

## Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru

Lisa J. Laplante\* & Kimberly Theidon\*\*

### ABSTRACT

Truth commissions have become key mechanisms in transitional justice schemes in post conflict societies in order to assure transitions to peace, the rule of law, and respect for human rights. However, few studies examine what must happen to ensure that the transition process initiated by a truth commission successfully continues after the commission concludes its truth-gathering work and submits its final report. This article argues that

---

\* *Lisa J. Laplante* is Deputy Director of Programs and Research, Praxis Institute for Social Justice. She worked with the Peruvian Truth and Reconciliation Commission as a University of Notre Dame Transitional Justice Program grantee. In her capacity as a human rights lawyer and community educator, she has since accompanied victims-survivor groups in their struggle for justice and reparations. She has published on transitional justice themes in international human rights journals and is currently directing the on-site study "After the Truth: The Politics of Reparations in Post Truth Commission" out of which some of the observations shared in this article came, and which will result in a book.

\*\* *Kimberly Theidon* is an Assistant Professor of Anthropology at Harvard University and is Executive Director, Praxis Institute for Social Justice. She is a medical anthropologist focusing on Latin America. Her research interests include political violence, forms and theories of subjectivity, transitional justice, and the politics of reconciliation. From 2001–2003 she directed a research project on community mental health, reparations and the micropolitics of reconciliation with the Ayacuchan office of the Peruvian Truth and Reconciliation Commission. A book based upon this research, *Entre Prójimos: el conflicto armado interno y la política de la reconciliación en el Perú*, was published in 2004 by the Instituto de Estudios Peruanos.

The authors gratefully acknowledge the support of the United States Institute for Peace and the Weatherhead Center for International Affairs at Harvard University for the support that made this research possible. Author Laplante thanks the Transitional Justice Program of the University of Notre Dame for the funding that supported her work with the Peruvian truth commission, the results of which are shared in this article. For their excellent assistance in carrying out this research, we thank Edith Del Pino and Leonor Rivera Sullca. Finally, we thank the many Peruvians who generously gave us their time and shared their experiences with us.

while attention often focuses on prosecutions and institutional reforms, reparations also play a critical role. The authors share their observations of how government agencies, nongovernmental organizations (NGOs), civil society sectors and victim-survivor's associations struggle over reparations in post truth commission Peru, offering a preliminary analysis of key theoretical suppositions about transitional justice: they explore whether the act of telling the truth to an official body is something that helps or hinders a victim-survivor in his or her own recovery process, and whether in giving testimonies victim-survivors place particular demands upon the state. The authors conclude that while testimony giving may possibly have temporary cathartic effects, it must be followed by concrete actions. Truth tellers make an implicit contract with their interlocutors to respond through acknowledgment and redress.

Oh, why should I remember all of that again? From the top of my head to the bottom of my feet, from the bottom of my feet to the top of my head—I've told what happened here so many times. And for what? Nothing ever changes.<sup>1</sup>

## I. INTRODUCTION

Truth commissions are currently hailed as key mechanisms for addressing the goals of justice and reconciliation in post conflict societies and as a prerequisite to announcing the establishment of a new democratic order by marking a break with a violent past. However, to date there has been scant research regarding what must happen to ensure that the transition process initiated by a truth commission successfully continues *after* the commission concludes its truth-gathering work and submits its final report. Given the relative newness of truth and reconciliation commissions as instruments to promote transitional justice, there remain many unanswered questions regarding their impact and effectiveness. For instance, how does the process of giving testimony and participating in public hearings impact victim-survivors in terms of their emotional well being, their relationships with their families, communities and the state, and their expectations of what a truth commission should achieve? Once the truth has been compiled, what must happen next?<sup>2</sup> When is justice in all of its complexity served?

