%	16.2%	10.8%
2) CALCA			
Dist. Coya	63.5%	28.8%	7.7%
Dist. Pisac	54.8%	22.6%	22.6%
Dist. Taray	62.5%	31.3%	6.2%
3) CANCHIS			
Dist. Tinta	53.8%	38.5%	7.7%
4) PAUCARTAMBO			
Dist. Colquepata	63.8%	31.8%	4.4%
Dist. Huancarani	43.3%	34%	22.7%
5) QUISPICANCHI			
Dist. Andahuaylillas	77.4%	13.2%	9.4%
Dist. Ccatca	63.6%	31.8%	4.6%
Dist. Ocongate (1st)	47%	23.6%	29.4%
Dist. Ocongate (2nd)	55.8%	42.3%	1.9%
Pob. Rural Ttinque	62%	32.8%	5.2%
6) URUBAMBA			
Dist. Chinchero	48.8%	46.2%	5%
Dist. Huayllabamba	62.5%	37.5%	
Dist. Ollantaytambo	67.3%	30.9%	1.8%
Dist. Yucay	54.5%	34.5%	11%
Total	59.8%	30.8%	9.4%

2.2 Relationships between the parties.-

Linked with the previous point, the main relationship between the parties in the context of the justice of the Peace is marital. In this study, conflicts between couples made up: 37.3%. In a similar study in 1981 these made up 34.5% (Loli 1991:100). Women are the main complainants and the problems brought were: maltreatment, separation, and maintenance.

33.1% of the conflicts were those occurring between neighbours. In the rural communities the 'neighbourhood' can be very problematic and produce frequent disputes. If an animal of one neighbour strays on to a plot of another neighbour and eats part of the corn crops this jeopardises the survival of the affected family. Additionally, the division of plots has been made without technical support so disputes about boundaries are very common. Problems of 'envy' are mentioned in these cases and are expressed through insults and slanders. Some of these confrontations even result in physical aggression. A good number of these complaints are presented by women and occurred between women too.

Relatives also have problems between themselves. They made up 12.5% of those attending the judge's places. These cases normally involved situations of insults and physical violence.

Taking the total of conflicts that occurred between couples and between relatives reveals that 49.8% of the cases that judges resolve are problems between 'the family'.

The remaining 17.1% consisted of other types of relationships, normally with 'outsiders' and involving commercial and labour activities. I have classified these under the category 'others'. The results by zones as follows

PROVINCES: ANTA and CALCA

	ANCAHUAS 1	ZURITE	COYA	PISAC	TARAY
COUPLES	39.1%	32.4%	22.6%	22.6%	31.3%
RELATIVES	17.4%	10.9%	17%	12.9%	12.5%
NEIGHBOURS	32.6%	32.4%	47.2%	41.9%	37.5%
OTHERS	10.9%	24.3%	13.2%	22.6%	18.7%

PROVINCES: CANCHIS and PAUCARTAMBO

	TINTA	COLQUEPATA	HUANCARANI
COUPLES	30.8%	83.3%	36%
RELATIVES	7.6%	16.7%	12%
NEIGHBOURS	30.8%		36%
OTHERS	30.8%		16%

PROVINCE: QUISPICANCHI

	ANDAHUAY	CCATCA	OCONGATE 1	OCONGATE 2	TTINQUE
COUPLES	41.6%	45.5%	53%	42.3%	50%
RELATIVES	11.3%	4.5%	29.4%	3.8%	10.4%
NEIGHBOURS	37.7%	36.4%	17.6%	38.5%	27.6%
OTHERS	9.4%	13.6%		15.4%	12%

PROVINCE: URUBAMBA

	CHINCHERO	HUAYLLABAM	OLLANTAYTA	YUCAY
COUPLES	30.8%	25%	32.8%	14.8%
RELATIVES	7.6%	12.7%	12.7%	13%
NEIGHBOURS	30.8%	18.7%	49%	48.1%
OTHERS	30.8%	43.6%	5.5%	24.1%

Total: Couples 37.3%, Relatives 12.5%, Neighbours 33.1%, Others: 17.1%

2.3 The conflicts.-

Scrutiny of the *juzgados* shows a set of social conflicts in which violence appears frequently:

19.8% of the cases involved incidents of wife beating.

17.5% are general incidents of physical aggression.

12.9% are insults and 'defamation'¹²

The incidents with violent components made up 50% of all the cases processed. These results are not exclusive to *non letrado* judges of the peace. In front of *letrado* judges of the peace, '*Faltas* against the person', that is, incidents of physical aggression made up almost 50% of the work load (Estremadoyro 1995).

'Insults and 'defamation' made up 12.9% of the conflicts. People affected point out that the causes are 'envy' which generates gossip that discredits them in front of relatives and the community. Verbal aggression occurred mainly in a state of drunkenness. In the records it is also noticeable that in cases of physical aggressions, insults and provocation preceded the physical confrontation.

To classify the cases which reach judges of the peace is not an easy task. As Loli (1997:98) well points out, some of the cases do not even have a 'legal status' and even if they have, the judges do not use it. Additionally, every one of these causes finished with conciliation, in this sense it was even less necessary to include them in a legal framework. I have classified the cases trying to preserve the social dimension of these conflicts. This typology permits us to establish that 19.8% were cases of women complaining about maltreatment by husbands and also that 40.4% of cases had to do with family concerns. (Types I and II). The categories are as follows:

¹² 'Defamation' is a term used by judges of the peace in simple cases of 'gossips'. It should not be confused with the legal term used in Peruvian criminal law to refer to public false declaration in detriment of a person's social image.

TYPE I: Conflicts involving marital relationship:

a) *Maltreatment*.- I included all cases in which women complained about being beaten by partners. I did not find any complaint in which men were victim of marital violence.

b) *Abandonment*.- In my finding most women were abandoned by their partners but I found 2% of men complained of being left by women.

c) *Separation*.- I included all complaints that finished in a separation agreement. In some cases that I include in the 'maltreatment' category women went to the Judges with the intention of separation but they were persuaded by the same judges to continue with their relationships. Consequently as 'separation' I look more to the results rather than the motivation for the complaint.

d) *Marriage arrangements* .- As already mentioned in chapter six, the beginning of marital cohabitation in the Andean society has an apparent clandestine character. The teenagers fall in love in the festivities and at the markets and then have sexual encounters in the fields. These relationships continue in this way until the girl becomes pregnant. When this happens the custom dictates that the boy should talk with his family to ask them to arrange the marital compromise with the girl's family. Some families attend the judges to sign formal agreements or to give permission to their daughter, normally between 16 and 17 years old, to start their life of cohabitation.

TYPE II Conflicts involving parent-offspring relationships.

a) *Maintenance*.- The cases of women seeking maintenance for their children.

b) *Missing children*.- The complaints by parents reporting missing children. The explanation that I obtained was that sometimes children are exposed to hard work and

even maltreatment within their own families and escape to the urban centres with the promise of help from other adults who convince them to join them in the cities. In many cases resulting in even greater abuse for the children.

c) *'Given' children*.- In the judges' records I found some agreements related to parents giving permission to their children to travel to other cities in the company of godparents or relatives. In some cases, children are exposed to great labour exploitation.

d) *Child recognition*.- Cases in which a pregnant girl, alone or accompanied by her parents, sought the recognition of the child-to-be. A situation that does not have a 'legal status' since in Peruvian legislation it is only possible to legally recognise an already born baby. Those cases were normally accompanied by a petition of maintenance for the future mother, who does not have legal rights to maintenance under Peruvian legislation.

TYPE III - Violent disputes:

In this type I include the whole range of violent situations that did not occur between the marital couple. Disputes between neighbours or relatives are included here.

a) *Physical aggressions*: Almost all incidents of physical assault in Andean communities occur in the context of drinking bouts, normally between men who were drinking on the same occasion. However, I found a significant number of women being physically attacked in their own house by drunk neighbours and I also found women beating each other in the same drinking context.

b) *Insults and 'defamation'*: I include here those cases of verbal aggression that judges labelled as 'defamation' and threats of different kinds.

TYPE IV - Patrimonial relationships

Cases involving disputes over money or agreements of buying and selling.

- a) *Land*. - Under this title I join two main problems: boundary claims and damage to the plots.
- b) *Payment and buying and selling* - Payment of monetary debts, loans and purchase of different goods.
- c) *Theft*: I also include the illegal appropriation.

The general results are as follows:

I	%
MALTREATMENT	19.8
ABANDONMENT	4.4
SEPARATION	4.3
MARRIAGE ARRANGEMENTS	1.2
II	
MAINTENANCE	6.3
MISSED CHILDREN	0.8
GIVEN CHILDREN	2.3
RECOGNITION	1.3
III	
PHYSICAL AGRESSIONS	17.5
INSULTS/ DEFAMATION	12.9
IV	
LAND	7.7
PAYMENTS	12.6
THEFT	8.9
Total	100%

The following tables show the results by zones:

PROVINCES: ANTA AND CALCA

	ANCAHUA	ZURITE	COYA	PISAC	TARAY
I					
MALTREATMENT	30.4	13.6	13.2	12.5	25
ABANDONMENT		2.7	11.3	3.1	6.2
SEPARATION		8.1		12.5	
MARRIAGE ARRANGEMENTS	4.3			3.1	6.2
II					
MAINTENANCE	2.2	5.4			6.2
MISSED CHILDREN			1.9		
GIVEN CHILDREN		8.1			
RECOGNITION	2.2			3.1	
III					
PHYSICAL AGRESSIONS	30.4	16.2	17	6.3	18.8
INSULTS/ DEFAMATION	8.7	5.4	15.1	15.7	12.6
IV					
LAND	10.9	10.8	7.5	3.1	18.8
PAYMENTS		27	15.1	28.1	6.2
THEFT	10.9	2.7	18.9	12.5	
TOTAL	100	100	100	100	100

PROVINCES: CANCHIS AND PAUCARTAMBO

	TINTA	COLQUEPATA	HUANCARANI
I			
MALTREATMENT	23.8	33.3	24
ABANDONMENT	8.3	16.7	
SEPARATION	1		
MARRIAGE ARRANGEMENTS			
II			
MAINTENANCE	3.1	33.3	12
MISSED CHILDREN	1		
GIVEN CHILDREN	4.1		
RECOGNITION			
III			
PHYSICAL AGRESSIONS	7.2	16.7	24
INSULTS/ DEFAMATION	7.2		8
IV			
LAND	17.5		
PAYMENTS	22.7		28
THEFT	4.1		4
TOTAL	100	100	100

PROVINCE QUISPICANCHI

	ANDAHUAY	CCATCA	OCONGATE-1	OCONGATE-2	TINQUE
I	%	%	%	%	%
MALTREATMENT	29.2	27.3	17.6	19.3	20.7
ABANDONMENT	1.8			1.9	1.8
SEPARATION	3.7	13.6	11.8	3.8	6.9
MARRIAGE ARRANGEMENTS	1.8				5.2
II					
MAINTENANCE	5.6		17.6	1.9	5.2
MISSED CHILDREN					
GIVEN CHILDREN	3.7			3.8	6.9
RECOGNITION				5.8	3.4
III					
PHYSICAL AGRESSIONS	20.6	13.6	5.9	15.4	29.3
INSULTS/DEFAMATION	5.6	22.2	23.5	13.5	6.9
IV					
LAND	7.4	4.4	11.8	5.8	3.4
PAYMENTS	18.8	18.9	11.8	9.6	3.4
THEFT	1.8			19.2	6.9
TOTAL	100	100	100	100	100

PROVINCE URUBAMBA

	CHINCHERO	HUAYLLABAMBA	OLLANTANTAYT	YUCAY
I	%	%	%	%
MALTREATMENT	12.5	12.6	16.4	5.6
ABANDONMENT	7.5	6.2	1.8	5.6
SEPARATION	5		7.3	
MARRIAGE ARRANGEMENTS				
II				
MAINTENANCE	5	6.2	3.6	
MISSED CHILDREN	2.5		3.6	3.7
GIVEN CHILDREN		12.6		
RECOGNITION	2.5		5.4	
III				
PHYSICAL AGRESSION	21.3	12.5	30.9	11.1
INSULTS/DEFAMATION	16.3	12.5	22	24
IV				
LAND	5		1.8	22.2
PAYMENTS	8.7	6.2	3.6	5.6
THEFT	13.7	31.2	3.6	22.2
TOTAL	100	100	100	100

These results deserve some comments. As mentioned, judges do not follow a strict written record of all the cases that they receive. The judge of Pisac is a good example. After scrutinising her register the category maltreatment gives a low rate: just 12.5%. I proved on several visits and observation of the judge's work that this result does not reflect the reality. Cases of maltreatment arrived daily and judges were not keeping a written record. In just one day I recorded 3 cases of maltreatment whilst the judges register did not show anything. Additionally, she always gave the couple a 'time to think' about what they want to do with their relationship. Sometimes the couple never came back. Instead in the records of the Ancahuasi Judge the cases in the category 'maltreatment' reach 29.2%. The judge is a former police officer and his register was meticulously maintained.

My data on the judges of Yucay should be used just as a reference because this district is just 10 minutes by bus from the capital province of Urubamba, and the same judge recognised that many townspeople prefer to deal with their conflict there. Additionally, the only peasant community linked to the district never takes a case to the judge. The register shows, however, a high rate of property related cases resolved there (22.2%). This conforms to the fact that it is a legal requirement to settle these kind of cases in front of the district judges. If these districts are not taken into account the average of the domestic violence cases taken before of rural judges increases to 20.4%.

3. Judges social legitimacy-

As was mentioned, people have a very positive opinion about judges' performance. Furthermore, over 50% of people consider judges of the peace as the main forum of intervention in a wide range of conflicts. A deeper look into the expectation that

people have in relation to judges performance gives evidence of the relationship that they want to establish with the judges and what conditions are necessary to enter into a successful negotiation or conciliation with the party in conflict. To feel confident that the judges will help them to achieve these objectives is really important and for that, to know and have information about the judge is decisive in building such trust. What people think about their judges made up the judge's 'social legitimacy'. In this sense, one very important element for the positive relationship with the justice of the Peace in rural areas came from the informality or flexibility of the territorial jurisdiction, already stated. If people do not trust their district judges they simply will attend another one. Judges use this 'informality' to establish a positive relationship with the party, their philosophy is 'as far as the parties are in agreement' any intervention is right and fair.

