

REPARATIVE JUSTICE

Reparations in Peru

From Recommendations to Implementation

June 2013



Cover Image: Acomayo, Peru. An example of a collective reparations project that responds to a general obligation of the state, this project consisted of paving half of a block in the town center, near the health clinic. Photo: Cristián Correa/ICTJ

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About ICTJ

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit www.ictj.org

CONTENTS

1. Introduction	1
2. Internal Conflict and Transition to Democracy	3
3. Comprehensive Reparations Plan and Early Implementation of CVR Recommendations	5
4. Continued Implementation and Registry of Victims	9
5. Collective Reparations Program	11
Collective Reparations Since 2007	11
Community Participation and Implementation	12
6. Economic Reparations or Compensation	15
Definition of the Amount	16
Other Criteria for Prioritization of a Single Payment	17
Extension of the Registry	17
7. Political Changes and a Step Back in the Definition of Reparations	19
8. Definition and Implementation of Other Reparations Measures	21
Restitution of Civil and Political Rights	21
Education Programs	22
Physical and Mental Health Programs	23
Memorialization	24
Search for Remains	25
Housing	25
9. Seeking Reparations and Justice in the Courts	27
10. Conclusions	29
Bibliography	31
Table 1. Reparations Programs Established by Executive Decree 015-2006-JUS	7
Table 2. Registration of Individual Victims for Economic Reparations or Compensation	10

ACRONYMS

APRODEH	Asociación Pro Derechos Humanos (Association for Human Rights in Peru)
CENIA	Centro Andino de Investigaciones Antropológicas Forenses (Andean Centre for Forensic Anthropology Research)
CMAN	Comisión Multisectorial de Alto Nivel (High Level Multisectoral Commission)
CVR	Comisión de la Verdad y Reconciliación (Truth and Reconciliation Commission)
EPAF	Equipo Peruano de Antropología Forense (Peruvian Forensic Anthropology Team)
ICTJ	International Center for Transitional Justice
MIMDES	Ministerio de la Mujer y Desarrollo Social (Ministry of Women and Social Development)
MRTA	Movimiento Revolucionario Túpac Amaru (Túpac Amaru Revolutionary Movement)
PIR	Plan Integral de Reparaciones (Comprehensive Reparations Program)
RENIEC	Registro Nacional de Identificación y Estado Civil (National Registry of Identification and Civil Status)
SFT	Specialized Forensic Team
SIS	Seguro Integral de Salud (Integral Health Insurance)
UIT	Unidad Impositiva Tributaria (tax unit)
USD	United States Dollar

1. Introduction

The Peruvian government has taken significant steps to address the severe and massive human rights violations committed during the country's internal armed conflict from 1980 to 2000. It has implemented measures to strengthen democracy and human rights protections and prevent the recurrence of violence. However, efforts to hold perpetrators accountable and satisfy the right of victims to reparations have experienced less progress, with initial commitments hampered by insufficient political will from successive administrations.

In any context, implementing a comprehensive reparations program that is capable of responding to massive violations that have affected tens of thousands of people requires a strong political and budgetary commitment from the state. Such a commitment needs to be based on a shared idea of how the country sees its past and its obligations to victims. In the case of Peru, the Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación, or CVR) provided a compelling narrative, not only of the violence but of its causes, which included the historic marginalization of the indigenous and peasant communities, who were most affected by the conflict and continue to suffer its consequences.¹

So far, the government has only partially implemented the Comprehensive Reparations Plan (Plan Integral de Reparaciones, or PIR) recommended by the CVR.² Although many of its components were passed into law in 2005, the implementation of the plan has suffered from delays, changes in policies, and competing narratives. Victims must still continue to wait—even after having suffered a serious violation sometimes twenty or more years ago and having navigated the long victim-registration process to finally achieve some recognition as right bearers. This process is inconsistent with the message that a reparations policy should carry.

The government's inability to comply with legislated reparations demonstrates the difficulty that mainstream Peruvian society and most of its political elite have in acknowledging their share of responsibility for the violations committed during the conflict and in accepting the history of marginalization reported by the CVR. It also shows the low importance that the rest of Peruvian society places on the situation of indigenous people.

¹ Comisión de la Verdad y Reconciliación, *Informe Final* [CVR Final Report] (Lima, 2003), www.cverdad.org.pe/ifinal/index.php. According to the CVR, 75 percent of victims spoke Quechua or another indigenous tongue as their primary language, although native speakers represent only 16 percent of the general population (Ibid., vol. VIII, Conclusiones Generales, conclusion 6 at 316). The Commission also established that the violence was primary focused in the poorest regions, inhabited mostly by indigenous people. Ibid., vol. VIII, Conclusiones Generales [General Conclusions], conclusions 4 and 9, at 315–16.

² Ibid., vol. IX.

2. Internal Conflict and Transition to Democracy

The 20-year period of conflict and repression was the longest and bloodiest in Peruvian history, leaving approximately 69,280 people dead or disappeared.³ Characterized by torture, illegal detention, sexual violence, forced recruitment of children, massive displacement, and a climate of terror and fear, the conflict has had serious psychological, sociopolitical, and socioeconomic consequences for victims and whole regions of the country.⁴ The CVR established that the conflict's immediate cause was the decision by the Maoist Communist party of Peru, commonly known as the Shining Path (Sendero Luminoso), to launch an armed struggle against the state in 1980, contrary to the will of most Peruvians. Inspired by an ideology that advocated extreme violence and even cruelty toward those who disagreed with its radical positions, the Shining Path tried to exploit the historic marginalization that affected most inhabitants of the Andean and Amazon provinces.

According to the CVR, the Shining Path was responsible for 54 percent of reported deaths and disappearances⁵ and violently punished and intimidated those whom it sought to control.⁶ The violence intensified in 1984 with the appearance of another subversive group, the Túpac Amaru Revolutionary Movement (Movimiento Revolucionario Túpac Amaru, or MRTA), which assassinated and kidnapped opponents and others whom it perceived as a threat.⁷ In response, the government adopted a severe counterinsurgency strategy that eroded the country's democratic framework, resulting in large-scale human rights violations.

In the 1980s, a state of emergency was declared in several provinces of the country, and the Peruvian armed forces implemented an indiscriminate policy of repression against populations it suspected of belonging to the Shining Path.⁸ These violations not only were the result of individual excesses, but in some cases represented generalized and systematic practices that constituted crimes against humanity and transgressions of international humanitarian law.⁹ At that time, no investigations or prosecutions of these violations were carried out,¹⁰ and violence spread across the country.

Alberto Fujimori's election to the presidency in 1990 ushered in a period of authoritarian rule, marked by subversion of the rule of law, widespread corruption, impunity, and the creation of death squads. Two

3 Ibid., Annex 2 at 13.

4 Ibid., vol. VI.

5 The CVR estimated that 46 percent of victims were affected by actions by the Shining Path; 30 percent by state agents; and 24 percent by other actors, including self-defense groups, paramilitary groups (which were usually supported or armed by the state security forces), MRTA, unidentified actors, or armed confrontation. Ibid., Annex 2 at 13.

6 Ibid., vol. VIII, conclusions 13 and 14 at 317.

7 According to the CVR, MRTA was responsible for 1.5 percent of the total number of fatalities (vol. VIII, conclusion 34, 320).

8 Ibid., vol. VIII, conclusion 54 at 323.

9 Ibid., vol. VIII, conclusion 55 at 323. Torture and the commission of sexual violence and rape, for example, were carried out on a massive scale by the armed forces and the vigilante groups it supported. Seventy-five percent of cases of torture received by the CVR and 83 percent of cases of rape were attributed to them (vol. VIII, 64–67).

10 Ibid., vol. VIII, conclusions 123 to 131 at 336–37.

laws passed in 1995 granted amnesty to military, police, and civilian personnel accused or convicted of human rights violations, and barred courts from questioning the constitutionality of the impunity measure.¹¹ Popular support for Fujimori and his 1992 coup provides a disturbing window into the complex and contradictory dynamics of the conflict.¹²

The exposure of an extensive corruption network at the highest levels of government and the ensuing outcry from civil society led to Fujimori's self-imposed exile to Japan in November 2000.¹³ The interim government, led by President Valentín Paniagua, implemented democratic reforms and began the process of dismantling the authoritarian structure that had come to dominate Peru. It also initiated judicial and congressional investigations into both corruption and human rights abuses.¹⁴ Under the Paniagua administration, the independence of the judiciary was recovered, the courts honored the 2001 judgment by the Inter-American Court of Human Rights invalidating the 1995 amnesty laws,¹⁵ new elections were held, and a truth commission was established.

The truth commission was charged with investigating human rights violations and crimes committed by terrorist organizations and state agents between May 1980 and November 2000. Its mandate spanned the regimes of former presidents Fernando Belaúnde, Alan García, and Fujimori, and covered the conduct of the Shining Path, MRTA, and other government agents. Additionally, the commission was mandated to determine the conditions that gave rise to the violence, contribute to judicial investigations, draft proposals for reparations, and recommend reforms.

In late July 2001, soon after being sworn into office, President Alejandro Toledo ratified the creation of the Truth and Reconciliation Commission. Delivering its final report to the government on August 28, 2003,¹⁶ the commission not only identified thousands of victims and provided estimates of the overall scope of the violence, but also made substantial recommendations for addressing the legacy of those violations. These recommendations were the product of a broad process of consultation, which included technical assistance from ICTJ, offering parameters based on comparative experiences.¹⁷

11 Laws 26479 and 26492 of 1995.

12 *Ibid.*, vol. VIII, conclusions 98 to 100 at 331–32.