- 
1. Interview with Justiniana Huamán (name changed to protect person), 48 years old, campesina community of Carhuahuarán, Ayacucho, in Peru (2002).
  2. The term "victim" and the elaboration of categories of victimization figure prominently in the work of truth commissions. In light of our work in Peru, we are more comfortable with the hyphenate "victim-survivor" for several reasons. First, not all people with whom we have spoken identify as victims in their daily lives. Indeed, they may reject the term for the helplessness it implies, choosing to distance themselves from such an image. In Peru, for instance, those who suffered human rights violations use the term "afectados" (affected). Second, one aspect of our ongoing research focuses on the ways

It is generally agreed that measures which accompany or follow the truth commission process such as prosecutions, reparations, or institutional reforms, are indispensable in contributing to reconciliation and to a more just and peaceful future. Indeed, the experiences of countries that have implemented truth commissions indicate that truth gathering must be followed by concrete measures to end impunity and build the rule of law if the transition process is to create the foundation for a viable democracy.<sup>3</sup> However, whereas criminal justice proceedings and institutional reforms tend to be prioritized in building democracy in post-conflict settings—and have been the focus of most research to date—reparations have attracted far less attention. Despite preliminary evidence that reparations play a critical role in the delicate task of rebuilding nations, it is a largely unstudied area. There is scant research that examines the central debates regarding the design and implementation of a reparations program, underscoring that while both prosecutorial and reparative efforts are “elements of justice,” the “latter has not received sufficient systematic attention.”<sup>4</sup>

This exploratory article seeks to address this gap by examining several debates related to the implementation of a reparations program in post-truth commission Peru. In particular, the authors aim to report upon the ongoing politics of reparations in Peru in order to examine key theoretical suppositions about transitional justice. As government agencies, nongovernmental organizations, civil society sectors and victim-survivor’s associations struggle over reparations, they provide a richly textured case-study of what actually happens *after* a truth commission terminates its mandate. The results of these struggles will inform future commissions and will determine whether the recommendations made by the Peruvian Truth and Reconciliation Commission (TRC) are transformed from a document to a reality.

In exploring the politics of reparations, the authors draw upon their research with victim-survivors in the form of interviews and observations both during and after the Truth and Reconciliation Commission in Peru, whose mandate covered the period 2001–2003.<sup>5</sup> This article will proceed in a two-fold fashion, allowing an evaluation of the struggles over reparations

---

in which people organize to demand reparations, and how this political activism leads to new perceptions of citizenship and agency. Finally, we are influenced by the work of Mahmood Mamdani, and his assertion that people must move beyond dichotomized identities as one way of searching for new forms of justice and coexistence following atrocity. See MAHMOOD MAMDANI, *WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA* (2002).

3. COMPARATIVE PEACE PROCESSES IN LATIN AMERICA 447 (Cynthia Arnson ed., 1999); TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES xix (Neil J. Kritz ed., 1995).
4. Pablo de Greif, *Introduction* to THE HANDBOOK OF REPARATIONS 1 (Pablo de Greif, ed., 2006).
5. COMISIÓN DE VERDAD Y RECONCILIACIÓN, FINAL REPORT (2003), available at <http://www.cverdad.org.pe/> [hereinafter CVR].

to be informed by the research with the people who are among the designated beneficiaries of the reparations program recommended by the TRC.<sup>6</sup> The authors believe that studying the experiences of people who provide testimony or participate in public hearings convened by a truth commission serves three key purposes.

First, it is important to ascertain whether the act of telling the truth to an official body is something that helps or hinders a victim-survivor in his or her own recovery process. Is providing testimony a healing action per se? Second, if one argues that the success of a country's democratic transition depends on the experiences, perceptions, and protagonism of its citizenry, then the experience of those who have given testimony is key to evaluating how those who bore the brunt of past violence may exercise emergent forms of citizenship. Third, in the testimonies they provide, what sorts of demands do victim-survivors place upon the state? By conducting qualitative research with victim-survivors in Peru, the authors have explored the complex experiences and impact of providing testimony and participating in public hearings, and have analyzed the concepts of justice, reparations, and reconciliation that victim-survivors articulate.

The research in Peru asserts there is an implicit contract established in the giving and receiving of testimonies about a painful history of sustained political violence. When victim-survivors speak about their suffering and losses, they place a responsibility on their interlocutors to respond: testimony is a demand for acknowledgement and redress. Survivors of political violence come forth in part to reclaim their history as well as to demand a different sort of future. Clearly the truth is not enough. Indeed, truth without consequences—without “affording a bridge to the future”—runs contrary to the goals of transitional justice.<sup>7</sup> As the Peruvian case demonstrates, delays in implementing reparatory measures have caused victim-survivors to become disillusioned and cynical about their country's truth commission.<sup>8</sup> The authors argue that people's conceptions of justice are dynamic and complex; however, one constant in post-conflict settings is that reparations play a central role in satisfying victims-survivors' expectations of justice and redressing the serious harm caused them by structural injustices and political violence.<sup>9</sup> Indeed, based upon the research in Peru, the authors will argue that the implementation of reparations is critical to generating the recognition, civic

---

6. *Id.*

7. Martha Minow, *The Hope for Healing: What Can Truth Commissions Do?*, in *TRUTH v. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS* 235, 241 (Robert I. Rotberg & Dennis Thompson eds., 2000).