In this study, I explore the sources of legitimacy of the judges and I asked people's opinion about their judges. If their opinions were positive they normally answered me 'he/she is good, he/she make well the justice (*hace bien la justicia*)', however, a richer source of information came from the 'objections' that they have to some judges performance and that I have categorised in the following way:

3.1 Objections to the excessive time of the judges in the post.-

One of my interviewees' negative comments on some judges was of having been perpetuated in the post. In some places, judges served for several years and thought of themselves as 'owners' of the post. In people's opinion this encouraged judges to behave arbitrarily. As was mentioned, judge's appointments should be for no longer than 2 years, however, it is the official legal system which fails to call for new elections. Another factor is that the list of candidates is elaborated in most cases by

the town councils which insist on proposing the same person as judge. This has to do with the local alliances of power. To avoid these cases in the November 1996 election of judges of Peace the President of the Superior Court in Cusco changed all the judges of the peace, despite the fact that some 'old judges' were again proposed as candidates. Here are extracts of my interviews:

In the peasant community of Chequerec, Urubamba, Jacinto, 30, told me that the former judge had been about 6 years in the post. He used to impose 'his will' and also he charged too much money.

In the District of Carhuayo, Quispicanchi, the President of the community of Coya told us that he never goes to the judge because he 'does not make well the justice' and it has been the same judge for many years. Victor, 35, neighbour of the district, told me that the judge has been in the post for 5 or 6 years, and 'he does not resolve well'. He prefers to attend the Ocongate judges (the main district) Evaristo, 23, from the community of Casapata, related that the judge has been there for so long and should be replaced.

In the District of Huancarani, Paucartambo, the current judge tells me that the former judge (a woman) had been in the post 10 years and committed many abuses because of that. Flor from the community of Q'eros confirmed the length of time the ex-judge remained in the post and that they had had many complaints against her. Armandina, 32, a district resident agreed that it was too long a time and because of that it was easy to commit abuses.

In the District of Paucartambo, Paucartambo, Domingo, 49, a primary school teacher, told me that the current judge is the 'eternal' judge of the district. Enrique, 27, from the community of Mahuaypampa, added 'he should be there like 12 years'.

3.2 Objections to excessive payments.-

As was mentioned, this is an unpaid work and it is expected that the judges charge in accordance with the economic capacity of the people. Sometimes this does not happen and judges of Peace use the post to provide, if not a full income for their families at least a substantial source of income and also to benefit from the post in other ways.

In the Community of Chequerec, Prov. Urubamba, Jacinto, 30, informed me that the former judge was very incorrect. His sister had had a problem involving a discussion with her cousin and the judge had charged them 80 soles for the agreement (the normal charge was between 10 and 20 soles). He thinks that the current judge charges just 'the fair' amount.

In the District of Huancarani, Prov. Paucartambo, Josefina, 34, a district resident, manifested that the former judge 'made her pay with a cow' (a cow costs between 300 and 400 soles) when she went to the community for the 'removal of the corpse'¹³ after a sudden death. She has heard that the current judge also 'likes the money'. Another informant, Luz, 42, told us that the former judge had been withdrawn for being 'incorrect'. She charged too much.

In the Community of Ccorao, Prov. Cusco, Francisca, 46, told me that three years ago a man who did not belong to the community 'make him to be appointed as a judge'. She had to visit him because of problems that she had with some neighbours. The judge asked her to invite him to eat and drink. Additionally she had a grocery shop where he took food 'on credit' but he never paid her back.

¹³ *Levantamiento de cadaver*, removal of the corpse is the act in which judges or prosecutors produce an official report regarding the circumstance of the death. At present, this function is exclusively the responsibility of the provincial prosecutors, generating many problems when incidents happen in far distant communities.

In the District of Ocongate, Prov. Quispicanchi, Victoria, 47, from the community of Maraspaqui, Ttinue, says that the Second Nomination judge of Ocongate district 'receives a sheep' to favour a party. Silverio, 36, told me that this same judge was judge some years ago too and he used to charge excessively for his work, for that reason there were a lot of complaints.

3.3 Objections to their partiality.-

Linked to the previous problems is the lack of fair treatment that the judges provide to the parties:

In the District of Ccatca, Prov. Quispicanchi, Máximo, 51, a carpenter and a district resident, comments in Quechua, the judge 'does not make well the justice' she favours the party who offers her more money.

In the District of Ocongate, Prov. Quispicanchi, Delfina, 21 and her mother Victoria, 47, from the community of Maraspaqui, Ttinue, were seeking 'justice' for more than one year. Delfina had been expelled from her marital home by her in-laws. She had been living with her partner for more than two years but when he travelled to work in a jungle town, her in-laws accused her of having affairs with other men. She had presented her complaint in front of the Ttinue judge but her in-laws did not want to attend the judge's summons. By the contrary, her in-laws presented their own complaint in front of the judge of Ocongate, the main district. This judge, after receiving a a sheep as present, had accepted a complaint against her for 'home abandonment'.

In the District of Huancarani, Prov. Paucartambo, Ana, a district resident, told us that the ex-judge (a woman) showed partiality toward the party who offered her more money.

3.4 Objections to the 'legitimacy' of the judges election.-

Many of the problems mentioned have their origin in the way the judges have been appointed. For instance, the appointment of the Second Nomination judge of the Ocongate district (Prov. Quispicanchi) intrigued the people. The town mayor invited all the authorities of the zone (from the district and from the communities) to a general meeting. At this event, a list of candidates was proposed. However, a man who was not included on the list was appointed to the post. In this case the problem originated in the provincial court. The rules of procedure relating to judges' appointments establish that the list of candidates be sent to the Superior Court *through* the provincial courts. In this cases, the neighbour's general opinion was that the judge 'arranged' his appointment because the secretary of the court of Urcos (the provincial court) was his cousin.

Something similar occurred in the Zurite District (Prov. Anta). The man who was appointed as the judge was not on any of the lists of candidates' produced by the 'Committee for the Defence of Zurite's interests' (a multi-sector committee). Comments were made that he 'arranged' his appointment with the Provincial court of Anta (capital of the province). The 'Committee for the Defence of Zurite's interests', however, dismissed him as judge and although this is not a valid legal procedure for removing judges, this particular judge felt so much pressure that he decided to resign of his own initiative.

The President of the Superior Court of Cusco, Dr. Abelardo Olivares, states that article 69 of the LOPJ establishes that the candidates are subject to an investigation even in the case that they are proposed by the community. In the 1997 appointment for new judges Dr. Olivera asked for the criminal, police and judicial records of all the

candidates. He also listened to 'social organisations' if they had something to claim about the judges' performance. After receiving all of these elements the Superior court decided to either follow the list proposed or to make a different one. But it is not just the Superior court which can alter the proposed lists, also to the provincial courts can make proposals for new judges.

In any case, a town's residents know the way in which the list was conformed and like in the case of the Ocongate judge, feel very disappointed if their 'democratic will' is dismissed. This generates great indignation and distrust toward the legal system representatives. Josefina (34, Dist. Huancarani, Prov. Paucartambo) expressed her views about the ex-judge of Huancarani in this way: 'who knows how the judge arranged to be appointed for so many years. I think she arranged with the provincial court of Paucartambo (capital of the province), at the end of the day who can you trust? In the police station they also ask you for money and sometimes they beat people too. Even the doctor of the health centre charges too much for certifying the death of a person'.

3.5 Objections to the use of violence.-

It is difficult to believe but in some places a small number of judges still use the lash (*zurriago*) to apply punishments, threaten the parties and especially 'to correct' a son at the request of his parents. Violence of this type is not strange for the Andean people. At the time of *gamonalismo* (landowners, before the Agrarian Reform of 1969), physical punishment was a common method of repression against the peasant¹⁴. It would be easy to conclude that it is a backward attitude encrusted in the isolation of the Andes mountains, but this would ignore the fact that so much violence is exercised

¹⁴ See Poole (1994a:97-131, 1994b:250-1)

against the population by the official legal system representatives themselves, especially by the police and the army.

In my study, I found two cases and surprisingly both were female judges. One was the former judge of Huancarani and the other a former judge of Limatambo who, at the time of my visit, still received cases as 'judge' despite the fact that the Superior Court had only appointed her as an *acesitaria* (deputy judge) for the period 1997-1999. Additionally, in some judges' places I saw lashes hanging from the walls but the judges informed me that it is just a tradition and that they do not use it nowadays. Here are the cases:

The former judge of the district of Huancarani (Prov. Paucartambo) proudly commented: *whenever people were insolent I lashed them. Or on other occasions parents asked me to do it against their sons: 'Mama (mum), gave him his comeuppance' and at the request of their own parents I did it. I beat them with the lash that I have, a 'sanmartin' (a whip made of rope) of 4 knots, and they went back glad. I have a good hand, with this hand that I have they left happy and they didn't misbehave more.* Later, Asuncion (39) who lived next door to the ex-judge's place, told us her version: *she used to beat the parties with a 'sanmartin' of four knots. From my kitchen I could hear how she insulted the peasants and how she beat them. Some of them left gushing blood from the nose. If they did not bring money, she beat them.* We found out in the end that this woman was the sister of the former judge but they had not spoken to each other for years, in any case except for some extreme details her comments matched with the ex-judges proud self-confession. Additionally, this was confirmed by the current judge of the district and by Luz, a street food seller, who

told me *the judge was incorrect, for that reason, people have denounced her, she charged too much and she knew how to beat.*

For her part, the former judge of the district of Limatambo (Prov. Anta) told me: *people come here because I have 'character', I have my whip and I intervene in the conflict if something happens. For instance, there are some sons who came back home drunk and beat their mothers and fathers. The parents come here bringing their children, I send them for 24 hours detention in the police station after that I give them three lashes to teach them a lesson. The parents ask me 'put your hand on him, so he will not put his hand on his mother.*

3.6 Objections to low educational level.-

As was mentioned in chapter six, Andean people have as an aspiration to access formal education. They value people 'who know more than themselves' and that with good will can help them in resolving their problems. However, the 'objections' about judges' low level of formal education was a subject raised mainly by the men amongst my interviewees.

In the District of Carhuayo, Prov. Quispicanchi, Victor, 35, told me that the judge 'has just a primary level of education, he does not know, he does not 'make the justice well', he does not resolve well'. The President of the community of Coya had the same opinion.

As a counter idea, most of my interviewees regarded it as very positive for the judges to have a good educational level:

In the community of Ccorao, Dist. San Sebastián, Prov. Cusco, I asked Francisca, 46, about the judge and her answer was: 'he should be a good judge because he is educated, professional. He should perform well'.

In the district of Pisac, Prov. Calca, Encarnación, 25, from the community of Maska, said 'the Judge attends well, she knows, is educated'.

From the district of Ollantaytambo, Prov. Urubamba, Dario, (18, AC Patacancha) expresses 'yes, I have heard that the judge has a good performance, he has studied to be a lawyer'.

Binolia Porcel commented to me that in a workshop on Local Government organised by her institution¹⁵ in July 1997 a group of commoners from the Province of Acomayo highlighted the necessity of appointing a 'more professional' judge in their zone. The reason stated was that the judges of the peace of their zone do not have an adequate knowledge to 'fulfil the post'.

3.7 Objections to their constant absences.-

As was mentioned, the post of judges of Peace is not full-time. Because it is not paid it is expected that judges have another source of income. In that sense, people know that judges are not available every day and at every time. For Andean communities people the really important days for the judges availability are the 'market days'. These are the days that all communities from the district get together to barter or sell their products. Most districts have two market days, one in the week and the main one which is normally on Sundays. Judges expressed to me that you can fail to be present any day but market days 'were sacred'. I proved that too, because if my visits were on 'market days' the judges' places had plenty of visitors.

¹⁵ CEA 'Bartolome de las Casas' (an NGO in Andean studies).

However, some judges are not available at any time in the *juzgados*. These were normally judges of communities or other small towns without 'market days'. Some of these judges explained to me they had a very light work load and people knew where to find them if they needed them. I proved myself that this was not necessarily true. Others were judges of larger towns who arbitrarily decided when to 'take holidays'.

In the District of Huayllabamba (Prov. Urubamba), and Saylla (Prov. Cusco), I found these judges on my third visit. On my previous visits I was informed that they were away for a reason related to the office or working on their plots. I found the Huayllabamba judge after walking outside the town where he was working on his land.

In the district of Paucartambo, Prov. Paucartambo, I could not find the Second Nomination judge because he was 'on holidays' in his city: Sicuani. Ana, 47, a district resident told me that the judge is regularly absent for some days. However, Juan, a retired school teacher, 67, stated that normally the judge of Second Nomination is there but the judge of First Nomination only attends after 5 p.m. and then not every day. Probably this is true because I found the judge in the town council workshop where he worked. This was a particularly serious situation since Paucartambo is also the capital of the Province, this is the reason why there are two appointed judges there but as we can see neither of them was available.

In the District of Ocongate, Prov. Ocongate, I did not find either of the judges (First or Second Nomination) on my first visit. Ocongate is as well a large town consequently two judges were appointed. Not many people, however, know the judge of First Nomination, despite his having been appointed since 1993. His father confessed to me that his son does not have time to carry on with the 'juzgado', 'for this reason, he replaces his son' (another situation with no 'legal status'). The brother in

law of the Second Nomination judge admitted to me as well that the judge travels frequently because he is originally from the capital of the province (Urcos).

Judges who are exclusive to peasant communities, are not always required. In my study this was noticeable with the judges of Ccorao (Prov. Cusco) and Yanama (Prov. Quispicanchi). In the community of Chequerec I did not find the appointed judge on any visit, but I managed finally to find the first 'accessitario' (secretary)¹⁶ of the community of Collana-Chequerec who informed to me that they receive few cases. I knew from the neighbours that the appointed judge was constantly absent because he travelled to the city of Lima. The judge of the community of Yanama (Prov. Quispicanchi) admitted that he rarely received cases consequently he dedicates all his time to his land so if somebody needs him they have to look for him. People of the community prefer to go to the Ttinue or Ocongate judges.

