

THE REPARATION REPORT

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PERU AND REPARATIONS: LITTLE PRACTICAL PROGRESS ON THE GROUND

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The fall of the Fujimori regime in November 2000 brought new possibilities for a shift towards respect for human rights in Peru and the development of a different national consciousness about the abuses of the preceding twenty years. The mandate of the Truth and Reconciliation Commission (TRC) was decreed by the transitional President in that context⁷ and was later ratified⁸ (with some minor modifications) by newly elected President Alejandro Toledo, who was sworn into office

in July 2001.

The TRC's mandate and objectives included: Clarifying the nature of the armed conflict and the abuses Peruvians experienced; Determining responsibilities for multiple violations of fundamental rights between 1980 and 2000;

⁷ Supreme Decree No. 065-2001-PCM, 4 June 2001.

⁸ Supreme Decree No. 101-2001-PCM, 31 August 2001.

Formulating recommendations to the State and the broader society on how to respond to and turn around the legacy of violence; With specific regard to reparations, drafting proposals for reparations and the "dignification" of victims and their families.

In August 2003, the TRC made public its nine-volume Final Report, which analyzes the causes and consequences of Peru's internal armed conflict and exposes the dimension and gravity of the human rights violations that occurred over the twenty-year period investigated. In Volume IX, titled "Recommendations by the TRC: Toward Reconciliation," the Commission proposes a series of measures to ensure that the violent abuses to which Peruvians had been subjected would not occur again. Those recommendations included a detailed and comprehensive Reparations Plan (RP).

The TRC based its RP on three grounds: legal, ethical and political. With regard to the first ground, the TRC noted that the obligation to make reparations is found both in Peruvian law and international human rights law. The TRC further reasoned that not only was the State responsible to make reparations for abuses committed by its agents, but also for failing to prevent and respond adequately to the abuses of private actors (mainly Shining Path guerrillas). Following important Inter-American Court jurisprudence (such as the Velasquez Rodriguez case), the TRC emphasized the State's duty to guarantee respect for human rights and, in the face of serious abuses, to repair the harm suffered.

The TRC also grounded its reparations proposal ethically. It reasoned that in the post-conflict period it was particularly important to show victims tangible evidence of support and solidarity that might instill at least some trust in those who had lost so much that they too were full rights-holders within the society. Thus the State needed to make a gesture, through its actions and in the name of all Peruvians, recognizing the harm visited on victims and their families, and reaffirming their dignity and status as citizens. Reparations would be the way in which to make concrete that recognition. Furthermore, because the TRC recommended that the State make reparations for victims of both the State and insurgent groups, the RP would treat both groups equitably.

Finally, the TRC justified its decision to design a national reparations policy on political grounds: the courts were not in a position to respond to the kind of systematic and massive violations that had occurred and resulted in so many victims, both individual and collective. The TRC argued that through the administration of a national reparations policy rather than one that was judicially overseen, the State would be able to respond to the broader universe of victims, and not just individual cases of the kind that had been addressed through the Inter-American system. In this way, a policy response would do more justice and for a greater number of victims than the judicial system was capable of, and could be both economically and politically viable.

The TRC's recommended RP has as its main objective "To repair and compensate for the violation of human rights as well as the social, moral and material losses and harms suffered by the victims as a result of the internal armed conflict." It combines collective and individual measures and responds to the collective harms suffered by communities and groups as well as by individual victims and their families. The RP is made up of six recommended programs according to the types of victims and the violations and harm suffered:

Program Symbolic reparations	Objective Reconstruction of social ties broken by the violence, by means of public gestures, acts of recognition, memorials and actions leading to reconciliation.
Health care	Help the population affected to recover both physically and mentally, rebuilding social support networks and strengthening both social and individual potential; communal and clinical interventions, access to health care and preventive attention.
Education	New or better opportunities for access for persons who lost their opportunity to receive adequate education or to complete their studies; provide scholarships and special educational programs.
Restitution of rights	Re-establish full and effective exercise of political and civil rights of citizenship through judicial rehabilitation including: normalization of the legal situation of the disappeared and of persons against whom illegal warrants have issued, expunging criminal records in court and police files, and ensuring the replacement of identity documents.
Economic reparations	Allow victims and their families to plan for a future of dignity and well-being; a limited set of victims would be compensated for damages through a pension or compensation scheme; no specific amount was publicly recommended, though a costing scheme was presented to Government.)
Collective reparations	Contribute to reconstruction and consolidation of communities and settlements (including resettled displaced populations) that lost physical and social infrastructure; listed factors combine to define which communities would be attended and in what priority, through: institution-building, recovery and reconstruction of infrastructure for production, provision of basic services and income-generating projects, to be defined with community input.

In August 2006 the country will mark the third anniversary of the publication of the TRC's Final Report. As that milestone approaches, Peru finds itself with some significant progress in terms of development of a legal framework for reparations, a mixed array of initiatives and, at least so far, little real sign of a purposeful and effective national reparations practice on

the ground.