8. Lisa J. Laplante, *On the Indivisibility of Rights: Truth Commissions, Reparations and the Right to Development*, *YALE HUM. RTS. J. & DEV. L. J.* (forthcoming May 2007).

9. Sharon F. Lean, *Is Truth Enough? Reparations and Reconciliation in Latin America*, in *POLITICS AND THE PAST: ON REPAIRING HISTORICAL INJUSTICES* 169, 185 (John Torpey ed., 2003).

trust, and social solidarity that are the foundation of a meaningful democracy. Thus the authors look to the past and to the future, as do the victim-survivors with whom the authors have worked throughout these years.

## II. COMMISSIONING TRUTH IN PERU

Peru's transitional justice project began in 2001 when an interim government established a Truth and Reconciliation Commission to investigate two decades of internal armed conflict (1980–2000) between guerrilla groups, the *rondas campesinas* (armed peasant patrols) and the Peruvian armed forces.<sup>10</sup> The Communist Party of Peru-Shining Path (Sendero Luminoso), began its campaign to overthrow the Peruvian state in the remote highlands of the country in 1980, initiating a reign of terror designed to usher the nation toward an imminent communist utopia.<sup>11</sup> The initial governmental response was a brutal counter-insurgency war in which “Andean peasant” became conflated with “terrorist.”

While the tactics for dealing with this conflict varied according to each democratically elected president, it was Alberto Fujimori, elected in 1990, who gained credit for pacifying the country by using draconian legal measures, permitting paramilitary tactics, staging a self-coup that shut down a recalcitrant Congress, rewriting the constitution, and dismantling political parties and other institutional intermediaries in the development of his self-described “direct democracy.” In September 1992, the Fujimori administration located and arrested the leader of Shining Path, decapitating the guerrilla movement, sending it into isolation into the jungles of the interior.<sup>12</sup> Significantly, there were no peace negotiations between the government and the guerrillas because *Sendero* had been largely defeated.<sup>13</sup>

Following a highly tainted presidential campaign in 2000, Fujimori finally fled the country after thousands of videotapes showed him and his cronies, former head of Internal Intelligence Vladimiro Montesinos, bribing a cast of characters that ranged from congressmen to talk show hosts. It was the corruption charges that forced Fujimori from office, sent significant army generals and politicians to jail, and provided the political opening for the establishment of the TRC in 2001 by interim president Valentín Paniagua's

---

10. Ernesto García Calderón, *High Anxiety in the Andes: Peru's Decade of Living Dangerously*, 12 J. OF DEMOCRACY 46 (2001).

11. CARLOS IVAN DE GREGORI, *QUÉ DIFÍCIL ES SER DIOS: IDEOLOGÍA Y VIOLENCIA POLÍTICA EN SENDERO LUMINOSO* (1990); CARLOS IVAN DE GREGORI, *EL SURGIMIENTO DE SENDERO LUMINOSO: AYACUCHO 1969–1979* (1990); *SHINING PATH OF PERU* (David Scott Palmer ed., 2d ed. 1994).

12. *SHINING AND OTHER PATHS: WAR AND SOCIETY IN PERU, 1980–1995*, at 378 (Steve J. Stern ed., 1998).

13. Sendero Luminoso has been reduced to isolated groups largely confined to the jungle region of Ayacucho and the Huallaga Valley.

executive decree. The TRC's mandate called for clarifying the processes, facts, and responsibilities of the violence and human rights violations during the internal armed conflict.