In the District of Carhuayo, Prov. Quispicanchi, Evaristo, 23, from the community of Casapata, was very clear in telling me: 'My family have taken problems between neighbours before him. He did not give us a solution, he gave us an appointment for a Friday. We went there but he was not there. This situation had lasted for two years and we got tired of it'. He also told me that a friend had been beaten in a drunken bout. He went to the judge and his wife told him that the judge was too busy and he could not listen to him.

3.8 Objections to the age of the judges.-

As was mentioned, judges are concentrated in the age group between 30-49 years old.

In Andean communities in general, there is not a hierarchic status assigned to elders of the community, although their opinions are well respected. The 1969 Agrarian

¹⁶ The secretary is legally obliged to replace the judge if he/she is absent

Reform also influenced this attitude since it made obligatory that the posts within the communities steering committees be filled on a rotating basis removing traditional patterns of self-governance and also favouring the loss of traditional prestigious posts. Additionally, at present, the value that peasants give to formal education means they entrust a lot of duties to the young people just because of the fact that they have completed secondary school. That is the case of Evaristo (23, CC Casapata, Dist Carhuayo, Prov. Quispicanchi) although being single he has been appointed secretary of the Parents Association in the communal school, in fact people appointed him as President but he refused the post.

I listened to complaints about the judges in the Combapata District (Prov. Canchis) for being 'very old' so he does not resolve the problems properly. The judge of second nomination of Ocongate was 'very old and deaf' so did not listen to people's problems well. I proved this myself because his wife asked me to sit down next to him for the interview. I had to shout in his ear. I wondered how he could listen to the parties? His wife is always sat knitting next to him. I suppose she is the one who 'translates' what the parties are telling him.

4. Judges' way, Andean people's way.-

Loli (1997:101) claims that what the users of the justice of the Peace are looking for is not 'legal solutions' but rather 'fair solutions' and this does not necessarily match with how the law (both as legal system and as concrete legislation) deals with the case. Being 'fair', she adds, is perceived as the 'restoration of the equilibrium' that has been 'broken' by the conflict. This restoration, or amendment can range from payment of the cost of the material side of the grievance, a modification of the attitudes and behaviours, a fine, or a combination of these. This 'amendment' is normally expressed



in a written or verbal agreement in which every party assumes their responsibility and agrees to fulfil it.

The difference between a 'legal solution' and a 'fair solution' is such that often people would avoid dealing with the 'official legal system'. Loli (1997: 101-2) comments on the case of a peasant from whom bulls were stolen. He captured the thief himself and negotiated with him the return of the animals, the thief accepted but the police intervened and put him in prison. In order to avoid being prosecuted the thief denied the offence. The thief spent time in jail waiting to be prosecuted and the peasant never recovered his bulls. Loli (1997:102) suggests that under a 'fair solution' the complainant was in control of his case, under the 'legal solution' he was no longer in control because being a 'criminal case' the prosecution is independent from the victim's will. A similar situation was expressed before the judge of Ollantaytambo, when one brother was injured by another in a drinking bout and the 'legal examination' resulted in more than 10 days of medical resting. Consequently, it became a 'criminal offence' and was out of the control of the judge. The parties desperately begged to him not to send the file to the provincial criminal court. What the judge of the peace, a young law student did, was follow the procedure in cases of '*Faltas* against the person'. The result was that the ending was no longer under anybody's control but under the official legal system procedure. The judge deeply regretted it and faced the dilemma between going against the complainant's will or committing the criminal offence of *prevaricato*¹⁷ for refusing to apply the procedure. Nowadays the people are practically obliged to go for medical examination. Judges were instructed in the 1997 training course to refuse to hear a case without this legal requirement. Neither the judges and even less the parties understand what the real

¹⁷ It is a criminal offence under the Peruvian legislation when a judge fails to apply the legislation and the procedures established by law. It is understood that this perverts the course of justice.

consequences are. Often the complainants think that this is a normal medical examination and not a 'legal' medical examination.

In the official legal system everything is 'mediated' through the procedure, through lawyers through the written documents. There is no direct negotiation between the parties and the judge. At the Justice of the Peace level, the parties 'shape' their conflict and negotiate under their own terms. Paradoxically, this is one of the dimensions of the Justice of the Peace system that it is frequently considered obsolete. The parties are even in control of the judge through their choice to attend the judges that they consider 'appropriate', that is, who 'makes the justice well'. The judges are a fundamental element of the negotiation and parties need to trust in him/her. They put the judge 'in context' and do not assume the judge as 'impartial' and 'rational' just because he/she is the judge. The mediation (or conciliation) needs to be done in particular circumstances in order to work.

Brandt (1995:95) summarises the difference between the 'formal justice system' and the judges of the peace as follows: Firstly, the justice of the Peace have 'different standards' than the 'formal justice system' has. People expect that the judge understands their cultural background and not to resolve the case 'based on laws that are foreign and based on a modern, urban reality'. They expect that the judge can intervene, as Loli (1997:101) would say even in problems 'without legal status'. In Ttinque (Prov. Quispicanchi) a man could not attend a judicial appointment, so his wife came in his place to explain that one of his kin had died 2 days ago and so he could not come. In the Andean zone the mourning rituals last 8 days. The other party, a woman, got a bit annoyed, the judge noticed it and in a very assertive way reminded

her of the importance of the mourning rituals to accompany the soul of the deceased to the 'other life'.

Secondly, the conflicts are 'broadly conceived'. The causes and consequences of the conflict -whatever they are- are examined and regarded as important. I observed that the judges will listen to the parties without scorn whatever their arguments whether about gossips, witchcraft, or superstition. Everything has a dimension and is taken into account if the parties bring it as a concern.

Thirdly, 'the goals of conflict resolution are different'. Even in 'offences' the goal is not the sanction but the restoration, the amendment of a situation which disrupts not just the life of the people involved but the 'common peace' of the community.

Fourthly, there is a 'heavier stress on conciliation'. For Brandt the judges of Peace, 'do not dictate justice' do not impose but work on the logic of mutual compromise. As the judges in the questionnaires expressed, they are peacemakers. For Brandt the sentence is an imposition and not a willing acceptance of a committed grievance.

Finally, the judge of the peace is a 'preferred mediator' and often the first and only forum for the resolution of a wide range of conflicts.

4.1 Domestic violence conflicts.-

As was reviewed women are the main users of the justice of the Peace and this study and Loli (1997) reveals that women considered the intervention of the judges as an adequate response to their demands. Loli (1997:101) suggests that women are not interested in other levels of justice management because it is inaccessible to them. There is a need for manoeuvre in 'wide spatial terms' more than in 'hierarchical

terms', this means to negotiate among different 'actors of interventions': family, lieutenant governors or judges of the peace.

In relation to domestic violence, as was mentioned in the previous chapter, women think that the judges of Peace role is beneficial if the man 'listens to what the judge is telling him'. Other women think that 'all people who go to the judge, change'. In this sense a good judge is the one who has the qualities to make himself/herself 'heard'. It is noticeable that what women considered as the ideal way of solving their problems and what the judges believe is their mission, -conciliation-, in some ways match. This produces not a few controversies since conciliation is regarded as an inadequate solution in most cases of domestic violence (Loli 1997:105, Revilla 1994). For Loli (1997:105) to conciliate denies to women a 'real access to the exercise of rights'. It is true that judges do have a deep conviction in their role as conciliators in cases of domestic violence. 'To promote conciliation' was a general answer that I received in the 149 questionnaires applied to the judges. To the question what is the role of the judges of the peace in cases of domestic violence they answered:

'To persuade and conciliate looking always for the well-being of the family and better upbringing of the children'.

'Reprimand the parties and re conciliate them...'

'Try to make them sign a conciliatory agreement for the well-being of their lives'.

'The judges of peace have the competence of intervention trying to avoid more conflicts. They call to the parties to reflect and conciliate'.

'The role of the judges of peace in a family conflict should be that of a paternal counsellor, trying to persuade, to make a peaceful conciliation in order that the family find a sound peace at home'.

'To conciliate the couple. The conflicts generate a bad image'.

'The judges of peace are peace makers in family conflicts'.

'To call the parties to reflect, make them realise the fault that they are committing'.

'The main role of the judges of the peace -as father of his her town- is seek and reach to a family pacification, taking into account the compatibility, the good customs of the couple to reach happiness and looking to a good example for their children'.

'To carry on with a conciliatory meeting in order that the husband refrains from maltreating his wife and give him clear and precise recommendations to reform his behaviour'.

The following paragraphs analyse characteristics of the judges intervention in the context of domestic violence cases. This analysis is based on judge's recorded cases, observation, questionnaires and interviews.

4.1.1 Enquires about the 'reasons' for the violence.-

Among Andean people the process of 'conciliation' means that everybody recognises a level of responsibility in the conflict. This ensures that the 'amendment' works since everybody is involved in resolving the problem. The conflict then has a different dimension than the legal system would predict. Judges enquire into all the aspects of the conflict, firstly, to the affected person and later to the aggressor or person at fault as to what were his/her reasons for such a behaviour.

This pattern is reproduced in domestic violence cases also. As 'outsiders' it gives us the impression that just to enquire as to 'why' a man beat his wife and to make the woman assume a degree of responsibility is a way of legitimising domestic violence. However, the context is different and the judge's own belief on domestic violence is very important too. On 20 April 1997 I attended a conciliatory meeting between a couple of the community of Ampay in front of the judge of Pisac (Prov. Calca). The judge asked the woman to explain the facts and after asked her partner: *'Let's see Dalmecio, up to what point is this maltreatment true?'*. She let the husband explain but immediately replied to him: *'but this is not a justification, it is not a justification*

... You are abusive...It can't be Dalmecio, all that you explain it is not a justification for your behaviour. You are not going to use your naked force to attack your wife'.

In the applied questionnaires, a general opinion of the judges to the question what is the procedure that they use when dealing with domestic violence cases was thus: *firstly I enquire about the reason for the maltreatment.* If this enquiry has the intention to oblige the aggressor to explain an 'inexplicable' behaviour or a disproportionate reaction this should be followed by a strong reprimand, as the judge of Pisac did. However, some judges fail to strongly condemn domestic violence, and although men are obliged to recognise their 'faults' the responsibility assigned to the woman in the incident appears to devalue her own claim. For example, in the records of the judge of Ancahuasi (Prov. Anta) a case from June 1997 read that a woman presented a complaint at the police station after suffering a physical attack by her husband. The police prepared the corresponding file on 'Faults against the person' and sent it to the judge. In the police report was written that the accused was punishing his son with a rope and the woman intervened to defend their child and was herself physically attacked too. In the conciliation agreement it reads: I (the man) recognise the magnitude of the aggression against my wife, and I promise to abstain absolutely from attacking her again and I promise to assume the cost of her medical treatment. 'I (the woman) accept, trying to live in harmony without harbouring any kind of resentment'.

There are also the judges who justify some beatings by the alleged wrongdoing of women. The ex-judge of the district of Limatambo (Prov. Anta), paradoxically a woman, told me: *women sometimes cause themselves to be beaten. I ask women about the motive why the husband has maltreated them and it is because they have not done the house's chores. Of course, in the end, I reprimand the man.*

4.1.2 To give 'a time'.

This is another common practice with some judges of the peace. They listen to the parties and discuss some minimum compromises, if for instance a woman has decided for the separation, or both parties are in agreement to separate, judges will give them time to think about it before acceding to their request, or will suggest to the woman to give the husband a last opportunity. I found the following examples:

In the first nomination *juzgado* of Huancarani (Paucartambo) I found a case of June 1997. The complainant stated that her partner beat her constantly for minor details. Cited to a 'conciliation' the accused said that 'he recognised his fault'. The judge gave them '6 months of probation' and that in the case of 'repetition of the behaviour' he would proceed with the separation.

In the records of the Chinchero Judge, Urubamba, is written a case of a woman from the Yanacona community who reported on 26 March 1997, that her cohabitant maltreated her continuously with kicks and punches mainly when he was drunk and she asked for a separation. The judge resolved to give them '15 days' to meditate well before taking any decision'.

In the conciliatory meeting of the couple of the Ampay community (20 April 1997), the Pisac Judge gave them 15 days to think whether they really wanted to separate or not. About this meeting and about the woman's complaint she did not make any annotation.

4.1.3 Give new opportunities and sanctions.-

This is a slightly different case to the previous one. Here judges carried on with a full agreement in terms of a 'new opportunity' to the husband, both in the sense of non separation and in the sense of not following with a criminal procedure of *faltas*.



Normally within the agreement sanctions (that are not necessarily the ones established by the criminal procedure of *faltas*) are established against the offender.

In the Colquepata *juzgado* (Prov. Paucartambo) in July 1997 a woman presented a complaint claiming that she was the victim of physical aggression by her partner. The judge ordered a legal examination that had as a result 3 days of resting and 2 days of medical attention. The accused was cited in front of the *juzgado* and 'seriously promised not to relapse'. The judge established that in case of repetition a fine of 500 soles would be applicable.

A similar attitude is observed in the First Nomination judge of Ocongate district (Prov. Quispicanchi). In June of 1997 a woman stated that her husband beat her constantly. In the conciliation agreement it reads that the husband promised to 'celebrate the civil marriage' and the judge established a fine of 500 soles and his detention if he re-offended.

In the records of the judge of Ollantaytambo (Prov. Urubamba) there is a case of May 1997 in which a woman from the community of Pallata made a complaint against her partner because of physical aggression. She complained that he maltreated her frequently. The judge 'invited the couple to a reconciliation exhorting them to reach an agreement'. The accused apologised to his cohabitant and she accepted. In the conciliatory document was established that in case of re-offending the judge would proceed with the separation.

The Combapata judge (Prov. Canchis) informed me about the last case of domestic violence that she received: 'a woman had arrived all 'green' (expression for many bruises) because of the beating she had received'. The judge called the husband and

the woman stated that he always beat her when he was drunk. The judge did not make any agreement but threatened him with detention if he did it again.

The records of the Pisac judge (Prov. Calca), contains a complaint by a woman of the community of Quello Quello (28 January 1997) of having suffered physical aggression by her cohabitant. The judge wrote an 'understanding agreement' where both spouses agreed to have 'a life of respect' and in the case of reoffence it will proceed with a fine and with the imprisonment of the accused.