13 *Ibid.*, vol. VIII, conclusions 103 and 104 at 332–33.

14 Judicial investigations stripped away Fujimori's immunity, opening him to prosecution on both counts. This led to his extradition and later conviction (Corte Suprema de Justicia, Sala Penal Transitoria, judgments of April 8, 2009, and July 20, 2009). For congressional investigations into corruption, see www.congreso.gob.pe/historico/ciccor/index1.html.

15 *Chumbipuma Aguirre et al. v. Peru (Barrios Altos Case)*, Inter-Am. Ct. H. R. Judgment on Merits of March 14, 2001, Series C No. 75. www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf.

16 Its 18-month mandate, originally scheduled to end in February 2003, was extended to mid-July 2003 and ultimately August 31, 2003. Decreto Supremo N°. 065-2001-PCM; Decreto Supremo N°. 101-2001-PCM; Decreto Supremo N°. 063-2002-PCM, Decreto Supremo N°. 063-2003-PCM.

17 ICTJ and APRODEH, "Design Parameters for a Reparations Program in Peru," 2002, www.ictj.org/sites/default/files/ICTJ-Peru-Reparations-Parameters-2002-English.pdf

3. Comprehensive Reparations Plan and Early Implementation of CVR Recommendations

The CVR's recommendations for victim reparations included a broad plan comprising multiple programs that, implemented together, were aimed at bringing reconciliation to the country and addressing deep socioeconomic disparities in Peru. As such, reparations focused not only on providing redress for crimes suffered individually by many people (for example, violations of civil and political rights) but also on trying to equalize disparities in terms of economic, social, and cultural rights and provide conditions of full citizenship to inhabitants of historically marginalized communities.

When Toledo received the CVR report, he expressed a commitment to implement its recommendations and later delivered an apology on behalf of the state.¹⁸ The government, in a more generalized response, approved a National Human Rights Plan as a long-term commitment to establishing human rights as a core guiding principle underlying state activity.¹⁹

Preliminary steps were taken to begin implementing CVR recommendations. In early 2004, Toledo established the High Level Multisectoral Commission (Comisión Multisectorial de Alto Nivel, or CMAN) responsible for following up on state actions and policies in the areas of peace, collective reparations, and national reconciliation.²⁰ This body was mandated to design, coordinate, and supervise implementation of the reparations policy across ministries and service sectors.²¹

During its first two years, CMAN's impact was limited. Charged with only a supervisory role, CMAN was unable to provide the type of coordinated and centralized administrative focus necessary for implementing reparations across government agencies. Further, funding was inadequate, with no clear allocation of funds for its various programs. No medium- or long-term financing strategy was ever implemented, as recommended by the CVR.²²

In the same period, two important laws with reparative content were passed: one created a humanitarian assistance program for displaced persons, including a registry;²³ the other created the legal category

18 Toledo Speech, November 22, 2003.

19 Decreto Supremo N° 017-2005-JUS (December 11, 2005).

20 Created by Decreto Supremo N° 003-2004-JUS.

21 The composition of CMAN and the ministry under which it functions changed overtime. Under the minister president of the cabinet, it shifted in 2005 to the Ministry of Justice. In 2006 it reverted back to the minister president of the cabinet, and in 2012 it returned yet again to the Ministry of Justice. These changes were precipitated by shifts in policy put in place as new administrations took office.

22 Julie Guillerot and Lisa Magarrell, ICTJ. "Reparaciones en la transición peruana: Memorias de un proceso inacabado," 2006, 174–75.

23 Law 28,223 of 2004.

of “absence by reason of disappearance,”²⁴ inspired by an Argentinean law, which helped to establish the civil law status of victims and their relatives without declaring victims to be presumed dead. The registry for displaced persons was assigned to the Ministry of Women and Social Development (Ministerio de la Mujer y Poblaciones Vulnerables, or MIMDES) and the registry of the disappeared to the Ombudsman’s Office (Defensoría del Pueblo).

A fuller version of the Comprehensive Reparations Plan was approved in July 2005, when most of the proposed plan was passed into law.²⁵ It was later detailed in an executive decree issued in 2006.²⁶ Comprising six programs,²⁷ the plan defined beneficiaries to include victims of displacement, arbitrary imprisonment, torture, rape,²⁸ and kidnapping, as well as members of the military, the police, and self-defense committees²⁹ injured as a result of the conflict. Relatives of the disappeared and killed were also eligible, as were some indirect victims: children born from rape, children conscripted by self-defense committees, those unfairly indicted under terrorism or treason charges, and those who became undocumented as the result of the conflict.

The law assigned the coordination of the policy to CMAN and created a Reparations Council tasked with building a unified registry of all categories of victims, subdivided into two lists: *individual beneficiaries* and *collective beneficiaries*. The law recognized as *collective beneficiaries* peasant and indigenous communities and other settlements affected by the violence as well as organized groups of displaced people who had not returned to their places of origin. This categorization helped to remedy earlier institutional deficiencies by providing a more coordinated approach to reparations efforts and combining once-multiple registries so that unregistered victims could be identified and included.

However, the law contained a provision not part of CVR recommendations that excluded “members of subversive organizations” from being defined as victims and receiving benefits, even if they had been tortured or suffered other serious crimes.³⁰ Such exclusions have taken different forms in other contexts.³¹ This exclusion, similar to an exception clause in Colombia’s reparations laws,³² poses a serious challenge to the assumption of human rights as inalienable, a tenet that should inspire reparations programs. The public’s negative view of anyone who was associated with the Shining Path or the MRTA makes it difficult for most people to accept that any such members who were tortured or disappeared should be recognized as victims of human rights violations and entitled to reparation.

So far, there has not been a legal discussion on how to make this exclusion compatible with the obligation to provide effective remedies to victims without discrimination. This is in part because the Reparations Council has not clearly defined how to interpret the exclusion. A definition by the council could have led to a constitutional challenge of the exclusion norm. By postponing the definition, the council has left the issue to the gov-

24 Law 28,413 of 2005.

25 Law 28,592 of 2005.

26 Decreto 015-2006-JUS, later modified by Decreto 003-2008 JUS.

27 The law left room for the creation of other programs, including economic reparations or compensation. See section 7 below.

28 A law approved on June 4, 2012, and sent to the president for promulgation on July 24, 2012, added victims of sexual violence, including sexual slavery, forced prostitution, and forced abortion. See *The Guardian*, “Peru Widens Civil War Compensation for Victims of Sexual Violence,” June 28, 2012, www.guardian.co.uk/global-development/2012/jun/28/peru-civil-war-victims-sexual-violence

29 Peasant patrols armed by the army in rural areas to combat subversive groups. These community-level vigilante groups were armed and organized by the military during the conflict to fight the Shining Path. The self-defense committees had a precedent in the *rondas campesinas*, a traditional method of self-defense used by peasant communities.

30 However, the law preserved their right to seek judicial reparations (Article 4 Law 28,592 of 2005). Another law approved in December 2012 suspends granting reparations measures under PIR to those who are charged with crimes of terrorism or terrorism apology until the charges are cleared (Law 19,979 of 2012).

31 An opposite exclusion exists in the various laws establishing reparations for several categories of victims of the dictatorship in Argentina (Laws 24,043, 24,441, and 25,914) and in Brazil (Laws 9,140 and 10,559), as they refer only to certain types of human rights violations committed by state agents. Legislation for victims in the former Yugoslavia suffers from another form of exclusion, referring only to those who suffered violations committed by enemy forces. No such exclusions limit reparations for victims in South Africa or Chile.

32 Article 3 of Law 1,448 of 2011 of Colombia, following a broad definition of victim, inserts a similar exclusion.

ernment. The only debate has been on if the exclusion requires a judicial conviction that establishes membership in a subversive group or if information from local authorities or security services could be relied on. Still, political pressure compelled the council to publicly declare in September 2012 that it does not “register terrorists.”³³

The situation worsened in January 2013 with the passage of a new law expanding the definition of the exclusion to those charged with having committed crimes of terrorism or terrorism apology.³⁴ No judicial action has challenged the constitutionality or the discriminatory nature of these provisions.