When the TRC concluded its two-year investigation in August 2003, it produced nine volumes consisting of 8,000 pages, based on almost 17,000 testimonies, fourteen public hearings, and hundreds of archives from not only the Peruvian government but also that of the US State Department.<sup>14</sup> The TRC estimated that approximately 69,280 people had been killed or disappeared, making it one of the country's most deadly conflicts.<sup>15</sup> In the section of the Final Report addressing the issue of accountability, the Commissioners state that Sendero Luminoso was responsible for 54 percent of the deaths and disappearances reported to the TRC, and the armed forces were responsible for 37 percent.<sup>16</sup>

The TRC confirmed that the casualties of the political violence were distributed by class and ethnicity, reporting that 75 percent of the dead and disappeared spoke a native language other than Spanish, and three out of every four people killed lived in a rural region, were farmers, poor, and illiterate.<sup>17</sup> National indifference, especially among the powerful elite residing in urban centers, is greatly blamed for permitting this ethnic massacre. These findings reflect a historical tradition of marginalization of a significant portion of Peru's poor and ethnic sectors, conditions that the TRC blamed for the violence and prioritized as deserving reform to ensure lasting peace.

The TRC also dedicated a chapter to explore the psychosocial sequelae (effects) of the conflict, detailing the serious damage inflicted at both the individual and collective levels. The TRC Final Report stressed the pervasive fear and distrust that continues to debilitate Peruvian communities most affected by the violence, undermining the civic and social participation of its members. One study conducted by TRC psychologists in the province of Ayacucho found that more than half of the people who testified there (53.3 percent) spontaneously mentioned the fear associated with the violence, with 43.6 percent describing feelings of permanent helplessness and impotency.<sup>18</sup> At the collective level, the TRC detected the disintegration of com-

- 
14. Decreto Supremo que proroga encargo específico de la Comisión de la Verdad y Reconciliación, No. 063-2003-PCM, *available at* <http://www.cverdad.org.pe/lacomision/cnormas/normas05.php>; on public hearings see *Audencias publicas*, official webpage of the CVR, *available at* <http://www.cverdad.org.pe/apublicas/audiencias/index.php>; on number of pages see *Nuestro labor*, official webpage of the CVR, *available at* <http://www.cverdad.org.pe/lacomision/nlabor/index.php>.
  15. CVR, *supra* note 5, General Conclusions ¶ 2.
  16. *Id.* General Conclusions ¶ 13, HATUN WILLAKUY, VERSION ABREVIADA DEL INFORME FINAL DE LA COMISION DE LA VERDAD Y RECONCILIACION 19 (2004). The TRC includes in this percentage the army, policy, and self defense committees.
  17. CVR, *supra* note 5, General Conclusions ¶¶ 5–7.
  18. Miryam Rivera, Ana Reyes & Rosa Maria Cueto, *Ayacucho: personas en una Guerra. Apuntes desde la Salud Mental* (Peru 2003) (working document on file with authors).

munity and family bonds and a weakening of social trust, creating a sense of vulnerability and insecurity that affects all levels of functioning.<sup>19</sup> These findings prompted the TRC to conclude that psychosocial disorders “weigh like a serious mortgage on our future and decisively affect the construction of a national community of free and equal citizens in a plural democracy on the path to development and equity.”<sup>20</sup>

To respond to the massive damages left in the wake of the internal armed conflict, the TRC designed the Program of Integral Reparations (PIR) as a form of reaffirming the dignity and status of the victims, and offering hope for the future despite the loss of loved ones or the interruption of life projects.<sup>21</sup> The PIR was explicitly linked to the goals of national recovery and sustainable peace.

The PIR is one of the most comprehensive truth commission reparation programs to date. Its definition of victims and beneficiaries is also one of the most inclusive, which includes symbolic reparations (e.g. public gestures, acts of recognition, memorials etc.), reparations in the form of services like health and education, restitution of citizen rights, individualized economic reparations, and collective, community-wide reparations.<sup>22</sup> In its introduction, the PIR presents the ethical, political, psychological, and juridical justifications for its proposals, linking reparations to the prevention of violence and the promotion of national reconciliation.<sup>23</sup> It clarifies that the implementation of PIR should include the participation of victims, taking into special consideration issues related to culture and gender, noting that this inclusive process has its own potential symbolic and psychological benefits.<sup>24</sup>

### III. TRUTH COMMISSIONS: TRANSITIONING TOWARD JUSTICE?

A genealogy of transitional justice indicates that from the post-WWII tribunals at Nuremberg and Tokyo to the proliferation of tribunals and truth commissions in the present, the field of transitional justice has both expanded and normalized.<sup>25</sup> The burgeoning of transitional justice is often associated with the post-Cold War political climate in which a significant number of authoritarian, oppressive, and frequently violent nation-states began to transition towards peace and procedural democracy.<sup>26</sup> The massive scale of

19. CVR, *supra* note 5, *General Conclusions* at ¶¶ 160–61.

20. *Id.* ¶ 162 (authors translation of the original Spanish language text).