The evidence appears throughout all my data. Sometimes, however, the 'new opportunities' do not work and the sanction with which the accused was threatened is in most cases very difficult to enforce. In the First Nomination's Juzgado of Huancarani (Paucartambo), there is a case processed during May 1997 in which a woman complained that her husband continued to beat her despite the 'conciliatory agreement' that they signed in front of the judge in 1995. In this document he promised not to beat her more. The judge invited them to a new conciliation and they signed a new document where the woman 'forgave' him again.

In the records of the judge of Andahuaylillas (Prov. Quispicanchi) is found a case of February 1997. A woman made a complaint against her husband because he continued to beat her. She asked for the definitive separation based on a document that they signed some months ago where the husband promised not to beat her more and that in the case of reoffence the judge would 'authorise' the definitive separation¹⁸. However, the judge resolved again to reconcile them and the husband accepted a new commitment not to beat her again and to 'co-operate more at home'.

¹⁸ This is another non legal status affair. Cohabitants under the Peruvian legislation are free to separate. They do not need a legal authorisation. However, an agreement is recommended to define the terms of the separation particularly in relation to maintenance and common property.

As an exception I found the case of the judge of Tinta (Prov. Canchis) processed on 15 March 1997. A woman from the community of Machamarca denounced a new aggression by her cohabitant. On this occasion he had put animal excrement in her mouth and he had beaten her. The woman remembered that some months ago he signed a document of conciliation after he broke her nose. In the new document, the judge declared the 'separation' and forbade the accused to enter drunk to their home¹⁹.

4.1.4 Dissuasion from separation.-

In most of the cases examined, the judges did not facilitate the separation of the couples. However, this case of the Coya district (Prov. Calca) shows there to be an intransigent attitude against separation. She manifested:

I can spend two hours with the couple until they accept and do not behave capriciously. I convince the woman in order that they do not separate. I had a case of a woman who was supported by her family in order to separate from her husband who beat her frequently and drank a lot. I told her that a woman is the fundamental basis for the change of the family. I also told them that they should marry by the religious ceremony [Catholic], attend mass and listen to the Gospel. I told them that Jesus suffered the Cross because of us and that we should reflect on that.

In this case the judge's values were radically different from those of the woman and her family. The judge an extreme catholic, imposed her point of view rather than a 'common sense' solution that was expected by the complainant and her family.

5. Domestic violence laws.-

As we saw in chapter five, the judges of the peace were not taken into account in the domestic violence laws. The original law 26260 (December 1993) does not mention

¹⁹ If the judges of the peace were entitled to apply the Domestic Violence Laws this would be a coercive legal order.

letrados judges of the peace. The amended law 26763 (March 1997) finally included the *letrados* judges of the peace but excluded the *no letrados*. The function assigned by law 26763 to the *letrado* judge of the peace is the application of protective measures within *formally open* cases of '*Faltas* against the person'. With the enactment of the '*Reglamento of the Domestic Violence Law*' of February 1998 to the *no letrado* judges of the peace it has recognised the possibility to assume the same intervention as the *letrado* judge. The law states though, that this should be subject to study by the Superior Courts. To the date of this review, nothing like that has happened but this is not the only restrictive aspect. The demand for 'formality' is a condition which creates the real gap between the law and rural judges. As was mentioned, rural judges do not often follow the formal procedures when intervening in a case. Additionally, a significant number of problems brought to the justice of Peace level do not have a legal status. In the case of domestic violence, it is even more evident, considering that even in urban areas, more than half of the women who attend the Women's police station of Lima are not recognised by the legal system as being victims of '*Faltas* against the person'.

Additionally, it is necessary to analyse what are the protective measures suggested by the law within an Andean communities context. The law states as 'protective measures':

'The retirement of the aggressor from the common house, prohibition of harassment of the victim, temporary suspension of all types of visits, inventory of the property and other measures of immediate protection to assure the physical, psychological and moral integrity' of the victims' (Article 10, TUO Law of Domestic violence)

This presumes the aggressor is a dangerous character who constantly jeopardises the family members integrity. This is not the way in which an Andean woman understands

the problem as demonstrated in chapter seven. Additionally, the law assumes that a threatening situation deserves police intervention for the protection of the victims. This kind of 'protection', overtly unsuccessful in practical terms in urban settings because of the lack of the availability of the Peruvian police to enforce such orders, is an undesirable situation for Andean people. Firstly from the practical side, there are scant police stations in rural areas. They are concentrated in the capitals of the provinces and in some commercially important large towns. However, this police absence rather than being seen by the Andean people as a lack of protection is perceived by them as less repression and abuse. An Andean man or woman, as I could see and my interviewees confirmed, would avoid going to a police station if they could.

Terms like 'temporary suspension of all types of visits to the family' lack any common sense in the reality of the peasant communities of Peru. To be effective it would mean the expulsion of the offender from the community and this is a decision that corresponds to all the members. The communities are relatively small social and geographical groups and they are exclusive. A person who belongs to community 'A' does not belong to community 'B', even if these communities are next to each other. The extended family, the neighbours sum up all an Andean woman/man's social references. This is the real wealth for the Andean people. To leave a community means to cease to be a *runa*. Expelling a member is not an easy decision to take.

In Andean communities a 'fair solution' could be far from a 'legal solution'. In these social settings 'amendment' is indispensable. The 'fair solution' in domestic violence is achieved when the intervention of relatives and judges leads to the modification of

the husband's behaviour. However, there is plenty of evidence in the judges records to know that some men are persistently violent and do not follow the advice and the compromise agreed in front of relatives or judges of the peace. In these cases the 'conciliation' is not supported by an alternative method of constraining a husband from beating. This does not mean that nothing can be done against a persistently violent husband. Both the judge and the community itself have the potential to intervene to stop the violence but it is necessary to develop an overt condemnation of domestic violence and a more assertive intervention, particularly from the judges of the peace.

In this sense, there is an aspect of the law which can contribute to build a rhetoric framework in relation to domestic violence. The law brings the principle that domestic violence should not be tolerated and this message can contribute to develop an awareness in the people that since violence is not condoned, it should also not be allowed to happen. It could have a positive result to get everyone involved in a 'conversation' about the aims of the domestic violence law. NGOs working in the area could have an important role in such a 'conversation'. The law itself acknowledges the NGOs role (article 3, e, TUO Domestic Violence law). In relation to the judges, the role of the state should favour the awareness of the law proposal instead of trying to make the judges participate in the rationality of the judicial system and convert them into 'lawyers' when they are 'non lawyers'. It is precisely that they do not follow a strict legal criteria which makes them successful in the eyes of the population.

Dissemination of the contents of the law is then an important task. One of the causes of failure of the first law (26260, December 1993) was that few people had heard

about it. Interested in this point I asked the judges in the questionnaires if they had heard about the domestic violence laws. I did not know, however, that the Superior Court had included the text of law 26260 in the printed training material. Although I did not prove my assumption because some judges just copied some paragraphs of the law the attitude of the Superior Court to include the law 26260 had positive results since it made the judges aware that something had been done in relation to domestic violence. The results of my questionnaires were:

104 judges did not know or had not heard about the law.

4 judges expressed that the law protected children.

25 judges copied paragraphs of the text of the law as an answer.

20 judges have heard about the law and some of their answers were:

'I have not read the text of the law myself but I understand that it brings protection mainly to women and children'.

'I have heard about the law, I think just in recent years there is more protection for the members of the family'.

'It is about the defence against violence towards women and children'.

'It is about women's rights'.

'The law orders that any neighbour who is witness of maltreatment as well as women and children have the right to complain in front of an authority'.

'It is a law mainly to protect the physical integrity of women'.

I differentiate these answers from those judges who expressed that the law was about 'children' because I think the main point it is to identify the specific issue about women being the object of violence by their partners despite that the law itself talks about 'family violence'. These 20 judges in one way or another recognised that dimension of domestic violence. During the training course I had the opportunity to talk with them and enquire how they knew about the law and they told me that they, as

members of their communities, have linked with NGOs working in the area and received different training from them. Consequently, this was the way that they have known about the law. Later in my visits I noticed that some judges even have posters of the feminist campaigns on 'non violence against women' hanging in their offices. These posters were provided by the NGOs. These well informed judges, particularly the judge of Pisac (a woman) and the judge of Tinta (a man), were those who expressed a strong condemnation of domestic violence and favoured a change of attitude by some violent husbands, as I noticed in my visits.

Conclusions:

Judges of the peace in rural areas perform an extremely important role in conflict resolutions. It has been estimated that more than 50% of people in these areas will take their conflicts to these judges as the preferred forum. Judges of the peace are negatively valued by the official legal system, being considered the 'justice of the Poor' and criticised for their lack of coherence with the rest of the justice system. However, these magistrates play the important role of intermediary between the legal system and the 'informal' networks of conflict management. Judges of the peace subsume both functions. On the one hand, they share the understanding that people in Andean zones have about their problems but also they are able to offer a 'legal framework' (in the form of conciliation or in the formalisation of the case) for most conflicts taken to them.

Andean people do not regard the judges in a 'traditional' position. There is a level of acknowledgement that these magistrates are part of the legal system. This is not an ancestral position to preserve neither are these judges elected following a traditional pattern. However what people expect is a major participation in judge's appointments and also a degree of accountability in such a way that people can relate to the judges

with confidence. Conciliation, negotiation, and mediation are the expected means through which a conflict is expected to be resolved. For the conciliation to work it is necessary that the judges have particular characteristics that all together can be summarised in the quality of making himself/herself 'being heard' by the parties.

Women are the main users of judges of the peace and regard their intervention as adequate. Women often are not 'heard' since there are few communities that allow them into their managerial bodies which set the priorities for the community as a whole. Women's problem are not in that communal agenda. Women then look to the judges to intervene and make themselves heard through the judges in the wide variety of conflicts that they have to face.

In relation to domestic violence, judges and people expect the husband to change his attitude through the conciliation, however, when the husband persists with his violent behaviour there are no alternatives to challenge his behaviour. Also noticeable in some judges' is the lack of a more assertive condemnation of domestic violence. On top of that, within the communities, nothing has been established to assist women with persistently violent husbands.

The domestic violence laws started with assumptions that are far distant from the reality of the Peruvian highlands and that do not share the choices which Andean women will be inclined to use. However, the law underlies a principle (the right to live free of violence) able to promote a more activist condemnation of domestic violence and can positively influence women 'being heard' within their communities. Communities have not hesitated in taking collective actions in cases of 'wrongdoing' that they regarded as threatening their social groups, a similar assertive attitude is lacking towards domestic violence which demands that a more effective social control should be developed.

CHAPTER NINE:

CONCLUSION AND ISSUES ARISING

1. Difficulties in implementing domestic violence legal strategies

It is clear that the law has historically contributed in the creation of gender relationships. It has assigned a different set of values for men and women in which women have been ordered in a subordinated way. Specifically referring to domestic violence, the legal system has been responsible both for endorsing husbands with the right of correction and for managing the 'excess' of this right. Feminists understood from the beginning of their constitution as a political force that the law had to be tackled to affect positive change for women in society. The obvious discriminatory contents of the law prevented early feminists seeing that the whole rationality of the law was male and was ruled by male values. This was noticed much later by the radical feminists. Other critics of the law have been the Marxist feminists who have seen the law as a superstructure of capitalism and serving to its purposes. However, the necessity for an affirmative action to improve women's position in society has led a diversity of feminists to take advantage of political moments, negotiating their aspirations within various agendas and even forgetting an integral criticism of the patriarchy. In these political negotiations they have often taken the law uncritically in an effort of achieve concrete results. They also have 'closed ranks' around the idea of an 'essential woman' despite that at discursive level feminists have often

acknowledged the different ways in which women around the world live the various aspects of our subordination.

This has been more evident when discussing a global agenda to address women's rights as human rights. To enter into the rationality of the human rights it is necessary to set minimum standards. Since Western feminists have regarded themselves as the role model for the rest of the world and since human rights are 'suspiciously' Western anyway, it has been this group of activists which have made their voices more prevalent. It is necessary to note, however, that when referring to Western feminists this does not just imply those activists geographically located in the Western world but also it includes those who emulate the values of the West in detriment of their country's multiculturalism, such is the case of the predominant groups in South America.

This work has argued that this is not just a problem of pragmatism but to pursue certain objectives with an uncritical evaluation of the state and the legal system can not just in real terms not improve women's position but can even have negative effects. One example of this is certain strategies on domestic violence that have contributed to conservative agendas to increase crime control. These measures are often perceived by some disadvantaged groups in society as excuses for more repression against people easily 'jailed' by the system. For women belonging to these groups who suffer from different categories of oppression: such as gender, race and class, some feminist strategies, strongly based in the intervention of the state representatives, have the risk of not being useful or being rejected because the violence that they suffer as women is one more aspect of the violence that they suffer

in other circumstances in which often the same state representatives act against their fundamental rights.

When despite feminist-oriented legal reforms domestic violence does not decrease and even worsens -as other expressions of violence- it is necessary to enquire what are the deficits and benefits of investing most effort and resources in using the legal system as the main way to challenge domestic violence. For instance, an improvement in police attitude has been demanded but the police can be an authoritarian feature of the state. Finally, it is necessary to compare the effort pursued in certain legal achievements with the efforts that have been dedicated to challenge the existence of an ideology which places women in a vulnerable position in society and celebrates male aggressive behaviour.

2. Difficulties in implementing domestic violence legal strategies in multicultural societies

The intertwined categories of oppression (race, class, gender) result in people seeing the law in a different light. On some occasions, this historical condition has resulted in certain groups creating an alternative 'legality' able to play the role of conflict and rules management, or in cases of post colonial societies, previous forms of 'law' have subsisted despite the establishment of the modern law. There is always a tension between state law and 'law out of the state' although in some places the customary law is legally enforced by the tribunals (juridical legal pluralism), in others the tension is permanent because since the state holds the monopoly of regulation, the 'paralegality' is always at risk of becoming illegality and being wiped out by state coercion. This is especially evident when some values of the social groups are contradicting those interests coming from the hegemonic way of ruling. However, alternative accounts of

law, or 'law out of the state', are not necessarily created in a democratic process, having instead the purpose of preserving certain privileges of those in powerful positions within the group. There are different situations, but subordination of women is the most obvious one. In this sense, women pursuing fair treatment within their social groups sometimes end up creating social tension because of their resistance to submit to certain rules of customary character. In this sense, not all alternative accounts of law can be considered as 'emancipatory agendas'.