Table 1: Reparations Programs Established by Executive Decree 015-2006-JUS

PROGRAM	SERVICES
Restitution of Civil Rights	Measures include declarations of absence due to enforced disappearance to allow the relatives of the disappeared to exercise their civil and inheritance rights; restitution of civil rights to those unfairly indicted or prosecuted for terrorism or treason; elimination of criminal records of victims; provision of civil records to those who became undocumented; regularization of property and inheritance rights of victims; and the waiver of fees and taxes imposed when initiating actions required to implement reparations, to be established by law in each case.
Education	Directed at individuals whose schooling was interrupted as a result of violence, children of victims, and those forcibly recruited by self-defense committees,* these measures include adult education and literacy programs; access to primary education; access to vocational training; waivers of tuition and certificate and exam fees; student housing and meal stipends for qualified victims; and implementation of a full-scholarship program, covering tuition, books, transportation, and food for university and technical studies where victims could apply based on regional quotas to support students coming from the most affected areas. * Some of these provisions were later modified by Decree 047-2011-PCM.
Health Care	Directed at victims suffering from physical or mental ailments resulting from the violence, these measures include delivering comprehensive health care services through the public network, with a priority on serving children, women, and the elderly; building comprehensive community health care programs, including rebuilding community support networks; recovery of historical memory about the conflict; and creating community programs for emotional support. These community programs also include clinical services according to the needs and resources of each area in the country as well as establishing education and outreach programs for promoting health and prevention and improving the health care network infrastructure.
Collective Reparations	Directed at assisting families, peasant communities, indigenous communities, settlements, and other communal organizations affected by the conflict, as well as at displaced families from conflict-affected communities that have resettled elsewhere, these measures—aimed at strengthening the community—include assistance for regularizing community property; human rights and conflict resolution training for communities and their leadership; communal participatory diagnosis for conflict prevention, peace education and promotion of a culture of peace; building of economic, productive, and commercial infrastructure; training to improve the capacity of community members to access economic opportunities; support for the return and resettlement of people displaced due to the conflict; rebuilding and improvement of the infrastructure of basic services, communal properties, and others to be identified by the communities.

33 See Reparations Council, Notice, “Consejo de Reparaciones aclara que no inscribe a terroristas en el Registro Único de Víctimas” (Reparations Council clarifies it does not enroll terrorists on the Registry of Victims), September 2012, www.ruv.gob.pe/noticias_112.html

34 Law 29,979, single amending provision modifying article 4 of Law 28,592.

Symbolic Reparations	<p>Measures provide for public gestures, including apologies from representatives of the state, letters to victims, and public ceremonies to promote massive outreach of the CVR report. These actions must acknowledge the different types of victims. It also includes reconciliation gestures such as renaming symbols or places associated with violations; closing or reconditioning jails that symbolize human rights violations; and naming streets, squares, bridges, roads, districts, or regions after “heroes of peace.” These symbolic measures should be implemented in consultation with victims’ groups. Other gestures include the government declaration of August 28, the date on which the CVR report was delivered to the president, as the Day in Tribute to All Victims of Violence.</p>
Promotion and Access to Housing*	<p>These measures are directed at individual or collective victims whose homes were destroyed or who experienced severe damage to their homes as a direct result of the violence. It creates a special program for building and assigning housing, to be implemented over time and in a decentralized way. This program provides support for reconstruction of rural housing; support for the regulation of property rights; assistance in the resettlement of displaced persons and their preferential inclusion in public housing programs; and technical and financial assistance to displaced people living in provisional or precarious dwellings for self-construction of housing.</p> <p>* This program was not included in the recommendations made by the CVR but was included in the law.</p>
Economic Reparations or Compensation	<p>Regulated by Decree Decree 015-2006-JUS*, this program includes as beneficiaries the following types of victims: relatives of victims of murder, extrajudicial execution, and disappearance; those victims who are partially or totally disabled according to the evaluation made by the National Commission on Disability; and victims of rape. The CVR had recommended a lump sum, equivalent to USD 10,000, to be distributed to families in a proportion of two-fifths to the widows or permanent partners, two-fifths to the children, and one-fifth to the parents of the nonsurviving victims. This amount was based on the maximum amount received by members of self-defense committees as part of their demobilization program. For victims over the age of 50, a pension equivalent to one-half of the minimum salary was recommended.</p> <p>* The law creating the PIR did not explicitly reference this type of reparation,* but did empower CMAN to authorize other programs. This shows the reluctance of congress to expressly create a compensation program, which was an important demand of victims’ and human rights organizations and was included in the CVR’s recommendations. The Toledo administration did not want to commit itself to this program either but accepted it on the condition of establishing certainty about the number of victims. That is why the executive decree regulating the PIR Law did not define the modality and amount, but established that they would be defined once the registration process was complete and that the process should be completed within two years of the establishment of the Reparations Council.</p>

4. Continued Implementation and Registry of Victims

The election of Alan García as president in June 2006 generated apprehension about the continuity of the country's human rights agenda and the implementation of CVR recommendations, given his tenure as president during the conflict, from 1985 to 1990. Elections also brought to office a number of legislators loyal to Fujimori or who opposed efforts to establish accountability for human rights violations.

Overall, the García administration's record is mixed. Although the government's emphasis on human rights and implementing CVR recommendations diminished, the administration's policies included the registration of victims, collective reparations, and more controversially, first steps toward compensation. These policies, though led by the government, were induced in part by a strong coalition of civil society organizations, victims' groups, and independent state institutions that pressured the government to meet its commitments by providing a material form of justice to victims.

The Reparations Council, established in October 2006, implemented an interesting strategy for registering victims. It defined a process for reviewing and validating previous registries (of the disappeared, managed by the Ombudsman's Office; the displaced, managed by MIMDES; of military and police personnel, etc.) and conducted field work to reach victims not previously registered by the CVR or other registries. It reached agreements with churches, municipalities, regional governments, civil society organizations, and other institutions to open offices in provinces that were most affected by the conflict. The council also initiated an outreach process that included workshops and public gatherings with victims' organizations and community and indigenous leaders.

One of the main challenges of registering victims of massive violations is how to balance the need for guaranteeing the veracity of cases with the need for accessibility, especially when violations or even familial relationships are not documented. However, strict judicial standards of evidence are not necessary in a massive administrative program. Furthermore, they can represent a significant obstacle to assessing crimes that happened long ago and can lead to revictimization of some survivors. The Reparations Council addressed this tension by adopting flexible guidelines for evaluating different types of violations eligible for reparations.³⁵ The guidelines are aimed at obtaining information that establishes reasonable grounds to believe that a person was a victim. Moreover, the council recognized that in most cases people living in rural areas with low literacy or little access to public services would face difficulty in obtaining documents. In such cases the testimony of community leaders or witnesses has been accepted.

35 For internal rules governing the registry, see Reparations Council. "Registry of Victims: Legal Framework," www.ruv.gob.pe/normas.html

By the end of 2012, the council had registered 160,429 individual victims (not all of whom qualify for compensation) and 7,678 communities, including 32 organizations of displaced people entitled to collective reparations.³⁶ The registration continues, but figures show that 96 percent of individual applications and 91 percent of community applications have been evaluated, resulting in their inclusion in the registry.

Table 2: Registration of Individual Victims for Economic Reparations or Compensation³⁷

TYPE OF CRIME	DIRECT VICTIMS	RELATIVES OF VICTIMS	TOTAL BENEFICIARIES
Enforced disappearance	7,177	15,672	15,672
Summary execution or murder	22,071	58,075	58,075
Disability due to injury	734	-	734
Rape	2,591	-	2,591
Total	32,573		77,072

³⁶ Ministerio de Justicia y Derechos Humanos, "Plan Operativo Institucional del Ministerio de Justicia y Derechos Humanos - Actualizado - 2012" (Operative Plan for the Ministry of Justice for fiscal year 2012), approved by Ministerial Resolution 0287-2012-JUS, <http://sistemas3.minjus.gob.pe/sites/default/files/normatividad/RMo287-2012-JUS.pdf>

³⁷ Information provided by Susana Cori, Executive Secretary of the Reparations Council, on May 6, 2013, based on figures from December 31, 2012.

5. Collective Reparations Program

The CVR recommended a collective reparations program be established to help rebuild and consolidate the collective institutions of communities and settlements that had lost their social and physical infrastructure and suffered increased poverty and social and economic exclusion as a consequence of two decades of violence.³⁸

Prioritizing collective reparations has been a way of responding to an important dimension of the conflict: the historic marginalization of populations in the Andes and the Amazon, particularly rural communities. In these rural and indigenous regions—where communal relations are essential for establishing identity and sustaining the high degree of collaboration needed in a local economy—crimes affected not only individuals but communities themselves. Communal ties were compromised or broken, as violence affected people’s ability to trust members of their own community and people in neighboring towns. As many individuals sought to collaborate with different warring factions as a survival strategy, organizations and assemblies began to be seen as dangerous. Distrust and resentment also affected individual and community relations with the state, adding to their historic marginalization.³⁹ Implementing collective reparations was thus welcomed by communities, and the program was seen by the government as a way to deliver a message to communities about a changed relationship with the state.⁴⁰

Collective Reparations Since 2007

The García administration decided in June 2007 to start implementing collective reparations without waiting for the finalization of the victims’ registry. As justification, the government argued that the state could not execute individual reparations until it could identify victims and their beneficiaries. Because the Reparations Council had just begun work on the victims’ registry, the government announced that once victims were registered, CMAN would coordinate the implementation of all programs in order to demonstrate a commitment to the concept of comprehensive reparations established by the Reparations Law. In the meantime, the government surmised that collective reparations could be implemented based on the Peace Censuses, which were preliminary registries of communities affected by violence collected by MIMDES before the creation of the Reparations Council.

38 CVR Final Report, *supra* note 2, vol. VIII, chapters 2 and 3, about the sociopolitical and socioeconomic consequences of the conflict, as well as the recommendations for the collective reparations program, vol. IX, chapter 2, 138–39.

39 *Ibid.* at 151–62. For effects of the conflict in community life, see also Kimberly Theidon, *Intimate enemies: Violence and reconciliation in Peru* (Philadelphia: University of Pennsylvania Press, 2012), and ICTJ, *A nuestra comunidad, una mañana entraron... Historias de violencia política en comunidades del Perú* (New York: ICTJ, 2011).