21. CVR, *supra* note 5, Vol. IX, Programa Integral de Reparaciones, ch. 2.

22. *Id.* 2.2.3 Los programas del plan integral de reparaciones, at 159–202.

23. *Id.* 2.2.1 Fundamentacion, at 139–44.

24. *Id.* 2.2.2.3 Enfoques Transversales, at 156–58.

25. Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69 (2003).

26. For general discussion see PRICILLA B. HAYNER, *UPSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY* 4 (2001).

damage characteristic of these post-conflict settings, the breakdown of legal and social institutions, and the destruction of social solidarity and civic trust indicated the need for innovations in the administration of justice. Frequently the traditional mechanisms of justice, designed to address occasional rather than chronic deviations from legal norms, failed miserably in meeting this challenge and, with equal frequency, the legal institutions of the countries themselves had played a role in promoting or sanctioning human rights violations.<sup>27</sup> Thus the innovative judicial and legal measures known as transitional justice sought to realign societies with norms consistent with the rule of law, respect for human rights, and consolidated democracy.

As transitional justice has expanded, so have the goals of its proponents. One area of inquiry has focused on which transitional justice mechanisms are best suited to assist countries and their citizens in recovering from prolonged violent conflicts in which the “enemy” is often the government, or one’s family members and neighbors.<sup>28</sup> Consensus indicates that reconciling these profound rifts requires creative and flexible responses that not only attend to the recovery of the people directly harmed by political violence, but also to strengthening democratic institutions and the rule of law to prevent future cycles of violence.<sup>29</sup> The exact transitional justice “formula” varies depending on the political, historical, and cultural realities of each country, thus supplying no “one size fits all” model.

As the goals of transitional justice have expanded to include societal reconstruction and individual recovery, truth commissions have emerged as the favored measure of the transitional justice movement.<sup>30</sup> In fact, truth and reconciliation commissions (TRCs) have become virtually synonymous with the growing field of transitional justice and are advocated as an alternative form of justice in the absence, or breakdown, of democratic institutions traditionally relied upon to ensure the protection of citizens.<sup>31</sup>

The primary function of a TRC is to collect testimonies from as many individuals as possible—including but not limited to victims, perpetrators, witnesses, institutional representatives, among others—to clarify “the truth” of what happened during a specific episode of a country’s history. These temporary bodies focus on the past, investigating patterns of abuses that resulted in the derogation of basic human rights, including acts of violence

---

27. RUTI G. TEITEL, *TRANSITIONAL JUSTICE* 18–26 (2000).

28. KIMBERLY THEIDON, *ENTRE PRÓJIMOS: EL CONFLICTO ARMADO INTERNO Y DE LA RECONCILIACIÓN EN EL PERÚ* (2004).

29. MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 9 (1998).

30. John Torpey, *Introduction to POLITICS AND THE PAST*, *supra* note 9, at 9.

31. Nancy L. Rosenblum, *Justice and the Experience of Injustice*, in *BREAKING THE CYCLE OF HATRED: MEMORY, LAW, AND REPAIR* 95 (Martha Minow, ed., 2002).

such as torture, rape, unjust imprisonment, extrajudicial killings, and disappearances.<sup>32</sup>

Based on these testimonies, a truth commission publishes an official public record of the past while also offering recommendations to the transitional or successor government. The recommendations may include a wide range of reforms, including moral, symbolic, and economic reparations for victims, institutional reforms, and the transfer of selected cases to the appropriate authorities for further criminal investigations.<sup>33</sup>

#### IV. UNANSWERED QUESTIONS: CAN TRUTH COMMISSIONS SATISFY VICTIMS' EXPECTATIONS OF JUSTICE?

The relative newness of the truth commission model, with approximately thirty established around the world since 1974, leaves us with many questions as to how they may or may not contribute to the efforts of countries transitioning towards peace and procedural democracy. Distinct challenges contribute to the task of evaluating truth commissions and their impact on victim-survivors and society in general. For instance, while fundamental similarities exist among all truth commissions, such as their truth gathering function, they each have their own idiosyncrasies that complicate the task of a precise evaluation of truth commissions as a uniform model of transitional justice. The social and political contexts in which a truth commission operates inevitably influence the results of its work, and leads to an innumerable set of confounding variables.