In relation to domestic violence, women suffering from other forms of oppression are in a very precarious situation. On the one hand, the alternatives offered from the state law are often unreachable because they lack the necessary resources to be capable to act within the legal system. Additionally, the legal system is not necessarily considered as a tool for the defence of their rights but rather as a source of injustice, consequently, there is a resistance to use the formal law. On the other hand, women who challenge their situation within their own groups have to rely on the values of those responsible for justice management. If a particular society is tolerant or even supports domestic violence there is no possible hope for women, however, on other occasions, there is simply not a practice to address complaints of domestic violence through such bodies.

3. A multicultural society: the case of Peru.-

For Santos (1998b:131) the 'knowledge-as-emancipation' necessarily implies the opposition of 'multiculturalism' to 'monoculturalism'. Or in other words, 'solidarity' starts by acknowledging the other as 'producer of knowledge'. The history of Peru has been marked by the constant 'silence' of other voices under the (legal) fiction of citizenship and the Peruvian nation.

Colonisation established styles of oppression unknown by the native population. With the colonisers came the government institutions and the law. The colonial legal system shaped people into exploitation. The relationship of native people with law was one of permanent transgression and consequently, of repression. Still there were some spaces in which the native population managed to manoeuvre within the system and even accommodated it to their own customs. In this sense, the 'native judge' managed a legitimacy to resolve conflict between native people however he was powerless when facing the coloniser. This gives evidence of judge's marginal relationship to the 'central' colonial judicial bodies.

With independence came the modernisation of the legal system and the formalisation of rules and procedures to reflect the principles of the 'legal science', in this way providing the conditions of 'objectivity' and 'neutrality' that modernity demanded. However, social relationships in front of the 'post colonial law' remained basically the same and by the contrary the social reality was uncovered by the 'qualities' of the 'modern state law' making invisible the disadvantageous situation of larger sectors of the Peruvian population and continued giving legitimacy to certain conditions of oppression.

4.- Peruvian feminist strategies: from local paralegality to the global agenda.-

Historically, law has not just been used to regulate exploitation but also to regulate patriarchy. Peruvian feminists, identified with socialist feminism, had a strong belief in the possibility of women to challenge gender subordination within their own popular organisations. There was a strong belief in paralegality, as an alternative justice generated by the 'oppressed'. In this sense, challenging discriminatory practise

went hand in hand with the strength of the social movement and it was part of a wider agenda. The objective was to articulate gender claims to the class struggle.

Feminists mainly organised through NGOs, were conditioned by the requirement of the international funding bodies. By the early 1990s there was a significant reduction in the aid received and a demand by the international agency to achieve more 'accountable' results, translating mainly to 'working with the state', under the wrong presumption that the state in countries like Peru had an infrastructure and resources to deal with the complexity of problems such as domestic violence. Consequently, domestic violence became an issue exclusively of feminist lawyers who, assuming the law in a traditional way and understanding 'success' from a conventional legal perspective, concentrated on winning some victories through the judicial system and legislative reforms.

The domestic violence laws are an example of the distance between reality and the legal system. Using a structure which exists only in the urban zones, the law 'universalises' a coastal, urban, woman able to access the law and the legal system to achieve her ends.

Legal strategies on domestic violence have been much inspired by 'global campaigns' and in a general circulation of legal recipes which have failed to rethink important emancipatory claims from the perspective of multicultural societies, taking the state and the legal system unproblematically and complicating the aim of eradicating domestic violence. Once the possible solutions are articulated into a crime control strategy, the analysis of gender violence within a wider political agenda loses force and as Ferraro (1996) would say became a fundamental conservative perspective. Additionally, the homogenisation of the causes of women's oppression reinforces the

silence of our multiculturality and contributes to the marginalisation of other already marginalised 'voices'.

5.- Domestic violence in South Andean communities.-

It has been the intention of this work to confront the feminist proposals with the Peruvian cultural diversity having as an example the South Andean communities of the Department of Cusco. This work has assumed Andean people as 'producers of knowledge', taking into account their views and contrasting them with the 'scientific knowledge' of the law and the feminist agendas. In this way, we could appreciate within these Andean communities, other sources of gender differentiation, that result in a better position for Andean women in their societies compared, for instance, to other Peruvian women in poor urban zones. This despite the fact that the 'modernisation' of the Andean communities after the Agrarian reform destructured the traditional organisation and brought the displacement of women from their traditional position in the 'public' life of the Andean communities. Andean women have slowly regained a presence in the managerial bodies after training themselves in their own women's organisations.

Domestic violence then does not appear in Andean women's lives finding them without social resources and the violence itself does not disrupt or erode her from her social position. People in Andean communities consider domestic violence a deviant behaviour, paradoxically, there is not a strong communal attitude against it and there is not a body within the same community able to listen to a woman's plea for overcoming such violence.

Alternatives to face the problem are individuals and communal bodies detached from taking responsibility. However, women have two main socially recognised forums

through which they may challenge their husbands behaviour. The network of relatives is one of them, and its success depends on the relationships generated and preserved mainly with godparents and parents of both sides of the couple. This intervention is fully in use, although, does not show a clear pattern and their success depends on the good will of all the people involved. In that sense, this study revealed that judges of the peace became a more steady and consistent forum of intervention for marital disputes.

6.- A different justice: judges of the peace.-

Women are the main users of judges of the peace. Loli (1997) suggests that women are not interested in other levels of state justice management because it is inaccessible to them. In this sense, women manoeuvre in 'wide spatial terms' more than in 'hierarchical terms', this means they negotiate among different 'actors of intervention' such as relatives, communal authorities, or judges of the peace although for the specific cases of domestic violence as well as for other conflicts, judges of peace are the privilege site used by women.

The rationality of the justice management performed by these judge is a very different one from the rest of the judicial pyramid. It is a consensual, non professional, direct justice. In this sense, parties expect that judges of the peace hold those characteristics that normally are considered an expression of backwardness by the rest of the judicial pyramid. The capacity of the judge of the peace 'to be heard' is fundamental. This is basically a 'conversational' relationship, or as Santos would say, a fundamental 'rhetoric' justice. In this sense, judges of the peace build a particular relationship with the parties based on their social legitimacy which started from the very election of

these magistrates but is mainly concentrated in the Andean idea of *make well the justice*.

Women considered judges of the peace an appropriate site for processing their marital conflicts. General women's opinion is that judge's intervention in cases of domestic violence is successful in arriving at a 'good understanding'. I proved in my visits to the judge's places the veracity of this affirmation. This is a rhetorical justice that through advice and persuasion works extremely well in the majority of cases. However, the capacity to influence positively the parties in conflict, in this case a violent husband, depends much on the judge's individual qualities and their own ideas on the problem. Judges have a strong conviction in their role as 'peacemakers' of their communities and while in a good number of cases judges will maintain a firm attitude against a violent husband in some others they will insist on making 'peace' even to the detriment of what is more convenient for women and/or against her own desire for separation. Being consensual means that the judges' success depends on everybody 'hearing' and there is evidence in the judges records that some men are persistently violent and do not follow the advice and the compromises agreed in front of relatives or judges of the peace. It is in these cases where the 'conciliation' is not supported by an alternative method to constrain a husband from beating.

Taking into consideration Santos' definition (1994) of *justiciable* bodies, discussed in chapter two, it seems that judges of the peace are lacking what Santos considers a fundamental element: 'the capacity of coercion'. However, the judges' intervention is so positive in managing conflict that despite an apparent lack of this coercive capacity they are a *justiciable* body par excellence. Additionally, judges -as Andean people- do believe that through an effective mediation it is possible in all cases to arrive at a good

understanding, even though, this conviction, in many cases, prevented them from assuming a more affirmative action in cases such as domestic violence.

7. Judges of the peace and domestic violence laws.-

Judges of the peace were not taken into account in the domestic violence laws. In the background of the preparative process of the laws was the feminist lawyers hierarchical understanding of the judicial system and the belief that women's right should be defended at the 'highest judicial level', as if the 'place' in which legal actions are processed could affect the integrity of the right that is defended or vindicated. This position was criticised from the very beginning by other Latin American activists (Chiarotti 1993) and other Peruvian feminist lawyers who were demanding the modification of the law to avoid what was qualified as a denial for rural women -who only access the legal system through the *non letrado* judge of the peace- of the 'exercise of their rights' (Loli 1998). In real terms, rural women were not included in the universal category of women protected by the law.

The original law 26260 (December 1993) did not even mention the *letrados* judges of the peace despite most cases involving domestic violence being processed as '*Faltas* (minor offences) against the person'. The law 26763 (March 1997) partially amended that situation giving them the attribution to impose protective measures but exclusively within *formally open* cases of Faults against the Person. That is, no woman can go directly to the *letrado* judges of the peace to apply for protective measures in an independent process as is possible in front of the Family judges. The *no letrados* judges were again excluded. More recently the *Reglamento* of the Domestic Violence Law (February 1998) opens the possibility for a future inclusion of the *no letrado*

judges but as with the *letrados* within formal criminal cases. As was documented judges of the peace avoid the legal formality.

On the one hand, the law presents an ideal situation for the protection of victims of domestic violence far from the reality of the legal system in urban settings. On the other hand, it relies on a legal structure non existent in rural settings. In relation to urban settings, it has reviewed the difficulty for a significant number of women to access to the legal system. The law 26260 (December 93) established a procedure to apply for protective measures in front of the civil judges. To act at this level, it is indispensable to have a lawyer, to pay judicial tariffs, and to wait throughout the stages of the process. If this is the means to assure immediate protection to the victims, this is really a declarative statement. Additionally, the enforcement of the orders of protection correspond to the police who, as is widely known, face an appalling lack of resources and lack the disposition for domestic violence cases. The law 26763 (March 1997) focuses on a specialised judge: the Family judge. At this level there is an exoneration of judicial tariffs but still a lawyer is necessary. On top of that there are less Family judges than civil ones in the country.

Throughout the law, there comes across an implicit idea of domestic violence as a crime, of the dangerous character of the aggressor and of the vulnerability of victims in need of immediate protection (even if in practise this is simply an aspiration). Consequently, the law is assuming coercion to compliance. In Andean communities, most women do not have to face domestic violence without social resources, however, they do believe in the central importance of the 'conjugal pair' which structures their societies. In this sense, and despite that in Andean communities there is no stigma against separation, it is obvious that a lot of effort is made around the couple to

'amend' the conflict. Additionally, marital union is developed in stages, it matures with time, consequently, people do not expect immediate solutions to domestic conflicts including violence. Separation of the couple is a decision taken within the extended family and with their support. Terms such as 'temporary suspension of all types of visits to the family' are far from the reality of small social and geographical groups, such as Andean communities, which are based in shared spaces and relationships. A peasant is not a person who can easily move and live in another place. To be a *runa* is to live in his/her community.

However, there is an obvious lack of communal attitude against domestic violence. This sums up to the lack of conviction in some judges to challenge domestic violence revealing that not enough is done in Andean communities to reflect women's interests. In this 'rhetoric' a strong element of condemnation of domestic violence is failing. For women to see their situation improve involves developing a conviction of the right to live free of violence. In this sense, the law can contribute in getting people into a conversation about the issue. The ethical aspect of the law, expressed in its principle of no tolerance, brings new argument to enter into this rhetoric. NGOs working in the area could have an important role in such a 'conversation'. Andean communities being small social groups, it is easier than in other social settings to develop social control to face domestic violence. But this has to be born as a need within the communities.

8- Raising the voice of Andean women within and outside the community.-

As was reviewed, historically, the legal representatives have often performed as infractors of fundamental rights more than granters of them in front of the Andean people. Until this historical condition is overcome it is very difficult to see how Andean women can relate to the state legal system as a means through which to fulfil

their aspiration for a life free of violence. In this case, the initial Peruvian feminist conviction that to achieve gender claims it is necessary a process of strength and empowerment of disadvantaged groups of society should not be disregarded. In this sense, Andean women have strong possibilities to develop strategies to face domestic violence in real terms within their social groups due to their better position and degree of social and material autonomy compared to other poor women in the country. It is necessary, however, to recover their 'voices' within the managerial bodies of the communities. This is being achieved gradually. This element joined to a major awareness of gender claims will lead Andean women to address their specific concerns as communal interests. If the eradication of domestic violence in these particular groups involves a more assertive attitude from the communal authorities, this would just be possible, as some Andean women recognised, when they are fully 'heard' in their communities, this is when they participate in the government of their social group enabling all members to assume a position when facing situations that affect them as *warmikuna*: as women.

Consequently, the acknowledgement of the diversity of women's experience should not take us, as Santos (1998b) would say, into a 'celebratory postmodernism' in which 'the very possibility of resistance and alternatives' is also 'deconstructed' but rather in the continuous ability to dream of a 'better world'. It means to redefine the alternatives with the participation of the multiculturalism in an authentic democratic process. Santos (1998b). self-denominated this position as 'oppositional postmodernism'. In this notion, one valid emancipatory agenda is the development of 'co-operative domestic communities' (Santos 1995:484), that is, the possibility to move forward from the notion of women's oppression to construct an alternative reality, in that alternative there is nothing 'absolute' because it is 'contextualised'

(Santos 1998b:132) in the differential reality of people. Going further, this emancipatory dream should be linked to other emancipatory processes at the level of the 'marketplace', the 'communityplace', the 'workplace', the 'citizenplace', the 'worldplace' (Santos 1995:484-9).

Andean women should be taken as protagonists within their organisation but also within the national life and being listened to within their groups but also and more importantly within the larger society. The violence of poverty, of repression, of marginalisation, when tolerated jeopardises an authentic desire for eradicating other forms of violence in the most intimate sphere because it carries the risk of accepting that violence and authoritarianism are normal events and contribute to the passivity to challenge the problem of domestic violence. It is also very important to understand that Andean women do not have an alternative account of social reality other than that of their communities, being out of the community is to renounce being a *runa*. Alternatives generated by the same Andean women will preserve this social identity and become an effective way to eradicate domestic violence considering real women that in real terms benefit from such achievements.