40 As expressed to the author, by Jesús Aliaga, then CMAN executive secretary, in a meeting held in July 2007 and reaffirmed by him during the Conference on the Concept and Challenges of Collective Reparations, in Rabat, Morocco, February 12–14, 2009. ICTJ and CCDH, “The Rabat Report,” at 40, <http://ictj.org/publication/rabat-report-concept-and-challenges-collective-reparations>

The collective reparations program implemented from 2007 to 2011 focused on small infrastructure projects in highly affected communities “to contribute to the reconstruction of social and institutional capital, material and economic productivity of the families and rural and urban communities affected by the process of violence.”⁴¹ In 2007, CMAN selected 440 rural settlements, native communities, and other populated rural centers affected by the violence to receive investment projects of up to 100,000 soles (approximately USD 37,000) for each community.⁴² Other communities were prioritized in subsequent years at a similar pace, with the exception of 2010 and 2011, when the number dropped to a third of those of previous years. Up to 2011, 165 million soles (approximately USD 63 million) were allocated for 1,672 projects, implemented in 1,649 communities.⁴³

Under the Humala administration (2011 to present), the pace of reparations has slowed down. In April 2012, it was announced that 23 communities would receive collective reparations,⁴⁴ in addition to five communities that received funding for projects during ceremonies attended by the president.⁴⁵ The announcements were made official later, when in August and October 2012, these communities and an additional 84 (totaling 107) were added for implementation in 2012—mostly for livestock and irrigation projects.⁴⁶ The 2013 budget allocates 39 million soles for reparations, which includes 19 million soles for collective reparations. This should allow the government to reach its goal of implementing projects in 190 communities in 2013.⁴⁷

In total, 1,946 communities will have benefited by the end of 2013, which is a significant number; however, it is far below than the 5,697 communities registered by the Reparations Council as having been affected by the conflict.⁴⁸

Community Participation and Implementation

Community participation in defining the projects has been a salient aspect of the program, making it possible for implementation to be carried out relatively quickly. Each selected community elects a management committee to define the content of the project, with projects focusing on either:

1. The recovery and reconstruction of the economic, productive, and commercial infrastructure, and the development of human capacities and access to economic opportunities; or
2. The recovery and expansion of basic services in education, health, sanitation, rural electrification, recovery of community heritage, and other projects in which the collective has a stake.

41 CMAN Executive Secretary, “Lineamientos generales del programa de reparaciones colectivas,” Lima, September 2009, on file with the author. The document was published on the CMAN website, but is no longer available. See also ICTJ and APRODEH, “¿Cuánto se ha reparado en nuestras comunidades? Avances, percepciones y recomendaciones sobre reparaciones colectivas en Perú (2007–2011),” 2011, 8–9, <http://ictj.org/sites/default/files/ICTJ-Peru-Reparaciones-2011-Espa%C3%B1ol.pdf>.

42 Funding for this program was partly supported by mining companies through the “Mining Program of Solidarity with the People.” Mining companies had agreed to this program of voluntary contributions in exchange for favorable tax conditions, regulated by Decreto Ejecutivo 071-2008-EM. Their contributions are not that significant, however; in 2008, contributions represented 13.6 percent of the total budget of the collective reparations program. Defensoría del Pueblo, Informe Defensorial N° 139 (Lima, 2008), 53–54.

43 U.N. Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 [Universal Periodic Review]: Peru,” August 7, 2012, ¶¶ 57.

44 See Ministerio de Justicia y Derechos Humanos, “Gobierno transferirá S/. 100,000 a 23 comunidades campesinas afectadas por la violencia política,” June 10, 2012, www.minjus.gob.pe/actividades-institucionales-y-eventos/gobierno-transferira-5-100000-a-23-comunidades-campesinas-afectadas-por-la-violencia-politica/

45 Ministerio de Justicia y Derechos Humanos, “Gobierno reconoce a víctimas de violencia en Lucanamarca entregando reparaciones por S/. 500 mil,” April 12, 2012, <http://sistemas3.minjus.gob.pe/noticias/12-04-2012/gobierno-reconoce-victimas-de-violencia-en-lucanamarca-entregando-reparaciones>

46 Ministerial resolutions 0202-2012-JUS, of August 22, 2012, and 0246-2012-JUS of October 17, 2012.

47 Ministry of Justice announcement, *Perú* 21, November 28, 2012.

48 The registry included five categories of victims, according to the degree of harm they suffered. The reparations effort has focused on the most serious categories, which, according to the registry, total 2,537 communities. See Reparations Council, “Miembros del Consejo de Reparaciones son ratificados por el Ministro de Justicia y Derechos Humanos” [press release], April 27, 2012, “www.ruv.gob.pe/noticias_109.html”

Most projects are aimed at responding to the primary economic and social needs of the communities, such as helping local economies or improving access to basic services, like health care or education.⁴⁹ Communities have focused on building new irrigation systems, community halls, additional schoolrooms, drains, or roads and livestock activities. However, the participation of women has been notably low. Of those interviewed as part of a joint monitoring project by Asociación Pro Derechos Humanos and ICTJ, 62 percent of men took part in meetings, while only 28 percent of women did. The result is that mostly men have made decisions on the allocation of project funding.⁵⁰

Selected communities have found it difficult to access technical support to make informed decisions regarding which project to implement with assigned funding and how to fulfill implementation requirements (i.e., approval of the project, design and development of the plan, conducting a feasibility study, etc.). The mandatory administrative process has been complicated for local governments, which are responsible for implementing plans with funds from the central government. Another challenge has been that most communities do not have access to reliable information and could not receive answers to their questions regarding the administrative process. This information gap has led in some cases to manipulation at the local level, with government officials trying to allocate funding for projects that did not primarily focus on the community's interests.⁵¹ Further, a small, centralized team in Lima executed the program without working with regional governments to coordinate projects with regional development policies, which has reduced their ability to have a more significant impact in the life and economy of communities.

Another problem faced by the program has been in ensuring that projects are perceived as constituting reparations and not development projects. While collective reparations projects are important for communities, in many cases they are activities that the government is already obligated to provide to citizens and communities as components of development, and not reparations policies specifically. This is especially true in regards to building or improving roads, schools, and health clinics.



Topa, Huánuco, Peru, January 2010. A workshop on recovering the historical memory of the community, part of a two-year project, organized by ICTJ, in coalition with several Peruvian NGOs, to strengthen communities' capacity to participate in defining the content of collective reparations. Cristián Correa/ICTJ

49 ICTJ and APRODEH. *supra* note 41, at 13.

50 *Ibid.* at 25.

51 *Ibid.* at 12. The Office of the Ombudsman found this to be one of the most serious problems in implementing the program during the first three years of operation. Defensoría del Pueblo, "Informe Defensorial N° 128" and "Informe Defensorial N° 139," as well as "Decimotercer Informe Anual al Congreso de la República," which covers 2009. www.defensoria.gob.pe/informes-publicaciones.php.

The importance of adequate and appropriate messaging and symbolism within this process has not received sufficient attention. For instance, it took until December 2009 before an activity to help the community collect historical memory was introduced. Even then, ceremonies organized at the start of the project did not go far enough in providing the necessary reparative component, as 58 percent of those surveyed did not identify community reparations projects implemented in their communities as reparations.⁵² Victims' confusion about project aims, whether reparative or developmental, is troubling. For example, national authorities who led some ceremonies took a limited approach to what reparations were for, emphasizing that they repaired the harm caused by terrorism, while remaining silent about the state's role.⁵³

Nevertheless, the joint monitoring project confirmed that projects were well received by communities. Forty-five percent of inhabitants of communities who were interviewed had a positive opinion of the projects and considered them as concrete benefits to communities that have little resources and precarious infrastructure. However, many remain dissatisfied because other comprehensive reparations measures remain unimplemented.⁵⁴ Only 6.5 percent of interviewees answered that the projects met their reparative needs, contrasted with 29 percent who did not know that the projects were a form of reparation, and with 47 percent who thought that they were not enough to repair the harm suffered.⁵⁵ A meaningful collective reparations policy should embody and ultimately reflect the community's view of what types and forms of reparative measures best address the consequences of the harm suffered.⁵⁶

52 ICTJ and APRODEH, *supra* note 41, at 35.

53 That is how President Humala portrayed reparations during a recent ceremony at Lucanamarca, a community that suffered a massacre by the Shining Path. See *La República*, "Humala en Lucanamarca: No hay mejor venganza contra el terror que lograr el éxito," April 12, 2012, www.larepublica.pe/12-04-2012/humala-en-lucanamarca-no-hay-mejor-venganza-contra-el-terror-que-lograr-el-exito. The speech of the minister of justice at the Human Rights Committee had the same emphasis about repairing victims of terrorism without acknowledging state responsibility: www.minjus.gob.pe/actualidad-juridica/discurso-del-ministro-de-justicia-juan-jimenez-ante-comite-de-las-naciones-unidas/. It is worth noting that senior authorities, like the ministers or the case of President Humala above, chose to attend reparations ceremonies in communities affected by the Shining Path, not in communities affected by massacres committed by armed forces.

54 This is consistent with the demand for basic services, expressed by members of communities. See ICTJ and APRODEH, *supra* note 41, at 39.

