

Research Brief

Indigenous Peoples and Reparations Claims: Tentative Steps in Peru and Guatemala

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In situations of large-scale violence and repression, reparations are best conceptualized as rights-based political projects aimed at giving victims due recognition and at enhancing civic trust both among citizens and between citizens and state institutions. This paper explores, in the light of two case studies, some of the goals, expectations and limitations of reparations as means of redressing identity-based injustice and setting the terms for a more just political order.

What do reparations require when we are talking about people who, as is often the case with indigenous peoples, have traditionally been denied equal citizenship status, have experienced long-term, systematic marginalization and who may resist standard notions of citizenship? We argue that the process of creating as well as the content of reparations policies should, first, affirm the commonality of members of indigenous groups as citizens and holders of basic human rights. It should also affirm their condition as members of sub-state groups with distinct cultures and/or communal forms of life.

While both Peru and Guatemala took steps to satisfy both of these criteria, the case studies show the limits of what even a well-crafted reparations program can do in terms of providing due redress to victims. They further illustrate that there are limitations to taking even modest steps toward transformation absent a serious commitment on the part of the state and ruling non-indigenous elites to the wider transformations that crafting a more inclusive political order would entail.

Peru

Reparations in Peru concern the two-decades-long armed struggle (1980-2000) between the state security forces and the Marxist-Leninist-Maoist group, the Shining Path, as well as another subversive group, Revolutionary Movement Tupac Amaru. In Peru, none of the main actors in the conflict assumed motivations, ideologies or claims of a predominantly ethnic nature. Yet Quechua- and Aymara-speaking groups in the Andes mountains, as well as Asháninka people living in the Amazonian forests, bore the brunt of the hostilities. Important to this paper is the fact that Andean groups tend

Research Project

Identities in Transition

In post conflict societies, histories of exclusion, racism and nationalist violence often create divisions so deep that finding a way to agree on the atrocities of the past seems near-impossible. This project seeks, first, to ensure that transitional justice measures are sensitive to the ways in which targeting people on the basis of their ethnic or religious identity may cause distinctive harms and, second, to clarify the difficult political challenges that arise in societies where communities are not ready to cooperate, or even agree on a definition of who the victims are. If transitional justice can find ways to act as a means of political learning across communities, foster trust and recognition, and if it can serve to breakdown harmful myths and stereotypes, then this will be at least a small step toward meeting the challenges for transitional justice in divided societies. The project is managed by Paige Arthur, Deputy Director of the Research Unit at the ICTJ.

to identify as peasants rather than “indigenous,” unlike the Asháninka, and thus their mobilization around “indigenous” issues has, until recently, been weak.

The main impetus for a reparations program in Peru came from the establishment of the Peruvian Truth and Reconciliation Commission (CVR) in 2000. The CVR made recommendations for a set of symbolic and material, individual and collective reparations measures. In July 2005, the legislature passed the Comprehensive Reparations Plan Law (PIR-Law), which is mandated to draw its inspiration directly from the more elaborate recommendations of the CVR.

Ways in which an “intercultural approach” as well as one that is sensitive to community-level harms was advocated in the CVR recommendations (which will influence the implementation of the PIR-Law) include:

- Symbolic measures of individual and national apology, renaming of schools and other institutions to commemorate local heroes and a national day of homage to Asháninka victims, who were the most disproportionately affected.
- Healing initiatives for individual victims and whole communities affected by violence, which includes health measures, such as the reconstruction of communal support nets, the recovery of historical memory or the creation of communal spaces for the exercise of techniques of support groups.
- A massive program to provide identity documents to people of affected regions.
- The provision of intercultural educational opportunities to those who could not study or had to interrupt their studies because of the conflict.
- A collective reparations program to partially redress the social, economic and institutional harm suffered by marginalized communities.

The implementation of reparations began in April 2007. Reparations for individuals are delayed as the government sets up a consolidated victims’ registry. Thus, so far, only collective reparations have begun to be delivered, consisting of grants for projects identified by the affected communities themselves. Almost all of them seek to improve access to basic services and infrastructure, including water, electricity and schools, and some seek modest improvements in agriculture and cattle productive infrastructure. One year after the project was launched, 111 projects had been approved.