Feminists in Peru should reconsider the way they are engaging with a 'universal' discourse that by focusing in addressing 'all the women' of the world and concentrating on working with the state prevents them from taking into consideration the diversity of women in the country and the experiences of their localities. In Peru women's human rights discourse has influenced the way the law tackles domestic violence. One positive effect is the incorporation of the principle of a life free of violence which challenges other discourses of law that construct and reinforce gender relationships. However, it also considers the formal legal system and the state

agencies as instrumental in achieving such aspiration. In this case, the tension between these universal 'recipes' on how the state should deal with domestic violence and the Andean women's perception of the problem, could be handled empowering those spaces that Andean people recognise as appropriate forums, such as judges of the peace. This should not be understood as increasing the capacity of coercion through the state agencies but acknowledging the important role fulfilled by these judges in the resolution of conflicts and favouring a democratic relationship with the Andean communities. This includes considering Andean communities organisations in the design of more effective mechanisms to eradicate domestic violence.

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1979 Peruvian Constitution

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1984 Civil Code

1992 Civil Code

1992 Civil Procedure Code.

1863 Criminal Code

1924 Criminal Code

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1920 Criminal Procedure Code

1940 Criminal Procedure Code

1993 Judicial Organic Law (LOPJ)

1993 Children and Teenagers Code

Andean communities related statues.-

1966 Indigenous Communities Statues

1969 Agrarian Reform Law (Decree No. 17716).

1987 Peasant Communities General Law (No. 24656)

1995 Land Law (No. 26505)

Domestic violence statutes -

Law No. 26260: 'Law establishing the state and social policy against family violence'. December, 1993.

Law No. 262763: 'Modification of the Family Violence Law' March, 1997.

DS 006-97-JUS: '*Texto Unico Ordenado* of the Family Violence Law'. June, 1997.

DS-002-98: '*Reglamento* of the family violence law'. February, 1998.

Appendix 1

PERUVIAN JUDICIAL SYSTEM¹

The judicial system in Peru is made up by jurisdictional bodies and offices responsible for its internal control and management. There are five jurisdictional bodies in the Peruvian Judicial System. In a hierarchical order the structure of the Peruvian judicial system is as follows:



I. SUPREME COURT:

Location: The capital of the country, Lima. Territorial Jurisdiction: The whole country. Representatives: Supreme *vocales* headed by the President of the Supreme Court. He/she is the highest authority within the Peruvian judicial system. Jurisdictional offices: Specialised Divisions (*Salas Jurisdiccionales*). Each division consists of 5 *Vocales*. The specialised divisions are divided by subject matters into: Civil, Criminal and Constitutional. Jurisdictional functions: Final decision level in the processes initiated in the Superior Courts, in those initiated in the Supreme Court and in those involving constitutional matters.

II. SUPERIOR COURTS:

Location: Capital of the departments¹. Territorial Jurisdiction: Their jurisdiction is established by law. The criteria is that in departments with a high judicial work load, like the department of Lima, there is more than one superior court; in other areas, like the South Andes, there is one

¹ This summary is elaborated based in our current 1993 Constitution and in the 1993 Organic Law of the Judicial Power ('LOPJ').

² This refers to the fact that the same court (*juzgado*) deals with more than one subject matter. Commonly, it refers to the joint of the criminal and civil jurisdiction.

³ Peru is politically divided into departments. Departments are divided into provinces and provinces in districts.

superior court corresponding to two departments. The Superior Court of Cusco is also Superior Court of the department of Madre de Dios. At present, there are 25 Superior Courts in Peru. Representatives: Superior *vocales* headed by the Presidents of the Superior Courts. Jurisdictional offices: Specialised or Combined Divisions (*Salas especializadas o mixtas*). Each division consists of 3 *vocales*. Jurisdictional functions: Final decision level in processes initiated in the Specialised and Combined Courts. First decision level in civil procedures against judges questioned by misconduct.

III. SPECIALISED AND COMBINED COURTS.-

Location: In the capitals of the provinces. Territorial Jurisdiction: Their jurisdiction is established by law. The number of these courts per province is defined by the superior courts based on the work load. In my study, except for Cusco and Paucartambo, which have specialised courts, the rest of the visited provinces have just one combined court located in the capital of the province. Representatives: judges. One judge per court. Jurisdictional offices: At present there are five kind of specialised courts: Civil, Criminal, Labour, Agrarian and Family. The jurisdiction of the combined courts is established by the Superior Court. The most common case is the combination of the criminal and the civil jurisdiction. In my study just Cusco hold the full range of specialised courts appointed including the Family Court. Jurisdictional functions: First decision level in the procedures within their specialised or combined jurisdiction. Final decision level in procedure started at *letrado* and *no letrado* judges of the peace level.

IV. LETRADO JUDGES OF THE PEACE.-

Location: Defined by the Superior Court. Judicial practise established the appointment of these judges in the location of the provincial courts. Territorial jurisdiction: Defined by the Superior Court. These judges are appointed in urban centres. In the city of Lima there is at least one *Letrado* judge of the peace per district or per every two or three districts. These situation is variable. Representatives: judges. One judge per location. Jurisdictional offices: This is a combined civil, criminal and labour matters jurisdiction in the specific procedures established by law. Jurisdictional functions.- First decision level.

V. NO LETRADO JUDGES OF THE PEACE.-

Location: Defined by the Superior Court. The judicial practise established the appointed of at least one of these judges in every rural district. Territorial jurisdiction: Defined by the Superior Court depending on where the judge is appointed. Representatives: judges. One per location. Jurisdictional offices: This is a combined criminal and civil jurisdiction in the specific procedures established by law. Jurisdictional functions: First decision level, however, the same legislation promote their fundamental conciliatory capacity instead their adjudicative one.

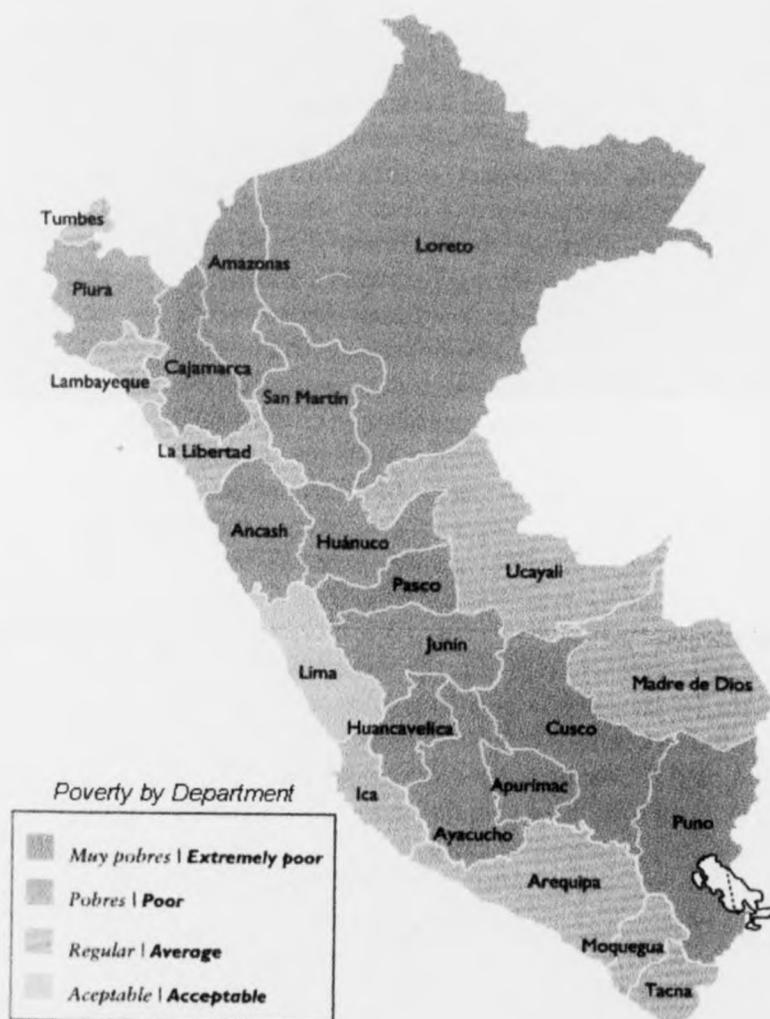
Appendix 2.a

South America



Appendix 2.b

PERU



Fuente | Source: FONCODES, 1995

Appendix 2.c

DEPARTMENT OF CUSCO*(Provinces visited are shown in yellow)*

CUSCO
MAPA DEPARTAMENTAL

INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA
DIRECCIÓN NACIONAL DE CENSOS Y ENCUESTAS
DIRECCIÓN EJECUTIVA DE CARTOGRAFÍA Y GEOGRAFÍA

Fuente: Mapa Político del Perú - 1981 - Esc. 1:2'000,000

PROVINCIAS CONVENCIONALES

Capital de Departamento Línea Departamental

Capital de Provincia Línea Provincial

Línea Interprovincial

0 30 60 90 120 150 Km

Appendix 2.d.1

PROVINCE OF ANTA

(Districts visited are shown in yellow)



ANTA	
NVA PROVINCIA	
INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA	
DIRECCIÓN DE ESTADÍSTICA DE CENSOS Y ENCUESTAS	
INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA	
Calle 1001, Lima 1, Perú	
TELÉFONO: 011 476 0000	
FAX: 011 476 0000	
CORREO: INE@INEC.GOB.PE	
SISTEMA: OLIVERA PERU S.A.S.	
Planta de Datos	U
Capital de la Provincia	●
Capital de Distrito	○
Distrito	□

Appendix 2.d.2

PROVINCE OF CALCA**CALCA****MAPA PROVINCIAL.**

INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA
 DIRECCIÓN NACIONAL DE CENSOS Y ENCUESTAS
 INSTITUTO NACIONAL DE CARTOGRAFÍA Y GEOMÁTICA

Estado: 1994. Instituto del Perú. PNT. Fo. 1. 2000000
 CANTON: CANTON PROVINCIALES

Límite de Departamento	— —	Límite Departamental	— —
Límite de Provincia	— —	Límite Provincial	— —
Capital de Distrito	●	Límite Distrital	— —

Appendix 2.d.3

PROVINCE OF CANCHIS



CANCHIS

MAPA PROVINCIAL

INSTITUTO NACIONAL DE ESTADISTICA E INFORMATICA
DIRECCION NACIONAL DE CENSOS Y ENCUESTAS
DIRECCION EJECUTIVA DE CARTOGRAFIA Y GEOGRAFIA

Fuente: Mapa Político del Perú - INEI - Esc. 1:2'000,000

SIGNOS CONVENCIONALES

Centro de Distrito	□	Límite Regional	---
Capital de Provincia	●	Límite Provincial	---
Capital de Distrito	○	Límite Distrital	---

Appendix 2.d.4

PROVINCE OF CUSCO**CUSCO****MAPA PROVINCIAL**

INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA
 DIRECCIÓN NACIONAL DE CENSOS Y ENCUESTAS
 DIRECCIÓN EJECUTIVA DE CARTOGRAFÍA Y GEOGRAFÍA

Estado: Mapa Provincial del Perú 1990 - Escala 1:500,000

SEÑALES CONVENCIONALES

Capital de Departamento	□	Límite Departamental	-----
Capital de Provincia	●	Límite Provincial	-----
Capital de Distrito	○	Límite Distrital	-----

Appendix 2.d.5

PROVINCE OF PAUCARTAMBO**PAUCARTAMBO**

MAPA PROVINCIAL

INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA
DIRECCIÓN NACIONAL DE CENSOS Y ENCUESTAS
DIRECCIÓN EJECUTIVA DE CARTOGRAFÍA Y GEODESIA

Escala: Mapa Político del Perú - 1:500,000 Ed. 2/1988

	SIEMPRE	COMUNICACIONES
Capital de Provincia	●	—
Capital de Distrito	○	—
		—

Appendix 2.d.6

PROVINCE OF QUISPICANCHI

Appendix 2.d.7

PROVINCE OF URUBAMBA



URUBAMBA

MAPA PROVINCIAL

DIRECCIÓN NACIONAL DE ESTADÍSTICA E INFORMÁTICA
 INSTITUTO NACIONAL DE SERVICIOS Y PROMOCIONES
 INSTITUTO NACIONAL DE CONSUMOS Y MERCADOS

Escala: Mapa Provincial del Perú: 1:100,000	
SISTEMA DE COORDENADAS UTM	
Ciudad de Depósito: Lima	Estado: Perú
Ciudad de Edición: Lima	Edición: Provincial
Ciudad de Distribución: Lima	Estado: Provincial

Appendix 2.e

Journey times from the city of Cusco



Distancia - tiempo promedio al Cusco
por la vía más utilizada

≤ 10	up to 10 hours	Zone 1
10-20	10 to 20 hours	Zone 2
20-40	20 to 40 hours	Zone 3
40+	over 40 hours	Zone 4

Appendix 3:

**Characteristics of the population from the area of fieldwork
Information based on the 1993 National Census
Peruvian National Statistic Institute**

	Total Population	Rural Population	Illiterate Population	Married and Cohabitants	Quechua speakers
1) ANTA					
Ancahuasi	6,937	6,157	2,399	2,619	5,387
Limatambo	8,413	7,552	2,583	3,257	6,128
Zurite	4,083	2,379	875	1,510	2,876
2) CALCA					
Coya	3,402	2,304	1,051	1,382	2,743
Lamay	5,011	3,605	1,863	1,820	3,847
Pisac	8,777	6,809	2,870	3,377	6,009
Taray	3,803	3,311	992	1,450	3,136
3) CANCHIS					
Combapata	5,120	3,430	1,128	2,043	2,631
Tinta	5,759	3,062	1,283	2,021	4,142
4) CUSCO					
San Sebastian ¹	32,134	2,793	3,080	11,358	18,369
Saylla	956	229	111	338	545
5) PAUCARTAMBO					
Colquepata	8,572	8,061	3,103	3,149	8,458
Huancarani	6,204	5,551	2,348	2,329	5,123
Paucartambo	11,028	8,095	3,963	430	7,690
6) QUISPICANCHI					
Andahuaylillas	4,343	2,054	1,012	1,569	2,772
Carhuayo	2,631	2,162	1,044	1,033	2,099
Ccatca	9,919	8,690			
Ocongate ²	11,111	10,220			
7) URUBAMBA					
Chinero	9,146	7,155	2,015	3,460	7,382
Huayllabamba	4,736	3,406	817	1,706	2,584
Maras ³	7,437	5,425	1,701	2,892	5,599
Ollantaytambo	8,065	6,440	2,449	3,011	5,171
Yucay	2,880	237	357	1,062	1,449