55 Among the reasons expressed to support this last opinion were that the projects were not enough to cover all of our needs (17 percent), do not compensate for all of our suffering (11 percent), or do not return to us those who died (7 percent). When asked about how to improve the impact of the projects, most respondents sought improvements in basic services to the community (28 percent), collective income-generating projects (28 percent), and infrastructure for supporting community activities (17 percent). There were fewer demands for individual reparations (14 percent). ICTJ and APRODEH, *supra* note 41, at 38 and 39.

56 This perspective is contained in PIR regulations, as it includes, among the guiding approaches to be followed during its implementation, that "all acts of reparations should be directed to recognizing the way how victims were affected during the process of violence." (Article 7(h) of Decreto 015-2006-JUS).

6. Economic Reparations or Compensation

In July 2010 the García administration announced that it would start implementing economic reparations or compensation.⁵⁷ A commission of government officials was created to start working on its definition. Half of the reparations budget for 2011 was reserved for this purpose (USD 7.4 million),⁵⁸ with the rest assigned to the fifth year of implementation of the collective reparations program. CMAN rejected the option of making partial payments to victims (whether in the form of pensions or a lump-sum format), positing that each individual payment could be seen as insufficient, and thus dilute the reparatory effect.

Defining the amounts and modalities for paying compensation for massive crimes is always a difficult task. Because it is impossible to use the notion of *restitutio in integrum* (restoration or restitution to the previous condition), the basis of the legal understanding of reparations,⁵⁹ establishing criteria that are fair and feasible is challenging on such a massive scale.

Debates in Peru have focused on defining the amount for a lump-sum payment, prioritizing among the large number of victims to overcome budgetary and implementation challenges,⁶⁰ and setting a deadline for closing victims registries. However, the process of defining this program lacked the sensitivity needed to reach out to victims. The budget assigned for 2011 apparently was the decisive factor in defining the program. Once this was accomplished, meetings were held with victims' organizations, though the government showed an inability to listen and engage with victims.⁶¹

Ultimately, the program was unilaterally defined by Decree 051-2011-PCM as follows:

57 See La Coordinadora Nacional de Derechos Humanos, "Ejecutivo crea comisión multisectorial para viabilizar reparaciones a víctimas de la violencia," July 19, 2010, <http://derechoshumanos.pe/2010/07/page/2/>. The commission was created by executive resolution 171-2010-PCM, www.gacetajuridica.com.pe/servicios/normaspdf_2010/Julio/18-07-2010.pdf

58 See Andida, "Gobierno destina S/. 20 millones para reparaciones individuales en el 2011," July 18, 2012, www.andina.com.pe/Espanol/Noticia.aspx?id=1eH4iE+Dd8E=

59 For further discussion of the problems of using *restitutio in integrum* and a proposal for an alternative notion, see Cristián Correa, "Making Concrete a Message of Inclusion: Reparations for Victims of Massive Crimes" in *Victimological Approaches to International Crimes: Africa*, eds. R. Letschert, R. Haveman, A. M. Brouwer, A. M., and A. Pemberton, (Cambridge/Antwerp/Portland: Intersentia, 2011) 185-233.

60 Countries that have paid compensation to significant numbers of victims have used various mechanisms to finance their programs' outlays. In Argentina, compensation was paid in the form of public debt bonds that matured after 16 years; victims could sell them immediately at a discounted price in the exchange market. The Truth and Reconciliation Commission of South Africa recommended distributing payments in 12 installments to be paid every six months over six years, but the government later implemented a one-time payment of a lower total amount. In Chile, compensation took the form of a pension; for victims of killing and enforced disappearances, pensions were supplemented by an initial payment equivalent to a full year of the pension.

61 The consultation process was criticized as inadequate by the Defensoría del Pueblo and the Reparations Council, in addition to victims' organizations. See Defensoría del Pueblo, "Defensoría del Pueblo observa con preocupación norma que aprueba pago de reparaciones económicas a víctimas de la violencia," Nota de Prensa N°191/2011/OCII/DP, June 21, 2011, www.defensoria.gob.pe/modules/Downloads/prensa/notas/2011/NP-191-2011.pdf. See also *La Mula*, "Pronunciamiento de CONAVIP - La Coordinadora Nacional de Organizaciones de Víctimas y Afectador por la Violencia Política del Perú," March 27, 2011, <http://lamula.pe/2011/04/02/reparaciones-dignas-si-limosnas-no/jairorivas/>

- a) Paying a lump sum of 10,000 soles (USD 3,700) per victim (without a clear explanation of how it had reached that amount);
- b) Prioritizing the elderly as an equivalent of vulnerability;⁶² and
- c) Closing the registry of beneficiaries of compensation on December 31, 2011.

The timing of the decree undermined victims' perceptions. The executive decree was passed just days after Ollanta Humala was elected president and only five weeks before he was inaugurated. The García administration had wanted the definition of compensation to be part of its legacy, so it rushed the definition, despite the poor results of its outreach process.

The lack of clarity on how the program would be implemented demonstrates the improvised, short-term vision for the program. The government also rushed into implementation mode and paid amounts to 1,021 victims before finishing its term. In response, victims' organizations, civil society, human rights organizations, as well as the Ombudsman's Office criticized the program, based on how amounts were defined and the deadline of December 2011 for closing the registry.⁶³

In June 2011 Humala was elected president under a platform and a coalition that included human rights defenders and victims' organizations. The newly elected president expressed his commitment to human rights; and the new premier, Salomón Lerner Ghitis, announced implementation of the reparations recommended by the CVR.⁶⁴ The newly appointed CMAN executive secretary started her work by consulting with victims' groups and civil society organizations. This collaboration included reviewing previous definitions, which led to several refinements.

Definition of the Amount

Determining the amount for compensation through a participatory process proved difficult. Victims' organizations had demanded 120,000 soles (USD 44,500) for the families of those killed or disappeared, those disabled, and victims of rape, without a solid explanation of how they had reached that amount. Some civil society organizations proposed an alternative: using the same amount paid to members of self-defense committees who were killed or disabled—39,000 soles (USD 14,500) in case of death and 31,200 soles (USD 11,500) in case of permanent disability. The proposal was consistent with amounts recommended by the CVR. Finally, in a session held in November 2011, CMAN defined a similar payment for all victims of 36,000 soles (USD 13,350), equivalent to 10 UIT (a Peruvian taxation figure that is automatically indexed to inflation).

In contexts where mass compensation is required, the task of establishing distribution percentages for family members of the deceased or disappeared presents a host of administrative challenges. Identifying all relatives of victims can be difficult, and providing the full amount to those who claim compensation can be unfair to others who are less informed about the process. However, the process is often left undefined, with distribution carried out by relatives or with preexisting inheritance laws allowed to dictate the amounts of successor benefits. This can create serious conflict among family members, as often occurs when estates are administered.

In Peru, CMAN considered several approaches to distributing benefits among relatives. One was based on percentage shares—for instance, distributing half of the amount to the spouse and the other half in

62 The decree does not define prioritization criteria but instead required only that payments should start in 2011 for those victims or their spouses who were aged 65 or older and for parents who were aged 80 or older.

63 See Defensoría del Pueblo, "Defensoría del Pueblo observa con preocupación norma que aprueba pago de reparaciones económicas a víctimas de la violencia," Nota de Prensa N°191/2011/OCII/DP, June 21, 2011, www.defensoria.gob.pe/modules/Downloads/prensa/notas/2011/NP-191-2011.pdf

64 Speech delivered by Minister Salomón Lerner Ghitis to Congress, August 25, 2011.

equal parts to children and parents, no matter how many family members were registered. However, this system does not prevent conflicts that could arise if a relative who is omitted later appears to claim a share. Ultimately, CMAN decided to distribute the amount in fixed sums of 18,000 soles to the spouse, and 4,500 soles to each child or parent, regardless of the number of family members surviving the victim.⁶⁵ In this way, the belated appearance of a sibling would not affect distribution amounts.⁶⁶

Other Criteria for Prioritization of a Single Payment

A decree passed by the García administration established that a single payment should be given to every victim, starting with the widows of those killed or disappeared who are 65 years or older, parents who are 80 years or older, or direct victims who are disabled or were raped and are 65 years or older.

These criteria were rejected by victims' groups and civil society organizations, not only for delaying the delivery of reparations, but for failing to provide a clear definition of when victims outside of those age ranges would receive payments.

In its November 2011 decision, CMAN modified the criterion for prioritization, replacing the victim's age with the date of the crime.⁶⁷ This approach has provided more certainty to victims about when to expect compensation.

Extension of the Registry

One of the main demands from victims' groups and civil society organizations has been to continue the registration of victims for compensation after the deadline of December 2011. The deadline was criticized as an unfair limitation of victims' rights, considering that many victims live in rural areas or have limited literacy, which may prevent them from learning about the registry. CMAN had estimated that most victims had been registered and that registering new victims would not add a significant number of beneficiaries, which might otherwise pose a threat to the reparations budget. In November 2011, CMAN acceded to this demand, making the registry permanent. Registration processes in Argentina and Chile were similarly reopened due to social pressure, some of them more than once, which allowed new beneficiaries to be registered.

