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Peru: Reparations begin but IDPs excluded

Eight years after the internal armed conflict in Peru ended, most internally displaced people (IDPs) have returned to their places of origin or have resettled elsewhere. According to a 2007 government ministry estimate, 150,000 people remained in the urban centres where they arrived after being forcibly displaced. Given that these IDPs have long integrated in various localities, it is difficult to determine if they still have specific protection needs originating from their forced displacement, with the exception of their right to remedy and reparation. Nevertheless, there are indications that they still struggle to access basic services and livelihood opportunities.

IDPs, like many other victims of violence, are in 2009 still waiting for reparations for the human rights violations and abuses they suffered in the conflict, although the right to reparation, enshrined in the American Convention on Human Rights, was pivotal in the recommendations of the Truth and Reconciliation Commission published in 2003. The adoption of a statute on internal displacement excluded the reparations component, and reparations for IDPs were instead included in a more general statute for all victims of the armed conflict.

Under this statute, reparations are dependent upon a registration system identifying the victims. Some 5,000 IDPs have been registered in the IDP-specific registry, despite an excessive burden of proof placed on applicants, but not one of them has received reparations benefits. Lack of coordination between the IDP-specific registry and the general victims' registry, and the current focus on reparations for collective groups, have effectively excluded individual IDPs. Finally, reparations both for IDPs and victims of other human rights abuses have generally been framed as development or anti-poverty measures rather than fundamental rights supported by international law.

Background: campaign for reform becomes brutal uprising

From 1980 to 2000 Peru endured internal armed conflict as the Peruvian Armed Forces and allied self-defence groups fought the *Sendero Luminoso*, or Shining Path, and the *Túpac Amaru* Revolutionary Movement (MRTA). The Shining Path, which became the organisation responsible for most human rights abuses during the war, initially campaigned for land reforms and broader social and economic rights, in response to one of the most unequal landholding distributions in all of Latin America. Yet the initial cause soon gave way to a totalitarian and brutal Maoist ideology which relied on the use of terror against civilians (CVR, 28 August 2003). The government largely ignored the armed rebellion in its early stages because it was carried out in remote rural areas.

However in December 1982 it declared a state of emergency in nine provinces and placed them under military command. According to the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*, or CVR) established in 2001 to investigate the atrocities committed during the twenty years of conflict, government forces were also responsible for systematic violations of human rights and international humanitarian law, including 28 per cent of the killings of civilians (CVR, 28 August 2003).

In the absence of functioning state institutions, rural communities organised “*rondas campesinas*” (self-defence patrols) to protect themselves against attacks by rebel groups. These patrols later fought alongside the armed forces against the insurgents, and were also responsible

for human rights abuses (CVR, 28 August 2003). Civilians refusing to join were often accused of supporting the rebellion (Cohen and Sanchez-Garzoli, May 2001, p.6).

As a result of the violence during the 1980s and 1990s, between 500,000 and one million people were forcibly displaced from their homes, according to the International Committee of the Red Cross and *Programa de Apoyo al Repoblamiento* (PAR), the government programme created to assist internally displaced people (IDPs) to return home (ICRC & PAR, 31 December 2003, p.68; CVR, 28 August 2003). Over 69,000 people were killed or disappeared. Indigenous peasant populations, primarily from the departments of Ayacucho, Huancavelica, Apurímac and Central Sierra, represented a disproportionate 70 per cent of the displaced (CVR, 28 August 2003).

Civilians were also subjected to human rights violations such as torture, rape, kidnapping, arbitrary detention, and expropriation and destruction of property. The 10,000 indigenous Asháninka people displaced in Junín, for example, were victims of violations which could constitute crimes of genocide, according to the CVR. In the views of Shining Path leaders, indigenous identity and culture needed to be eliminated to pave the way for their “new state”. They imprisoned about 5,000 people in camps, submitted them to appalling treatment and used them as slaves and combatants. Pregnant women were murdered or forced to abort, girls were used as sex slaves, and many were forced to kill their own family members under threat of death. Others were left to die from hunger and disease in captivity. In Satipo, the Shining Path

forcibly displaced thousands of indigenous Asháninkas and held them in conditions amounting to slavery. They were imprisoned in sub-human conditions in camps, and forced to fight, work and perform sexual services. These abuses were possible due to the absence of state institutions and the prevailing deep-rooted prejudice against rural Andean communities (CVR, 28 August 2003).