¹ Includes AC Coorao

² Includes RT Tinique and Yanama (*parcialidad*)

³ Includes the communities of Collana and Chequerec

Appendix 4:**List of interviewees and participant observation****1) Interviews with Andean people****Women:**

- 1) Teodora, 45, AC Tarahuasi, Dist. Limatambo, Prov. Anta.
- 2) Jacinta 37, AC Tarahuasi, Dist. Limatambo, Prov. Anta
- 3) Rosa 39, AC Churo, Dist. Limatambo, Prov. Anta
- 4) Luisa 42, AC Churo, Dist. Limatambo, Prov. Anta
- 5) Valentina, 32, AC Chuquimarca, Dist. Limatambo, Prov. Anta
- 6) Armandina, 35, AC Tamacalla, Dist. Limatambo, Prov. Anta
- 7) Hilda, 20, AC Chitapampa, Dist. Taray, Prov. Calca
- 8) Lucia, 26, AC Cuyo Grande, Dist. Pisac, Prov. Calca
- 9) Encarnacion, 25, AC Maska, Dist. Pisac, Prov. Calca
- 10) Maria, 23, AC Quello Quello, Dist. Pisac, Prov. Calca
- 11) Filipa, 40, AC Utopia, Dist. Tinta, Prov. Canchis
- 12) Luisa, 19, AC Queramarca, Dist. Tinta, Prov. Canchis
- 13) Francisca, 41, AC Machamarca, Dist. Tinta, Prov. Canchis.
- 14) Faustina, 30, AC Yungaypata, Dist. Cusco, Prov. Cusco
- 15) Luz Marina, 19, AC Yungaypata, Dist. Cusco, Prov. Cusco
- 16) Francisca, 46, AC CCorao, Dist. San Sebastian, Prov. Cusco
- 17) Asuncion, 39, Dist. Huancarani, Prov. Paucartambo
- 18) Josefina 34, Dist. Huancarani, Prov. Paucartambo
- 19) Luz, 42, AC Churu, Dist. Huancarani, Prov. Paucartambo
- 20) Flor, 23, AC Mahuaybamba, Prov. Paucartambo
- 21) Natividad, 58, AC Mahuaybamba, Prov. Paucartambo
- 22) Francisca, 37, AC Mahuaybamba, Prov. Paucartambo
- 23) Eva, 14, AC Mahuaybamba, Prov. Paucartambo
- 24) Luisa, 36, AC Chayabamba, Prov. Paucartambo
- 25) Cristina, 53, P.R. Ttinqe, Dist. Ocongate, Prov. Quispicanchi
- 26) Victoria, 47, AC Maraspaqui, P.R. Ttinqe, Dist. Ocongate, Prov. Quispicanchi
- 27) Delfina 20, AC Maraspaqui, P.R. Ttinqe, Dist. Ocongate, Prov. Quispicanchi
- 28) Leonarda, 28, AC Santa Cruz, Dist. Sallac, Prov. Quispicanchi

- 29) Guillermina, 49, AC Santa Cruz, Dist. Sallac, Prov. Quispicanchi
- 30) Alejandrina, 30, AC Kuper, Dist. Chinchero, Prov. Urubamba
- 31) Dominga, 38, AC Chilca, Dist. Ollantaytambo, Prov. Urubamba

Men:

- 1) Feliz, 25, AC Chitapampa, Dist. Taray, Prov. Calca
- 2) Juan, 33, AC Yungaypata, Dist. Cusco, Prov. Cusco
- 3) Aquilino, 25, AC Mahuaybamba, Prov. Paucartambo
- 4) Faustino, 52, AC Mahuaypama, Dist. Paucartambo, Prov. Paucartambo
- 5) Victor, 35, Dist. Carhuayo, Prov. Quispicanchi
- 6) Enrique, 25, AC Ausangate, Anexo Pachanta, Dist. Ocongate, Prov. Quispicanchis
- 7) Evaristo, 23, AC Casapata, Dist. Carhuayo, Prov. Quispicanchi
- 8) Silverio, 36, Dist. Ocongate, Prov. Quispicanchi
- 9) Maximo, 50, Dist. Ccatca, Prov. Quispicanchi
- 10) Jacinto, 38, AC Santa Cruz, Dist. Sallac, Prov. Quispicanchi
- 11) Dario, 18, AC Patacancha, Dist. Ollantaytambo, Prov. Urubamba
- 12) Jacinto, 30, AC Chequerec, Dist. Maras, Prov. Urubamba.

2. Group Interviews -

- 1) Mother's Club of Dist. of Taray, Prov. Calca: 16 participants. (all women)
- 2) Mother's Club of AC Q'enqo, Dist. Taray, Prov. Calca: 27 participants. (all women)
- 3) Steering Committee of AC Coya, Dist. Carhuayo, Prov. Quispicanchi: 8 participants (all men).

3. Interviews with judges of the Peace -

A) Province of Anta:

- 1) District of Ancahuasi: Mario Echegaray
- 2) District of Limatambo: Elmina Huacho
- 3) District of Zurite: Hugo Huayapa

B) Province of Calca

- 4) District of Coya: Clotilde Romero
- 5) District of Lamay: Bernardino Gamarra
- 6) District of Pisac: Luzmila Cantero

- 7) District of Taray: Liberata Cuba
- C) Province of Canchis
- 8) District of Combapata: Sony Luna
- 9) District of Tinta: Victor Manuel Cruz
- D) Province of Cusco
- 10) AC Ccorao: Walter Ramos
- 11) District of Saylla: Victor Manuel Cruz
- E) Province of Paucartambo
- 12) District of Colquepata: Francisco Estrada
- 13) District of Huancarani: Antonio Pumachara
- 14) District of Paucartambo: Isaac Nazario
- E) Province of Quispicanchi
- 15) District of Andahuaylillas: Rafael Ferrazas
- 16) District of Carhuayo: Victor Qqero
- 17) District of Ccatca: Moraima Cama
- 18) District of Ocongate (First Nomination): Willy Paradicino
- 19) District of Ocongate (Second Nomination): Jose Portillo
- 20) Rural town of Ttinue: Florentino Gonzalo
- 21) *Parcialidad* of Yanama: Roberto Condori
- F) Province of Urubamba
- 22) District of Chinchero: Justo Malaga
- 23) AC Collana and AC Chequerec: Alfonso Rodriguez
- 24) District of Huayllabamba: Julio Luna
- 25) District of Maras: Andres Tupayachi
- 26) District of Ollantaytambo: Sergio Santos
- 27) District of Yucay: Manuel Huayotuna.

4. Interviews with governors and Lieutenant governors -

- 1) Fortunato Vargas, governor, Dist. Catca, Prov. Quispicanchi
- 2) Alberto Ruiz, governor, Dist. Huallabamba, Prov. Urubamba
- 3) Ricardo Achahua, governor, Dist. Maras, Prov. Urubamba
- 4) Facundo Palomino, Lieutenant governor AC Ccorao, Dist. San Sebastian, Prov. Cusco

5) Domingo Quispe, Lieutenant governor, AC Mahuaypamba, Dist. Paucartambo, Prov. Paucartambo.

5. Interviews with Cusco judicial members.-

- 1) Dr. Francisco Olivera, President of the Cusco Superior Court
- 2) Dr. Miguel Castañeda, President of Criminal Division (*sala penal*) of the Cusco Superior Court.
- 3) Dra. Marina Tagle, 5th Specialised Criminal Judge (court judge) of Cusco

6. Other interviews.-

- 1) Elizabeth Dueñas, 37, mayor of the District of Taray, Prov. Calca. I enquire into her experience as a mayor and in her interaction with the women's organisation of her jurisdiction.
- 2) Martha Garcia, 43, nurse in the health service of Dist. of Combapata, Dist. Canchis on cases of domestic violence
- 3) Alejandra Pinto, 38, co-ordinator on women's issue in the Prelatura of Sicuani (a division of the regional Catholic Church, working with women's organisations in the area) on the situation of domestic violence in their area.
- 4) Fabiola Villasante and Matilde Rojas, member of training team of NGOs Cadep working in gender awareness with Women's Committees of the Prov. Anta, in Department of Cusco and Chumbivilcas and Cotabambas in Department of Abancay, in their evaluation of domestic violence.
- 5) Binollica Porcel, member of the CEA 'Bartolome de las Cases' (NGO specialist in the study of Andean culture).
- 6) Lucas Yanas, *accesitario* (deputy judge), RT Ttinue, Prov. Quispicanchi.
- 7) Luisa Herrera, *accesitaria* (deputy judge), Dist. Limatambo, Prov. Anta
- 8) Teofilo Soto, *testigo actuario*, (secretary), *juzgado* Ollantaytambo, Prov. Urubamba.

6. Participant research.-

6.1 Activities with Andean community people.-

6.1.1 Workshop in 'Legal strategies in domestic violence', organised by the Prelatura of Sicuani (Catholic Church division). 22 January 97. Participants were women leaders of women's organisation such a Popular Kitchen, Vaso de Leche amongst others. Dynamic: speech, comments and queries of the participants in Quechua and Spanish.

6.1.2 Campaign on Women's rights organised by NGO Cadep, in the District of Limatambo, Prov. of Anta. It consisted of general legal advisory meetings with the so called Women's Committee from the Andean communities of the area. 25 January 97.

6.1.3 A group discussion in gender awareness within a workshop organised by NGO Cedep-Ayllu in 'Communal training and social organisation'. 5 February 1997. Participants were men and women leaders of the peasant communities of the so called 'Cuenca de Taray', an area along the Provinces of Cusco and Calca.

6.1.4 Workshop on 'Domestic violence and women's organisation', organised by the 'Peasant House' of the NGO Bartolome Herrera. Participants were women's leader from a wide range of peasant communities of the whole Department of Cusco. 7 May 1997. Dynamic: speech, comments and queries of the participants.

6.2 Activities with legal representatives.-

6.2.1 A training workshop in 'Legal advisory' in cases of domestic violence to the Legal Advisory Office team of the Cusco Women and Children Police Station, 24 January 1997.

6.2.2 During January and February 1997 I realised visits to the Women and Children Police Station of Cusco and hold informal conversation with the personnel

6.2.3 Participation in the training course for judges of the Peace organised by the Cusco Superior Court in the city of Cusco. 13-15 February 1997. I was introduced as

a researcher of the Judiciary Academy, and had the opportunity to explain the objective of the surveys as well as hold informal conversations with the participants.

6.2.4 Participation in the training course for judges of the Peace organised by the Cusco Superior Court in the town of Sicuani. 20-22 February 1997. The same dynamic as the previous training.

6.2.5 Workshop in the 'Modification of the Domestic Violence Law' to the police personnel who work in the Cusco Women's and Children Police Station. 30 March 1997. Dynamic: speech, comments and queries of the participants.

6.3 Activities with trainers (capacitadores, promotores) in NGOs and local governments -

6.3.1 Seminar on 'Strategies of the State and NGOs to face domestic violence'. Organised by the Women's National Network, 4 February. Participants gender training members of NGOs and representatives of local governments. Dynamic: speech, comments and queries of the participants.

6.3.2 Workshop in 'perspective on gender in the NGOs work' with the 'gender training team' of the Cedep-Ayllu. 6 February 1997

6.3.3 Seminar on 'Strategies of the State and NGOs to face domestic violence' organised by the Regional Government and the Women's National Network. 28 March 1997. Participants were NGOs trainers in rural development.

6.3.4 Workshop on 'Domestic Violence and Human Rights' organised by the National Commission of Human Rights, Cusco office. 19 July 1997. Participants were trainers on Human Rights in the Cusco Department. Dynamic: Exposition, comments and queries of participants and dramatisations

6.4 Individual advice- These cases were referred to me by recommendation of women's organisations or/and under request of leaders of peasant communities. My advice was completely free.

6.4.1 Eriberta, resident of the town of Calca, Prov. Calca had separated from her husband for domestic violence problems but she was still harassed by him. She had three legal procedures one at the level of the Municipal Advisory office (Demuna) for Maltreatment, a second one was a criminal procedure by bodily harm and a third one was a civil procedure for divorce on the ground of cruel maltreatment. I reviewed the state of her processes and had a meeting with the civil provincial judge.

6.4.2 Delfina, AC Maraspaqui, Dist. Ttinque, Prov. Quispicanchi, was expelled from her house by her in-laws while her husband was working outside the province. I talked with the judges of the Peace involved and presented a legal documents on her behalf.

6.4.3 Eva, AC Mahuaypampa, Dist. Paucartambo, Prov. Paucartambo, was 14 years old and had been raped by her father who was in jail. Communal authorities and the family asked me to review the case with the criminal judge of Paucartambo.

6.4.4 Juana, AC Mahuaypampa, Dist Maras, Prov. Urubamba, asked me to review her daughter's case files for rape before the provincial prosecutor.

6.4.5 Steering Committee of the AC Inca Paucar, Dist Paucartambo, asked for advice in the formalisation of communal documents.

6.4.6 Hilda, a resident of the town of Huaru, Prov. Quispicanchi, asked me to review her case file for divorce.

7. My own experience. - I had a direct experience of the dynamic of the legal system in Cusco from two events: Firstly I rented a flat in the city of Cusco and I was swindled by the owners. I took the case to the Prosecutor in the Criminal Prevention Office and we signed a conciliatory agreement. Secondly, I was robbed in the house where I was living I followed the police procedure.