Guatemala

Reparations in Guatemala stem from the conflict between the government and the Guatemalan National Revolutionary Unity (1962-1996). Although the war was grounded in socio-economic factors, the historic marginalization of the indigenous population was one of its main features. The Maya and the Ladinos (or mestizos)

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constitute the main ethnic groups in the country, while there are smaller indigenous groups of Xinkas and Garifunas. Guatemala is one of the poorest and most unequal countries in Latin America. The Guatemalan Historical Clarification Commission (CEH) reported of the massive violence that 83 percent of victims were of Mayan origin and 17 percent were Ladino. State forces were responsible for the overwhelming majority of these crimes, some of which the CEH described as genocidal in nature.

Unlike in Peru, a strong indigenous movement has emerged over the past decades, and it has played an important role in the development of the reparations program. In 2003, the government approved the creation of a National Reparations Program (PNR), to be led by a National Reparations Commission (CNR), which was initially designed to include members of the state and civil society. Subsequent power struggles within the CNR among civil society representatives—including between human rights groups and indigenous groups, which have come into conflict over issues such as making genocide a reparable crime and the value of community-based healing projects—have led to its reconstitution as a solely government-staffed commission.

Like initiatives in Peru, the Guatemalan program addresses violations of individual rights, but also seeks to be sensitive to community-level harms, mainly through the design and delivery of the reparations benefits. It offers benefits both for individuals and for communities. Such benefits include:

- Monetary compensation for families of victims of extrajudicial execution, death in a massacre or forced displacement, as well as compensation for survivors of torture, rape and sexual violence.
- Material restitution measures mainly consisting in the restitution of land, housing and productive investments for victims of forced displacement, minors who suffered forced recruitment and others.
- Psychological rehabilitation measures for all victims who suffered physical or psychosocial harm as a result of the listed crimes. Indigenous organizations demanded to have these psychosocial rehabilitation measures implemented from the perspective of their spiritual traditions.
- Measures to dignify victims, including ways to disseminate the truth, vindicate the good name of victims, keep history alive and help victims with exhumation and reburial.
- Cultural reparation measures “to recover and revitalize the culture and identity of the people, communities and regions affected by the internal armed conflict, mainly the Mayan people” [PNR Handbook].

In 2006, individual economic compensation measures started, under heavy pressure from victims to see something finally happen and the need of the executive to spend some of the funds that had been allocated. This turn of events is ironic given the fact

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that the PNR's vision for reparations so far has stressed the collective dimension of human interdependency. Many measures still need to be more concretely defined before implementation. This is, tellingly, the case for cultural reparations measures.

Analysis

In terms of process, the Peruvian and the Guatemalan cases offer two contrasting examples. In Guatemala, a growing indigenous movement has helped to shape the reparations program. In Peru, reparations have been shaped by mainstream human rights NGOs and victims' associations. One may rightly ask about the relevance of the greater sense of agency and direct participation of indigenous groups in the Guatemalan process, especially in view of two facts: first, international indigenist sensitivities had an influence on the white intellectual elites who created the reparations program in Peru; and second, in both countries there has been slow implementation. A feature shared by the two countries is that, in spite of the "transition" and its accompanying rhetoric, the political elite in each country has not significantly changed. This elite expresses little sympathy for rural, non-Spanish-speaking, poor and illiterate people.

Considering the reparations plans themselves, there are many similarities. Neither country went as far as conceptualizing the worst forms of cultural and ethnic violence as violations of collective rights of the indigenous people. In Peru, this was a failed opportunity because the decree that created CVR had asked the commission to investigate the violations of the collective rights of the Andean and native communities. While Guatemala has recently, following a change in government, made genocide a reparable crime, it remains to be seen what effects this will have for the reparations program.

It seems that to the extent that the Peruvian but even more so the Guatemalan programs capture the group-specific harms to identity, culture, and communal life endured by indigenous peoples, they do so mostly when defining reparations benefits and beneficiaries, rather than in their definitions of victims and violations. This strategy was more compatible with the prevailing human rights angle that dominates the field of transitional justice and the emphasis on individual civil and political rights within it.

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