In its decision, CMAN announced its 2012 plan, which included a cost estimate for the first year of implementation of all programs comprising the Comprehensive Reparations Plan: 135 million soles (USD 50 million), plus 242 million soles (USD 89 million) for compensation, to be executed over the next 10 years, with a total cost of 3.8 billion soles (USD 1.4 billion).⁶⁸ After a tense confrontation between the minister president of the cabinet (usually called premier)⁶⁹ and the minister of economy and finance, the government approved an initial budget of 140 million soles (USD 52 million) for reparations for 2012, without identifying specific budgets for the different programs.

However, in December 2011, a cabinet crisis led to the resignation of the premier and the appointment of a retired Army officer as premier and reinforcement of the Ministry of Economy and Finance's influence. As result, the government rejected most of CMAN's decisions and reinstated the program established by the lame-duck García administration. Only one of CMAN's proposals was accepted, a plan to modify the

65 CMAN Executive Secretary, "CMAN: Informe de Gestión Correspondiente al Periodo Agosto-Diciembre 2011," December 2011, www.scribd.com/doc/75894977/Informe-de-Gestion-Cman-Agosto-Diciembre-2011-Docx1-corregida

66 This system of fixed amounts for each family member, instead of a percentage of a total that for each victim varies according to how many relatives are included, was previously used in Chile for the relatives of the killed or disappeared (Law 19,123 of February 8, 1992).

67 Article 1, Law 29,979 of 2013.

68 CMAN, "Propuesta de trabajo institucional 2012," November 2011, at www.scribd.com/doc/75787139/Propuesta-de-Trabajo-Institucional-2012-Final

69 This is a special figure in the Peruvian executive government. It is a minister who responds to the president and coordinates the ministries and articulates general policies implemented by the government.

criteria for prioritizing which victims should receive reparations first and which later, considering that the elderly had already received compensation.⁷⁰

CMAN estimated that it would require five years to provide compensation to all eligible victims, starting in 2012; however, the decree establishes a criterion only for early stages of implementation, leaving the policy undefined for subsequent years.

Civil society and victims' organizations continue to demand modifications to the compensation program. Their efforts have been supported by the Ombudsman's Office and a member of congress who presented legislation to make the victims' registry permanent and regulate compensation according to the proposal designed by CMAN before the December 2011 change of cabinet.⁷¹ In January 2012 they obtained a partial victory when the Reparations Council, which is directly responsible for registration, accepted registering victims for compensation who had presented their application before December 2011.

70 Proyecto de Ley N° 1356-2011 PR [draft bill], presented by the Executive to Congress on July 23, 2012.

71 Proyecto de Ley N° 966 [draft bill], presented on March 30, 2012. The draft bill contains similar definitions to those made by CMAN in November 2011, including a provision that the amount should not be lower to what has been paid to the self-defense groups and defining also how the amount should be distributed among family members.

7. Political Changes and a Step Back in the Definition of Reparations

The Humala administration has continued paying reparations with the amounts defined by the García administration. As of July 2012, 1,878 people had received some form of compensation, totaling 11 million soles (USD 4.2 million).⁷² In the second half of 2012, this program received strong support and funding, and by December the total number of beneficiaries increased to 17,652 victims, completing a total investment of 96 million soles (USD 36.7 millions).⁷³ However, this amount still falls short of the more than 21,000 beneficiaries announced in April 2012,⁷⁴ and the commitment of reaching 22,000 made by the state at the United Nations Human Rights Council in its report for Universal Periodic Review.⁷⁵ It also represents a 22.9 percent advance in the implementation of the program compared with registry figures.

Moreover, the Humala administration appears to be making efforts to diminish its financial commitment to reparations. The Ministry of Justice had sent CMAN a request to interpret regulations for this program so victims who suffered more than one violation or those who lost more than one family member would receive only one amount. This would have meant that the mother of two children killed or disappeared would receive compensation for only one child, or a daughter of a killed person who was also raped would receive compensation for only one of those crimes, when the amount of compensation for these violations is already low. Civil society and the Ombudsman's Office objected,⁷⁶ and CMAN unanimously adopted the decision not to follow the interpretation requested by the Ministry.⁷⁷ However, the government could insist that CMAN members impose the restriction; and a final decision was pending as this report went to press.

Another example of the Humala administration's restrictive approach is the veto of a law to include other categories of victims in the reparations program. The reparations law had included only rape as a sexual crime to be repaired. Following years of campaigning by women's rights groups, Congress, in June 2012, approved a law to expand the definition of victims entitled to reparations to include victims of sexual violence, not just victims of rape. The new law is based on the findings of the CVR, which devoted a special

72 CMAN, press release, August 12, 2012, on file with the author.

73 Ministerial Resolution 0221-2012-JUS, August 29, 2012. Information provided by Susana Cori, see *supra* note 37.

74 Ministerio de Justicia y Derechos Humanos. "Gobierno reconoce a víctimas de violencia en Lucanamarca entregando reparaciones por S/. 500 mil," April 12, 2012, <http://sistemas3.minjus.gob.pe/noticias/12-04-2012/gobierno-reconoce-victimas-de-violencia-en-lucanamarca-entregando-reparaciones>

75 U.N. Human Rights Council, *supra* note 43, at ¶¶58.

76 ICTJ also presented a report supporting the objection made by the Ombudsman's Office, on file by the author.

77 CMAN session of March 15, 2013. However, at the time of writing, official notes containing the agreement were not published and the final decision by the government was not public.

chapter to describing the different forms of sexual violence suffered mostly by women, including sexual slavery, forced prostitution, forced abortion, and others.⁷⁸

Still, the law has not entered into effect. The Executive Cabinet objected to the law, claiming that it requires an additional commitment of resources not approved in the national budget, which congress cannot do according to the constitution.⁷⁹ Proponents of the inclusion of victims of sexual violence are challenging this objection.

Anticipating a shift in definitions, the Reparations Council has registered 891 victims of these types of crimes, of which 562 are women.⁸⁰ However, the modification does not clarify if victims of sexual violence are entitled to compensation (considering that registration for compensation expired in December 2012) or only to other reparations programs, such as health care, symbolic reparations, etc.

78 Another aspect of reparations for victims of massive violations under the Fujimori administration (not directly related to the armed conflict) is the forced sterilization of indigenous women. The CVR did not include this policy in its mandate, which focused on the internal armed conflict; however, the issue has been raised through congressional investigations and the work of NGOs.

79 Oficio N° 144-2012, June 28, 2012.

80 Estudio para la defensa de los derechos de Mujeres (DEMUS), "891 víctimas de violencia sexual quedarían sin reconocimiento ni derecho a reparación - Nota de Prensa" [press release], August 28, 2012, www.demus.org.pe/pronunciamientos.php

8. Definition and Implementation of Other Reparations Measures

As described above, the Comprehensive Reparations Plan includes programs in addition to collective reparations and compensation. It is precisely this combination of programs, covering different dimensions of harms suffered by victims, that is intended to provide repair when individual assessments of harms suffered by each victim is not possible. However, because their implementation depends on the commitment and political will of different ministries and agencies, which has been lacking, their execution has been uneven and slow. This situation also demonstrates the cost to comprehensiveness that a policy of this nature suffers when the coordinating body focuses on executing just one or two single programs.

Restitution of Civil and Political Rights

Restitution of civil rights and documentation has experienced significant progress. These measures have not been defined or coordinated by CMAN but have been adopted by different institutions. The Ombudsman's Office, which has been responsible for registering victims of enforced disappearance, has registered 1,896 victims.⁸¹ This has allowed relatives of the disappeared to exercise some rights, including obtaining a judicial declaration of absence due to enforced disappearance, receiving social security benefits, and claiming inheritance. However, the system is not sufficiently accessible to victims, especially those living in rural areas. Obtaining a judicial declaration can be a complex process requiring a lawyer. In 2008 the Ombudsman's Office made recommendations for simplifying this procedure and making it more accessible, but there has been no progress yet.⁸²

The National Registry for Identification and Civil Status (Registro Nacional de Identificación y Estado Civil, or RENIEC) has implemented several programs to help victims obtain their civil documentation. Documentation campaigns were implemented in most of the affected areas, even before the PIR Law was passed, and continue today. These programs target not only victims of serious human rights violations but any person whose registries were destroyed.⁸³ This is a critical matter that affects many people, as the Shining Path destroyed and burned civil registries in its fight against the state.

These efforts have been accompanied by a general policy to: improve civil registration (especially in rural areas); simplify requirements; offer registration free of charge; and even implement ways of reaching remote communities. The results are impressive. By June 2012, 91.6 percent of children under 17 years of

81 This figure is very low compared with the 7,177 victims of enforced disappearance registered by the Reparations Council. This number could be explained by how limited the ability of many relatives of victims is to exercise their civil rights to inheritance, pensions, or other claims. For Special Registry list, see www.defensoria.gob.pe/pdf/ley28413/personas_desaparecidas.pdf

82 Defensoría del Pueblo, "Informe Defensorial N° 139," 67–68.

83 Ibid.

age were registered, compared with 27.5 percent in 2008.⁸⁴ The 2012 budget allocation for this program was 229.8 million soles (approximately USD 88 million).⁸⁵

Education Programs

Implementation of reparations with regard to education has been limited. Until August 2012, CMAN's website did not report any progress toward implementing this policy,⁸⁶ and little more has been done for victims in terms of registration.⁸⁷ However, the Ombudsman's Office reported that some measures had been implemented by private and public educational institutions.⁸⁸

The eligibility of beneficiaries was restricted by definitions in Decree 015-2006-JUS. This norm was later modified in 2008 by a new decree, which excluded as beneficiaries children of direct and indirect victims and limiting beneficiaries to victims who, as result of a crime, had to leave school.⁸⁹ Further restrictions were imposed by the García administration a few weeks before the end of his term: excluding as beneficiaries the children of all categories of victims except for the children of victims of killings, enforced disappearance, or rape. Victims of forced recruitment were also excluded.