In February 2004, the Executive created a "High Level Multi-Sector Commission in Charge of State Actions and Policies in the Areas of Peace, Collective Reparations and National Reconciliation" (CMAN is its Spanish acronym).⁹ CMAN eventually developed a Programmatic Framework for State Action on Peace, Reparations and National Reconciliation, and a Multi-year Program for the Reparations Plan for 2005-2006, which was approved at the Executive in July 2005.¹⁰ The CMAN Multi-year Program develops all of the programmatic areas of the TRC's RP, including individual measures (with the important exception of pensions and individual compensation), despite the CMAN's original formulation as a body charged only with developing policy on collective reparations.

The Program effectively sets out to implement individual reparations in education and health care to the populations of 562 of the most harshly affected rural communities, without regard to whether beneficiaries were victims or family members of victims. In addition, the substance of the program focuses on the current situation of these areas rather than on the explicit link to the human rights violations committed. The TRC had stressed this link as an important guarantee that reparations would serve as recognition of specific wrongs and the harms caused. The total cost of the Program, which totals about 349 million soles (roughly \$100 million USD), has not been fully funded, carrying an initial deficit even before implementation begins, of some 86 million soles (about \$24.6 million USD).



The Truth and Reconciliation Commission handing its final report to the Peruvian Government on August 28, 2003 in the Palace of Government <http://www.cverdad.org.pe/ingles/pagina01.php>.

The biggest advance came in late July 2005, when the Peruvian Congress passed the Law Creating the Comprehensive Reparations Plan¹¹ (the "reparations law"). The reparations law is consistent with the RP as set out in the Programmatic Framework, and should allow ad hoc policies to merge into a true State policy on reparations. Moreover, by binding future governments the legislation provides greater guarantees of implementation of the RP. The TRC foresaw that any RP must encompass all victims (within the defined violations covered), and not just those whose cases were reported to the Commission, and therefore the reparations law provides for the creation of a unified "victims' registry" of both individuals and collectives, as well as family members of the dead and disappeared, who would be entitled to reparations. This will be an indispensable tool in the effective implementation of reparations measures.

The reparations law echoes the CMAN Framework in that it rejects the notion of compensation or pensions to individual victims, while contemplating an otherwise comprehensive array of symbolic and material reparations for both individuals and collectives. The law contains an open-ended authorization to CMAN to include other programs it deems necessary, and this may eventually pave the way to future compensation to some victims. For now, however, the law postpones an important obligation of the State in this regard.

The reparations law also makes another significant change to the RP as set out by the TRC and the CMAN's Programmatic Framework, explicitly stating that members of subversive groups will not be considered victims, and will thus not be entitled to any benefits under the law, though they would not be barred from judicial actions to seek reparations. The TRC had struggled with this issue and concluded that it was both legally and practically unwise to exclude such individuals as long as they were victims of a human rights violation or violations of international humanitarian law.

The fact that Congress did finally approve a law on reparations is significant, yet there are a number of steps ahead before the law will be implemented effectively and efficiently. One important issue that has lagged behind for months is the passage of implementing regulations and the creation of both a Reparations Council to execute the law and the National Victims Registry to identify those who should be beneficiaries under the law. At the national level political will has been at best shaky, in part a reflection of the weak Government led by President Toledo. At local and regional levels of Government, where politicians perhaps feel more closely identified with and scrutinized by victims, there have been some important initiatives to register victims and initiate community-level programs.

⁹ Supreme Decree No. 003-2004-JUS, 6 February 2004. Modified by Supreme Decree No. 024-2004-JUS, 25 March 2004, and later fleshed out by Resolution No. 154-2004-PCM, 4 May 2004, and Supreme Decree No. 031-2005-JUS, 7 April 2005. CMAN started out under the Cabinet and was more recently moved to the Justice Ministry. In addition to government ministries, the CMAN includes 4 representatives from civil society, including one from the human rights umbrella group of NGOs.

¹⁰ Supreme Decree No. 047-2005-PCM, 7 July 2005, with an annex published 4 October 2005.

¹¹ Law No. 28592, 29 July 2005.

From President Toledo's initial speech on the TRC's Final Report to the present time, there has been an attempt to use development and poverty alleviation programs as a vehicle for reparations. This may be a politically attractive shortcut since there is a clear overlap of victims' populations with those in need of these programs, and both reparations and development are demands of the victim population. However, this approach undermines the recognition of human rights violations that is a critical element to any reparations. The TRC emphasized that reparations are not an instrument of social policy to be piggybacked on the State's existing obligations to address structural problems of poverty, exclusion and discrimination.¹² This continues to pose a challenge to implementation.

Another challenge lies in overcoming the rejection of compensation and the accompanying argument that such reparations are too costly for the country. Peru already has provided compensation through earlier, special legislation for "victims of terrorism," and through satisfaction of a number of judgments or settlements of cases in the Inter-American Human Rights system. Recognition of the duty in these cases without providing equal treatment of victims will continue to generate tensions and underscore existing inequalities.

Finally, Peru's Government will change hands at the end of July 2006 and many of the TRC's recommendations hang in the balance. Neither of the two candidates currently vying for the Presidency offers a clear victory for reparations, justice and ongoing revelations about the past. This rather suggests that a close watch and concerted advocacy will be necessary to preserve gains made over the past few years, and to move forward in any significant way. ○