Acta de Separación

en vista a los ventinueve días del mes de junio de mil novecientos veintidós, por los señores de la Tercera Comparsa, ante el Jefe de la Policía de Paz don Guillermo Ayo Yucas, concubina, ocupación sus quehaceres, sin documentos, y a don Esteban Ayo Yucas, de otra lado, con la firma H. Yucas Yucas, natural de la misma comunidad, con el fin de ratificar en el acto de separación suscrita el mes de junio del año pasado próximo, y a que luego de esta separación se dieron nuevos contratos, pero el caso es que sucesivamente se dieron los nuevos contratos hasta el día de que don Esteban Ayo Yucas en muchas ocasiones ha tenido la intención de que se victimasen, queriendo abrogar la ley de la noche, hechos estos que no pueden continuarse en salvaguarda de la vida de Guillermo Ayo Yucas. En consecuencia, se dispuso disueltos esta reunión concubina, por lo que el Jefe de la Policía de Paz sancionó penal de detención corporal de sesenta y cinco días, y una sanción pecuniaria de multa en la cantidad de quinientos soles que renuncian beneficio de la biblioteca Municipal del Distrito en consecuencia don Esteban Ayo Yucas, desde esta fecha a partir de la fecha no se volverá a Guillermo Ayo Yucas, y de lo que se trata de personas distintas a Guillermo Ayo Yucas, y a toda su familia por cuanto hay amercos por parte de Esteban Ayo Yucas, y se da a los hechos el único responsable de los hechos Esteban Ayo Yucas, con lo que condono el presente acto firmado por ante mí, los comparecientes.

Guillermo Ayo Yucas
Jefe de la Policía de Paz
LUGO YUCAS

~~Esteban Ayo Yucas~~

Guillermo Ayo Yucas
Beltrán Ayo Yucas

ENCUESTAS SOBRE CASOS DE VIOLENCIA FAMILIAR A NIVEL DE JUZGADOS DE PAZ

ENCUESTA No. *40*

(esta encuesta se realiza con fines de estudio y no evaluativos)

DATOS GENERALES:

- 1.- DISTRITO EN DONDE DESEMPEÑA SU CARGO *Peruigote*
2. SEXO: FEMENINO..... MASCULINO...*X*... 3.- EDAD...*64*
- 4.- ¿CUANTOS AÑOS DESEMPEÑA EL CARGO DE JUEZ DE PAZ?...*0*?
- 5.- ES UD. LETRADO..... NO LETRADO...*X*..
- 6.- LA POBLACION QUE ATIENDE ES:
SOLAMENTE RURAL..... MAYORITARIAMENTE RURAL...*X*.. RURAL Y URBANA...*X*
MAYORITARIAMENTE URBANA.... SOLAMENTE URBANA.....

7.- ¿EXISTEN COMUNIDADES CAMPESINAS EN SU JURISDICCION?...*Si*. Mencione las tres con mayor población:

- 1) *Perilca*
- 2) *Julicunca*
- 3) *Llullucha*

8.- ¿CUALES SON LAS PRINCIPALES CAUSAS (O PROBLEMAS) QUE TIENE QUE ATENDER. MENCIONELAS POR SU IMPORTANCIA DEL 1 AL 3.

- 1) *Alimentos*
- 2) *Abandono de familia*
- 3) *contra las buenas Costumbres*

CASOS DE VIOLENCIA FAMILIAR:

9.- ¿RECIBE QUEJAS O DENUNCIAS DE MUJERES QUE SON AGREDIDAS POR SUS ESPOSOS O CONVIVIENTES EN SU JURISDICCION? *Si*

¿RECUERDA APROXIMADAMENTE CUANTOS DE ESOS PROBLEMAS ATIENDE EN UN MES?

Hasta 4 quejas por mes, generalmente por maltratos físicos y psíquicos.

10.- ¿DONDE PIENSA QUE HAY MAYORES PROBLEMAS DE VIOLENCIA ENTRE ESPOSOS O CONVIVIENTES? 381

EN LAS ZONAS RURALES..... EN LAS ZONAS URBANO-MARGINALES. X...

EN LAS ZONAS URBANAS EN LAS ZONAS RURALES Y URBANO-MARGINALES.....

EN TODAS LAS ZONAS.....

POR QUE?..... *falta de trabajo, falta de educación*
continua del esposo, muchas veces por
ambos que son buenos consejeros.

11.- ¿POR QUE CREE UD. QUE LOS HOMBRES GOLPEAN Y/O AGREDEN MORALMENTE A SUS ESPOSAS O CONVIVIENTES EN SU ZONA? CUALES CREEN SON LAS CAUSAS? *muchos*

*veces por ebrios constitucionales y otros veces porque uno de los consortes tiene alguna otra mujer o espal
dios de la mujer, más que todo por celos y falta de economía*

12.- ¿HAY MUJERES QUE GOLPEAN A SUS ESPOSOS?, HA ATENDIDO UD. ALGUNO DE ESOS CASOS? *en muy rara vez, pero hay mujeres que teniendo el poder económico que tienen golpean a sus esposos.*

13.- ¿CUANDO SE PRESENTA UNA MUJER DENUNCIANDO QUE SU MARIDO LA MALTRATA, QUE ES LO QUE UD. HACE. DESCRIBA LAS ETAPAS DE SU INTERVENCION: *Después de escucharla...*

- 1) *Primariamente investigo las causas por lo que ocurrió.*
- 2) *Seguidamente voy a las partes con un compromiso de*
- 3) *hecha los esclarecimientos analizo el asunto.*
- 4) *Luego le llamo la atención al esposo haciéndole reconocer su falta.*
- 5) *Es necesario tratar de ponerlo en paz haciendo acuerdos.*

14.- ¿COMO SE RESUELVEN ESTOS CASOS, COMO CONCLUYEN?

Apesando la falta que cometiese el agresor, si tienen hijos por delante tienen que haber reconciliación bajo acta.

15.- ¿RECUERDA EL ULTIMO CASO DE MALTRATOS ENTRE ESPOSOS O CONVIVIENTES QUE RESOLVIO C.A. LEÑDIO?, CUANDO SUCEDIO? DESCRIBA BREVEMENTE EL CASO

Si: hace más de un mes, la esposa fue maltratada física y moralmente por el esposo, así también los hijos por pedir auxilio en defensa de su madre, y mientras que la esposa venía a pedir intervención policial se fue a la selva hasta la fecha no se ha visto.

16.- ¿EXISTEN DENUNCIAS POR MALTRATOS A MENORES EN SU COMUNIDAD O DISTRITO?
QUIENES HACEN ESAS DENUNCIAS?

¿QUIENES AGREDEN MAYORMENTE A LOS NIÑOS?

LOS PADRES..... LAS MADRES..... AMBOS..... OTROS FAMILIARES.....

17.- ¿QUE FACULTADES CREE UD. TIENEN EL JUEZ DE PAZ PARA INTERVENIR EN PROBLEMAS DE
VIOLENCIA FAMILIAR? DESCRIBALAS

*Persuasivo y conciliatorio buscando siempre el bienestar
de la familia para una mejor formación de los hijos*

18.- ¿CONOCE UD. LA LEY 26260? (LLAMADA TAMBIEN 'LEY EN CONTRA DE LA VIOLENCIA
FAMILIAR)? QUE ES LO QUE CONOCE DE ELLA? DESCRIBA SU CONTENIDO

19.- ¿SE HAN PRESENTADO ACCIONES AL AMPARO DE ESTA LEY EN SU JURISDICCION?

20.- ¿CUAL OPINA UD. ES EL ROL DEL JUEZ DE PAZ EN LOS CONFLICTOS FAMILIARES?
CONSIDERA UD. QUE LA INTERVENCION DEL JUEZ DE PAZ ES IMPORTANTE, POR QUE?

*El rol del Juez de Paz en el conflicto familiar debe ser
de un consejero paternal, tratando de persuadir hacia
una conciliación pacífica para que esta familia
encuentre paz duradera en su hogar.*

Muchas Gracias por su colaboración.

JEV/feb87

Appendix 7: South Andean division of labour¹

Women's activities:

Agricultural work -

Participation at sowing time, traditionally planting the seeds in the ground.

Participation in the harvesting of potatoes, corn and other crops.

Processing crops for daily consumption.

Production -

Elaboration of pottery. In some cases, preparation of food to sell such as frozen potatoes (*papa helada*) and other regional dishes.

All tasks of textile production: shearing sheep or alpaca, collecting plants for dyes, spinning and dyeing the thread, warping the backstrap loom, weaving and finishing the textile. Some women knit sweaters especially as a part of the activities of Mother's clubs (women's survival organisations).

Market -

Buy or barter for consumer goods in town markets. Sell their own production. These activities normally include travelling.

Household -

- a) Cooking food for daily consumption.
- b) Cooking and caring for household animals: pigs, dogs, chickens, guinea pigs, cats.
- c) Slaughtering, cleaning and butchering smaller animals (and often assisting with larger).
- d) Keeping house clean: sweeping, defleaing blankets, dishwashing, etc.
- e) Laundry and mending.
- f) Health care of people and household animals: knowing the uses of herbs for medical use.
- g) Care and socialisation of children.
- h) Reproduction: pregnancy, childbirth, breast feeding, tending small children.

Community Role -

- a) Sharing responsibilities with their husband of fulfilling *mayordomo* and other *carguyok* (posts)²

¹ This is a modification of a summary provided by Knox-Seith (1995).

² From ancestral times, Andean people had a complex system of veneration and religious rituals. Main sites of rituals were the *huacas* and amongst the most common deities the *apus* or spirits of the mountains. Spaniards did not tolerate indigenous religious beliefs. Andean people had to substitute their sacred

- b) Roles in certain rituals and in charge of the veneration of female saints.
- c) Participating in the *Club de Madres* (Mother's Club) and *Vaso de Leche* (another women's organisation).
- d) Food preparation for school-related events, including *kermesse* (fund-raising bazaar).
- e) Cooking and carrying cooked meals for large agricultural work parties and other community events.

Property

Making decisions about personal property and products of own labour (weavings, animals raised).

Women have a fundamental and exclusive role in the management of the harvests³. The peasant family is mainly a production consumption unit. To obtain a good crop is as important as to know how to store it and distribute it. Women are the only ones allowed to sort the harvest, choose the seed for the following year, separate the products for bartering in markets and for the preparation of the meal in communal work and religious ceremonies. Women's decisions in relation to harvest distribution are never questioned by husbands who are forbidden to take anything from the *taque* or *marka* (larder)⁴. Women are also responsible for the marketing of the small quantities of 'excess' products.

Men's activities.-

Agricultural work.-

- 1) Most agricultural work, including ploughing with *chakitaqlla* and *vacataqlla* (foot and oxen ploughs), field tasks from planting to harvest.
- 2) Harvesting firewood and transporting it by horse to the house
- 3) Transporting goods by horse or mule, including manure and seed to field for planting and harvested crops to village for storage
- 4) Making and maintaining own tools: includes shaping *kuti* (sharply angled wooden handle fitted with a variety of blades), twisting rope, making leather net for carrying firewood, making harnesses for horses and weaving sacks and braiding *waraka* (sling).

entities with Catholic saints. The result is a mixture of both spiritualities. It has developed in a system of religious posts in which the most important is the *majordomo*. There are other *carguyok* (posts) for the veneration of 'minor' saints. The Andean religious system is one of the richest aspects of the Andean folklore and culture and it has been extensively studied by authors such as Isbell 1978, Allen 1988, Ossio 1992 and Pena 1998.

³ Nunez 1975b:624-5), Casos (1990:28), Skar (1979:454).

⁴ See Nunez (1975b:625) and Casos (1990:28)

Production

- 1) To weave plain cloth (e.g. sacks, blankets)
- 2) Painting ceramic -especially those around tourist places.
- 3) Elaboration of pottery in some communities.

Wage labour -

- 1) Travelling to lower valleys (*yunga*) and working the household fields there
- 2) Occasional wage labour (e.g. porter on Inca trail; harvest in *yunga* areas -lower valleys)

Household -

- 1) Making certain tools for women e.g. wooden parts of backstrap loom
- 2) Branding horses and cattle
- 3) Slaughtering and cleaning larger animals (large pigs, cattle).
- 4) Building and repair of houses
- 5) Cutting men's hair.
- 6) Participating in life cycle rituals for children
- 7) Cooking simple meals when necessary.

Community roles -

- 1) Representing household in *assembleas* (community assemblies), and working in *faenas* (communal works) held to build and maintain public structures, to farm community lands (for community funds), amongst others.
- 2) Holding political offices (*varayok*, president, etc.), *carguyok* and *mayordomo* for male saints.
- 3) Special roles such as ritual specialists (e.g. lead prayers in rituals, wash and prepare body of deceased, prepare *despachos* (special ritual offerings). The position of *paku* (shaman) is held only by men)
- 4) Representing the household when dealing with urban bureaucracies, e.g. applying for government agricultural loans or arranging official documents.

Property

- 1) Making decisions about personal property and products of own labour (crops raised, animals owned). Handling and trading of large animals (horses, mules, cattle).
- 2) Making decisions about land use (e.g. where and what to plant)

THE MOUNTAINS

Around the district of Pisac, Calca



Around the
district of
Colquepata,
Paucartambo



Around RT
Ttinue,
Quispicanchi



ANDEAN LIFE

Women waiting for the meeting of the Mother's Club, AC Mahuaypampa.



A wedding in RT
Ttinque,
Quispicanchi.



Youngsters
from AC
Patacancha,
Urubamba
taking a break
from a training
course in
Ocongate,
Quispicanchi.



ANDEAN COUPLES

Aquilino, Flor and children (AC Mahuaybamba, Prov. Paucartambo)



Feliz, Sonia and children
(AC Chitapampa, Prov.
Calca)



Juan and Faustina (AC
Yungaypata, Prov. Cusco)



WOMEN FACING VIOLENCE

Filipa (AC Utapia, Dist. Tinta, Prov. Canchis)



Dominga (AC Chilca,
Dist. Ollantaytambo
Prov. Urubamba)



Encarnacion
(AC Maska,
Dist. Pisac,
Prov. Calca)



JUDGES IN DIFFERENT SETTINGS

A training course for the judges. In front row, members of the Cusco Superior Court.



The judge of
Ttinqe,
Quispicanchi.



The facade of
the judge's
place of
Ollantaytambo,
Prov.
Urubamba



WOMEN JUDGES

Liberata, Dist. Taray, Prov. Calca



Luzmila, Dist. Pisac, Prov. Calca



Clotilde, Dist. Coya, Prov. Calca.



WOMEN IN THE JUDGES' PLACE.

RT Tinique (Quispicanchi), Dist. Pisac (Calca) and Dist. Tinta (Canchis).



PERSONAL MOMENTS

Hilda (AC Chitapampa, Taray, Calca) and me.



Surviving the mountains with *runakuna* who helped us.