Although rebel leaders were arrested in the 1990s and sentenced to life imprisonment in late 2006, the number of “subversive acts” increased from 128 in 2005 to 233 in 2006, according to the National Police’s Department of Intelligence (CNDDHH, April 2007, p.187). While the majority of the reported incidents were labelled “agitation and propaganda”, they included nine armed attacks and eight “terrorist attacks”, the latter referring to attacks committed by remnants of the Shining Path. One particularly violent attack resulted in the killings of five policemen and three civilians in Ayacucho in December 2006 (CNDDHH, April 2007, p.197). Surviving Shining Path groups reportedly allied with drug traffickers in the coca-producing regions of Alto Huallaga and el Ene-Apurímac (Peru21, 2 January 2007).

The CVR concluded that displacement was often an end in itself, a deliberate strategy by the warring parties in pursuit of their military objectives. People were also forced to flee either because of direct attacks or when ordered to do so by security forces, or because the persistent conflict prevented them from meeting their minimum subsistence needs.

Situation facing remaining IDPs

When the security conditions improved towards the end of the conflict, the government met its duty to initiate return and reintegration programmes for IDPs through the Programme for the Support of Resettlement (*Programa de Apoyo al Repoblamiento*, or PAR). However, this programme was interrupted after 2000 and no similar structure was put in place. As a result, only some 21,000 people benefited from the assistance.

Available IDP figures are based on general estimations rather than any registration process. Most of the IDPs that did not return or resettled after the conflict are currently located in the urban centres to which they came after being displaced, particularly Ayacucho, Lima, Junín, Ica, and Huánuco. This population was estimated at 150,000 by the Ministry of Women and Social Development (*Ministerio de la Mujer y Desarrollo Social*, or MIMDES) in May 2007. This represents between 20 and 25 per cent of the 650,000 people estimated to have been displaced by the conflict.

In response to the lack of clear benchmarks as to when displacement should be considered as ended, the Brookings-Bern *Framework for Durable Solutions for Internally Displaced Persons* suggests that IDPs should be given assistance and protection as long as they continue to have specific needs that are or have been caused by their being displaced (Brookings, June 2007, p.10). Without any significant support from the government, IDPs (most of them indigenous people) slowly merged into the wider urban poor population. Even though no data are available evaluating the situation of this

group either independently or in comparison with non-IDPs, there are indications that IDPs may face particular obstacles in the realisation of their rights. For example, the Ombudsman's Office has reported that many victims of the conflict, including IDPs, frequently complain that they are denied access to health benefits under the Integral Health Insurance (*Seguro Integral de Salud*) system (Defensoría el Pueblo, December 2007, p.264). Furthermore, IDPs' right to remedy and reparation, included in the national law on reparation, has still not been realised.

Steps towards justice for IDPs

As the armed conflict ended, the transition government of Valentín Paniagua created the CVR with an 18-month mandate to investigate human rights abuses between 1980 and 2000, find those responsible for them, and recommend actions to promote peace (Government of Peru, June 2001).

The CVR issued its final report in 2003. The report identified each party's responsibility for human rights violations, noted the failure of central decision makers to acknowledge the magnitude of the crisis, and formulated recommendations with a view to reconciliation. These included a recommendation to recognise all people forcibly displaced during the conflict as victims and therefore potentially eligible for compensation, regardless of their large numbers and the resulting financial implications. The CVR also recommended that individual and collective compensation programmes be developed in areas such as mental and physical health care, education, symbolic and eco-

nomic support, and provision of identification documents.

The report stated that the end of hostilities did not mark the end of the problem of displacement, but rather opened up opportunities for its resolution. In line with the descriptive nature of the definition of an internally displaced person contained in the United Nation's Guiding Principles on Internal Displacement (the Guiding Principles), it acknowledged that displacement had to be acknowledged as a situation rather than as a matter of formal registration.

Partly in response to the CVR's recommendations, Law 28.223 on Internal Displacement was passed in 2004, representing a positive step towards the protection of IDPs' rights and the prevention of future displacement. It provided a specific framework for the protection of IDPs and incorporated the Guiding Principles into national legislation. Law 28.233 charged MIMDES with the coordination of the response to IDPs, and with the creation of a national registry of displaced people.

However, Law 28.223 did not include a reparations component, even though the conflict had ended four years before the law was passed, and restitution of property and reparations were central issues for those remaining displaced. Instead, IDPs are entitled to reparations under a more general law on reparations adopted in July 2005. Law 28.592, which was also part of the normative framework put in place to implement the recommendations of the CVR from two years earlier, included IDPs in its broader definition of victims of violence.