Implementation had been so low that there was no tangible benefit to further narrowing the targeted population. The modification did help clarify some of the broad provisions of the program that had been largely unimplemented. It restricted the scholarship program to a limited number of beneficiaries per province (to be determined by the Ministry of Education) and to programs provided by public institutions. It expanded adult education and skill training, but used language related to priority access, instead of creating special programs or guaranteeing victims the benefit.⁹⁰

An analysis of the age of registered victims entitled to this program shows that in many cases victims do not want reparations in the form of educational benefits for themselves but want to pass them on to their children. Many victims value the ability to provide a better future for their children as a way of overcoming the consequences of violations.⁹¹ Thus, the definition puts a serious restriction on one of the most important measures for providing reparations for victims.

Of direct victims registered by the Reparations Council up to June 2012,⁹² 92 percent were 30 years old or older, and 72 percent were over 40 years old. Among children of victims entitled to reparations after the narrowed targeting defined by the 2011 modification, 74 percent were 30 years old or older, and 34 percent were over 40 years old. In September 2012, CMAN and the Ministry of Education created a scholarship that would provide access to university education to victims; however, they not only limited the number of scholarships to 50 (although 13,511 children of victims of killings, disappearance, and rape between ages 18 to 29 were registered at the time) but also restricted the scholarships to people under the age of 30. The combination of the two provisions means that although children of direct victims

84 U.N. Human Rights Council, *supra* note 43, ¶¶91–93.

85 *Ibid.* at ¶¶90.

86 However, in March 2013, the webpage was replaced by a page in the Ministry of Justice site with only a description of its functions and contact information. See also www.minjus.gob.pe/reparaciones.

87 The Ombudsman's Office also reported little progress in these matters in the last annual reports which mentioned them. See "Decimotercer Informe Anual al Congreso de la República," which covers 2009, and "Decimocuarto Informe Anual al Congreso de la República," covering 2010, www.defensoria.gob.pe/informes-publicaciones.php

88 Defensoría del Pueblo, Informe Defensorial N° 139, 81–85.

89 Decreto 003-2008-JUS, October 3, 2008. See also Defensoría del Pueblo, "Informe Defensorial N° 139," 94–99.

90 Decreto 047-2011-PCM, May 24, 2011.

91 Based on direct observation by the author in conversations with victims in different countries. Many of them deeply resented that the impoverishing effect of the crime suffered by them limited their ability to provide education to their children.

92 This includes 50,872 registered victims who suffered any of the following crimes or harms: forced displacement, arbitrary detention, unlawfully accused or prosecuted, undocumented, forced recruitment of underage persons, kidnapping, torture, wounded or harmed, disability, and sexual violence that was not rape.

of killings, disappearances, and rape are entitled to these scholarships, they are in effect restricted to only 26 percent of this group.⁹³

The Ombudsman's Office recommended eliminating the restriction established by Decree 047-2011-PCM. It also recommended increasing the number of scholarships and allowing victims entitled to educational reparations to pass on this right to their children.⁹⁴ A precedent for this proposal can be found in Chile, where after several years of demands and out of consideration that the average age of victims of political imprisonment and torture was 60, victims were authorized to pass on university scholarships as reparations to one of their children or grandchildren.⁹⁵

Physical and Mental Health Programs

An examination of the different rules approved by the Ministry of Health and the information published by CMAN shows that there are no individualized health services provided to victims or any health programs targeting their unique needs. Furthermore, there had been no progress in building the community health care networks or specialized services delivered to victims, as established in the PIR.

The implementation of reparations in health care has been mostly limited to registering victims for Comprehensive Health Insurance (Seguro Integral de Salud, or SIS),⁹⁶ with 29,012 victims registered as of June 2012.⁹⁷ While a positive development, it is not much of an improvement on preexisting mechanisms.

Most victims were already entitled to SIS coverage due to their socioeconomic condition or were already registered as persons of low-income. Providing health care to the inhabitants of historically marginalized areas is clearly an obligation of the state under the International Convention on Social, Economic and Cultural Rights,⁹⁸ as well as under Peru's own constitutional provisions. However, guaranteeing access to services provided by SIS is not enough to comply with the Comprehensive Reparations Plan in terms of providing, for example, prosthetics and physiotherapy needed as result of a crime.⁹⁹

It is difficult to imagine how the specific needs of massive numbers of victims can be addressed if the ability of the state to comply with its obligations is limited and there is a systemic lack of services for all citizens. A reparations policy on psychosocial support to victims needs to be accompanied by an improvement of the health care system in those areas where it is insufficient. This is one of the main challenges of reparations programming in contexts such as Peru, where guarantees of social and economic rights for citizens lag, making it even more difficult to provide specialized services to individual victims that are distinctly reparative.

One area where more targeted efforts have been made is in the area of mental health care. The Ministry of Health created a Comprehensive Reparations Program on Mental Health that targets the ten areas most affected by the conflict. This program has included hiring professionals and training staff in what can be

93 Defensoría del Pueblo, "Análisis de la problemática actual para las reparaciones en educación: la necesidad de modificación del artículo 18 del reglamento del Plan Integral de reparaciones." Informe de adjuntía No. 015-2012-DP/ADHPD, December 2012.

94 Defensoría del Pueblo, "Informe Defensorial N° 139," 60-63. This recommendation was supported by the recognition of the right of victims to hand over measures of reparations in education in a case of a victim of enforced disappearance decided against Peru by the Inter-American Court of Human Rights. See Inter-Am. Ct. H. R., case of Gómez-Palomino v. Peru. Merits, reparations, and costs. Judgment of November 22, 2005. Series C No. 136, 145-146.

95 Law 20,405 of 2009 [Chile], provisional article 6.

96 CMAN, "Programa de Reparaciones en Salud: Documento de Trabajo," May 2010, on file with the author.

97 In 2008 SIS reported having 22,005 victims registered, but the Defensoría del Pueblo expressed doubts about this figure (Defensoría del Pueblo, "Informe Defensorial N° 139," 72-73). Later, in its report to the 2012 Universal Periodic Review, the government claimed that up to June 2012 it had provided care to 29,012 victims through SIS, U.N. Human Rights Council, supra note 43 at ¶¶159. Apparently no separate registries are available for them.

98 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

99 Defensoría del Pueblo, "Informe Defensorial N° 139," 78-80.

The lack of a national policy on memory is demonstrated by the backstory underlying Peru's much-anticipated National Museum of Memory. Proposed by civil society organizations, the German Embassy offered a donation to create a museum of human rights in 2009. The García administration initially rejected the plan, but then under pressure from civil society—and facing international embarrassment—the government announced the creation of a commission aimed at establishing a National Museum of Memory.¹⁰⁷ Though the government set aside land in Lima and an inauguration is expected in the second half of 2013,¹⁰⁸ the debate continues about its contents.

The Ombudsman's Office organized and implemented a national archive with documents from the CVR, and some local governments have renamed emblematic places where human rights violations occurred.

Search for Remains

The search for and identification of remains of victims of enforced disappearances and of the missing is an important component of the reparations policy, which has made little progress despite the immense need.¹⁰⁹ Many victims are still waiting to find and identify their next of kin.¹¹⁰

While not part of the PIR, the Ombudsman's Office initially led the effort to define a policy for locating and identifying remains, bringing together the Office of the Prosecutor, the Bureau of Forensic Medicine, the International Commission of the Red Cross, and the Equipo Peruano de Antropología Forense (EPAF), and later the Centro Andino de Investigaciones Antropológico-Forenses (CENIA), as well as other organizations with experience working on exhumations and identifications. This led to the creation of a Specialized Forensic Team (SFT) at the Bureau of Forensic Medicine.¹¹¹ The work done by the SFT, the Office of the Prosecutor, and civil society organizations brought substantial improvements to finding and identifying remains. From 2002 to April 2012, the remains of 2,109 victims were recovered, of which 1,074 were identified and returned to their families.¹¹²

Housing

The PIR has not defined a housing policy for relevant victims, and little has been done to compensate victims beyond the benefits provided to families of police and armed forces personnel killed during the conflict.¹¹³ The 2012 report presented by the state to the U.N. Human Rights Council for Universal Periodic Review did not mention this program, and the description of the housing policy for low-income populations does not show much investment in this area.¹¹⁴

107 *The Economist*, "Don't look back: Arguing over a museum of memory," March 12, 2009.

108 *Diario El Comercio*, February 13, 2013.

109 Given the scale of the challenge, the CVR had included in its recommendations the implementation of a National Plan for Forensic-Anthropological Investigations. The detailed PIR combined the scientific, judicial, psychosocial, and cultural dimensions required to address this type of crime committed on a massive scale, and the CVR contributed by identifying 4,644 burial sites throughout the country. See CVR Final Report, vol. IX, 146–95.

110 Defensoría del Pueblo, "Informe Defensorial N° 139," 203–208.

111 *Ibid.* at 197–203.