Obstacles to reparations for IDPs

Eight years after the conflict ended, and five years after the CVR issued its recommendations, effective reparations for IDPs are still not a reality for a variety of reasons. Law 28.592 charged the High Level Multisectoral Commission (*Comisión Multisectorial de alto Nivel*, or CMAN) with leading and implementing the reparations programmes. However, the unreliable institutional, financial and logistical support which the CMAN has received since it was created has slowed the reparations process (ICTJ, Guillerot, 2008, p.6). While the collective reparations programme had, for 2007, the significant budget of 44 million Soles (over \$14 million), the approval of projects and the transfer of funds delayed the start of reparations programmes (ICTJ, Guillerot, 2008, p.18).

The IDP registration system (*Sistema de Registro y Acreditación de Desplazados Internos*, or RADI), and the general victims' register (*Registro Unico de Víctimas Individuales y Colectivas*, or RUV) have not yet been integrated. The former is supposed to be compiled by MIMDES according to the IDP law, while the latter is the responsibility of the Reparations Council (*Consejo de Reparaciones*, or CR) under the reparations law. MIMDES has to date registered only 5,000 people, around three per cent of the total 150,000 IDPs that did not return, and only 2,000 more than the 2007 figure of 3,000.

The two largest IDP platforms grouping various IDP organisations, the National Coordination of Displaced Persons and Communities in Reconstruction in Peru (*Coordinadora Nacional de Desplazados y Comunidades en Reconstrucción del*

Perú, or CONDECOREP) and the Association of Displaced Families in Lima (*Asociación de Familias Desplazadas en Lima*, or ASFADL), report that the registration process is cumbersome and places an unreasonable burden of proof on IDPs. Applicants must obtain a certificate from their community of origin, which is generally very hard to get. This contradicts the recommendations offered by the CVR, and the criterium contained within the Guiding Principles that displacement is a factual condition; when registration is needed for identification purposes, it should not be excessively complicated.

In any case, MIMDES had by November 2008 still not furnished to the CR the personal files of the 5,000 IDPs it had so far registered in the RADI. Therefore, the CR had not been able to forward the files belonging to these IDPs to CMAN for adjudication (Macher, November 2008).

Consequently, not one single IDP had yet received reparation despite the existence of a normative and administrative framework.

Furthermore, IDPs who are not part of an organised group have currently no access to reparations. The reparations laws envisage both individual and collective reparations, and the original plan set forth by the CMAN, the *Programación Multianual 2005-2006*, included both types. However, this plan was interrupted before it ever reached implementation, and replaced by a programme including only collective reparations (ICTJ, Guillerot, 2008, p.16). There is no solution to this in view, as the CMAN does not have a clear policy to regulate individual reparations (Macher, November 2008), despite the fact that the CR has already registered 17,000 individuals for other human rights violations.

It is also important to note that the existing programmes are seen by the government more as development and poverty eradication strategies rather than as purely reparatory measures (Macher, November 2008). Reparations programmes are seen as a deviation of funds from what are deemed more urgent social policies (ICTJ, Guillett, 2008, p.16). This is problematic, as the government has the legal obligation, domestic and international, to provide reparations to victims of violations. While regularisation of property titles and granting of credits to IDPs to acquire housing are included in the Reparations law, there is no specific mechanism for property restitution in place.

These and other problems may be due to the fact that IDPs have not had significant input into the reparations process. MIMDES reports that the voice of IDPs is taken into account in the design of projects to be undertaken by local governments (MIMDES, November 2008), but the IDP groups argue that participation has been limited and IDPs only rarely consulted (CONDECOREP, ASFADEL, November 2008).

Note: This is a summary of the IDMC's Internal Displacement profile. The full profile is available online [here](#).

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About the Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre, established in 1998 by the Norwegian Refugee Council, is the leading international body monitoring conflict-induced internal displacement worldwide.

Through its work, the Centre contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

At the request of the United Nations, the Geneva-based Centre runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries.

Based on its monitoring and data collection activities, the Centre advocates for durable solutions to the plight of the internally displaced in line with international standards.

The Internal Displacement Monitoring Centre also carries out training activities to enhance the capacity of local actors to respond to the needs of internally displaced people. In its work, the Centre cooperates with and provides support to local and national civil society initiatives.

For more information, visit the Internal Displacement Monitoring Centre website and the database at www.internal-displacement.org.

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