112 U.N. Human Rights Council, *supra* note 43 at ¶¶ 32.

113 Defensoría del Pueblo, "Informe Defensorial N° 139," 89–93.

114 U.N. Human Rights Council, *supra* note 43 at ¶¶ 137–39.

9. Seeking Reparations and Justice in the Courts

Results have been limited in regards to investigating acts committed by state agents in the context of the conflict and securing court-ordered reparations.

The CVR documented 47 cases showing patterns of criminality representative of violations committed during the conflict,¹¹⁵ which were sent to the National Prosecutor and the courts for investigation.¹¹⁶ From 2005 to 2011, 81 cases were completed at the National Criminal Division, which resulted in 58 convictions and 195 acquittals. Perhaps the most well-known is the 2009 conviction of Fujimori, who was sentenced to 25 years in prison for his responsibility in three cases of human rights violations, including the Barrios Altos Massacre¹¹⁷ and the enforced disappearances of La Cantuta.¹¹⁸

Since 2005, the Inter-American Court of Human Rights has found the state of Peru liable 16 times for violations committed in the context of the internal armed conflict or for the death of union leaders, including for massacres, summary executions, enforced disappearances, torture, and violations of judicial guarantees when trying suspected members of so-called subversive groups. In February 2001, the interim government agreed with the Inter-American Commission of Human Rights to settle 165 cases and committed to providing reparations for victims and investigating crimes.¹¹⁹ Yet, the state has generally failed to comply with these terms.¹²⁰

115 The CVR identified patterns of violations for organizing criminal investigations. See Javier Ciurlizza and Eduardo González, “Verdad y justicia desde la óptica de la Comisión de la Verdad y Reconciliación,” in eds. Lisa Magarrell and Leonardo Filippini, *El Legado de la Verdad: La Justicia Penal en la Transición Peruana* (Lima: ICTJ and IDEHPUCP, 2006), 85–104. (An English translation is available at <http://ictj.org/sites/default/files/ICTJ-Peru-Legacy-Truth-2006-English.pdf>.)

116 Two respected institutions led the follow-up on criminal investigation of violations committed during the conflict: the Democracy and Human Rights Institute of the Pontifical University of Peru (IDEHPUCP) and the Ombudsman’s Office. See Proyecto “Justicia y derechos humanos en el Perú: asesoría, capacitación y seguimiento para una eficaz judicialización de las violaciones de los derechos fundamentales,” at <http://idehpucp.pucp.edu.pe/proyectos/proyecto-justicia-y-derechos-humanos-en-el-peru-asesoria-capacitacion-y-seguimiento-para-una-eficaz-judicializacion-de-las-violaciones-de-derechos-fundamentales>. For an evaluation of the principal legal issues regarding criminal investigations, see Montoya, Iván, “Los límites y avances de la justicia penal frente a las violaciones de los derechos humanos ocurridas durante el periodo del conflicto armado interno,” in coord. Víctor Manuel Quinteros, *Judicialización de violaciones a los derechos humanos: Aportes sustantivos y procesales* (Lima: Idehpup, 2010). For a quantitative assessment up to 2010, see annexes 1 and 2 of the same volume. For the follow-up done by the Ombudsman’s Office, see Defensoría del Pueblo, Informe Defensorial N° 139, 112–16.

117 Summary execution of 15 people and injuries to four by a military death squad who broke into a house during a party in 1991.

118 Detention and enforced disappearances of nine students and one professor of the Enrique Guzmán y Valle University, known as La Cantuta, committed by the Colina Group, a military death squad in 1992.

119 Inter-American Commission of Human Rights, Joint Press Release, February 22, 2001, www.cidh.org/Comunicados/English/2001/Peru.htm. The state has not fully provided reparations for cases included in the agreement, despite initial implementation of health care and scholarships for university study to victims. Several victims experienced obstacles in accessing these measures and in some cases charged mistreatment by those responsible for delivering services.

120 See APRODEH and International Federation for Human Rights, Letters regarding IACHR cases, January 29, 2013, <http://derechoshumanos.pe/wp-content/uploads/2013/02/Cartas-Casos-CorteIDH.pdf>. Additionally, Defensoría del Pueblo, “Informe Defensorial N° 139,” 242–45, and Defensoría del Pueblo, “Informe Defensorial N° 128 - El Estado frente a las víctimas de la violencia ¿Hasta dónde vamos en políticas de reparación y justicia?,” 215–28.

Some progress has been achieved in investigating acts of corruption, resulting in judicial actions to seize the assets and a percentage of the pensions of some retired military officers, judges, and other authorities who served in the Fujimori administration.¹²¹ However, most of those who were sentenced resisted the seizures, and little progress had been made in securing the funds, even several years on.¹²²

The limited resources provided to investigate cases—and the protection that the Ministry of Defense has given to members of the armed forces who are being investigated by denying information about the identity of personnel located in areas or units where violations were committed—demonstrate the state's limited commitment to comply with its obligation to fight impunity. It also sends a message to victims that their rights are not taken seriously, which undermines the effect of the reparations effort.

¹²¹ Similar actions have been directed against those convicted of human rights violations.

¹²² The government has created a registry of debtors of civil reparations for crimes of corruption against the state, which includes 296 cases, including three against Fujimori. It also assigned responsibility for seizing and obtaining assets to a Special Public Attorney Office. However, action has been opposed by Fujimori supporters in Congress who demand a similar policy be implemented against those convicted of terrorism. See *La República*, "Con juicios, sentenciados por corrupción evitan pagar reparaciones," June 30, 2012, www.larepublica.pe/30-06-2012/con-juicios-sentenciados-por-corrupcion-evitan-pagar-reparaciones

Conclusions

It is not atypical for countries facing a history of massive human rights violations to take some time to implement reparations. It is a complex policy matter that is usually politically and economically charged. The magnitude and character of Peru's internal conflict, as well as its deep roots in the historical marginalization of some segments of the population, make reparations an issue grounded not only in the politics of the conflict but also in long-standing questions about how to overcome discrimination and include indigenous and peasant communities in the development of the country.

Thus, it is not surprising that budget allocation for the reparations policy on universal registry at the civil registration system for 2012 alone is almost equivalent to the total combined amount allocated for the other reparations programs in the eight years since the law implementing the PIR was passed. Civil registration is not a heated issue for people living in marginalized areas. Moreover, because the destruction of civil registries was a tactic employed by the Shining Path, a policy to overcome its consequences certainly enjoys the support of those who see reparations as limited to violations associated with terrorism.

The most salient expressions of how divisive this issue remains are: the pattern of political manipulation, distortion, and the one-sided approach to collective reparations projects (such as labeling programs as reparations for terrorism); the continued exclusion of those who belonged to subversive groups from reparation benefits; and continued statements by authorities refusing to pay reparations to people who they consider terrorists.¹²³ It is also demonstrated by the difficulty that state officials have in delivering apologies on behalf of the state for its responsibility for violations, even when confronted by the CVR's estimate that 30 percent of violations are directly attributable to army or security forces and many others were committed by self-defense patrols frequently supported and armed by the armed forces.¹²⁴

It is most probable that despite efforts made by those pushing for acknowledgment and reparations, the current trend of providing isolated measures will continue. As a result, reparations will lack the comprehensiveness that the CVR recommended and that the PIR Law and its implementing decree envisioned. The abrupt change of direction by the Humala administration, from an effort to listen, expand, and implement reparations in a comprehensive form (using the recommendations of the CVR as guidance) to one that not only had reversed those efforts but inserted new restrictions is also a negative signal, at least for the short term.

123 See Lori Berenson Mejía v. Peru case, Inter-Am. Ct. H.R. See also *El Comercio* "Giampietri rechazó fallo de la CIDH que obliga al Perú pagar reparación a terroristas," July 7, 2010, <http://elcomercio.pe/actualidad/507170/noticia-giampietri-rechazo-fallo-cidh-que-obliga-al-peru-pagar-reparacion-terroristas>

124 CVR Final Report, Annex 2 at 13.

Despite this somber outlook, there are signs of hope. The CVR report is still broadly seen as legitimate, and only politicians at the extreme ends of the political spectrum tend to deny its value or question its findings. The participatory work done by the CVR in drafting its recommendations, in seeking the broad contribution of victims' and civil society organizations, provided a strong basis and legitimacy for its recommendations. This enabled recommendations to be passed into law and at least started the partial implementation of reparations, despite the contested political narratives that surround them. That process, and continued efforts to organize and mobilize victims, still provides a broad base of organizations and leaders willing to challenge the limited approach that successive administrations have taken to reparations.

The implementation of collective reparations for a significant number of communities, the policy of providing documentation for massive numbers of people and adding them to the civil registry, and the registration of victims by the Reparations Council are signs of the capacity that the country has to execute the ambitious policy recommended by the CVR. It is no coincidence that these three efforts are marked by a practical approach of responding to the rights of victims, and are based on a human rights approach, without drawing distinctions based on political ideology.

Nevertheless, the process of fully acknowledging society's responsibility for its part in violations, as well as overcoming the historical marginalization of vast numbers of its society, will require additional time and effort. It is a process that will continue, outlasting the political will of one or two administrations, as the developments of the past nine years show. Implementing the CVR's recommendations in regards to reparations will be an important part of this national effort. It also offers lessons for implementing reparations in other countries. The policies defined to date, and those already implemented, offer important lessons on what may work in the years to come and what challenges policymakers and civil society may face in the future.

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