Thus, in the absence of any precise quantitative evaluation of truth commissions, one unanswered question is whether or not it is a beneficial model for those who provide testimony. One concern is that truth commissions could possibly have a negative impact on victim-survivors. With minimal scientific basis, some have speculated that testimony giving, especially in public forums, is cathartic for both the individual and society.<sup>34</sup> It is hoped that the process of relating their stories restores human and civil dignity for people who have not only had their rights violated but also their requests for

---

32. For general discussion, see HAVNER, *supra* note 26. For a comparative look, see also Joanna R. Quinn & Mark Freeman, *Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa*, 25 HUM. RTS. Q. 1117 (2003); Audrey R. Chapman & Patrick Ball, *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, 23 HUM. RTS. Q. 1 (2001).

33. For further discussion of how Peru's truth commission was exceptional in forgoing amnesty for criminal investigations, see Lisa J. Laplante, *Entwined Paths to Justice: The Inter-American Human Rights System and the Peruvian Truth Commission*, in PATHS TO INTERNATIONAL JUSTICE (forthcoming).

34. Sandra Young, *Narrative and Healing in the Hearings of the South African Truth and Reconciliation Commission*, 27 BIOGRAPHY 145 (2004).

redress consistently ignored or repressed, creating a culture of silence. Yet more recent criticism posits that despite the indispensable role victims play in truth commissions, as a vulnerable population their participation may put them at risk of exacerbating mental health problems or renewed trauma.<sup>35</sup>

Indeed, there are distinct opinions regarding this issue. For instance, based upon his research with people who testified before the South African TRC, psychologist Brandon Hamber has stated:

[T]hose largely in favour of the TRC, argue that the TRC will heal the wounds of the past through survivors telling their stories to sympathetic individuals who, for the first time, will acknowledge their real pain. Alternatively, those opposed to the TRC argue that the TRC is a destructive mechanism that will simply open up past wounds (which are presently healing) resulting in anger, bitterness and revenge.<sup>36</sup>

Despite almost two decades of experience in truth commissions around the world, there is still no final conclusion on which opinion is more valid. Hamber has argued that, "despite the potential for the TRC to operate as a psychologically healing mechanism it is not a sufficient process in itself to promote psychological rehabilitation."<sup>37</sup> However, he does suggest that a truth commission's public hearings may be an important and perhaps even necessary step in initiating the victim's healing process in states emerging from eras of systematic human rights abuses. Hamber cautions, however, that if not carefully structured, public hearings can actually obstruct the healing of individuals.<sup>38</sup>

The paradox of this potential risk is that the work of truth commissions depends largely on the participation of victim-survivors since their testimonies form the basis for the TRC's final report. In particular, commissions develop explanatory frameworks for damage done and thus design appropriate recommendations for reparations and institutional reforms based on what victim-survivors tell them. In some cases, these testimonies also provide the preliminary evidence for initiating criminal investigations. Additionally, the participation of victim-survivors is part of a pedagogical project: these testimonies are also used to educate and sensitize a broader public about periods of gross and systematic human rights violations. Thus, victim-survivors are both the primary subjects and the intended beneficiaries of a truth

---

35. Brandon Hamber & Richard Wilson, *Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies*, 1 J. HUM. RTS. 35 (2002).

36. Brandon Hamber, *The Need for a Survivor-Centered Approach to the Truth and Reconciliation Commission*, 9 COMMUNITY MEDIATION UPDATE, ¶ 3 (1996), available at <http://www.csvr.org.za/articles/artrcdrt.htm>.

37. Brandon Hamber, *Dealing with the Past and the Psychology of Reconciliation*, Public address presented at the 4th International Symposium "Contributions of Psychology to Peace," ¶ 3 (27 June 1995), available at [www.csvr.org/articles/artrcdrt.htm](http://www.csvr.org/articles/artrcdrt.htm).

38. *Id.* ¶ 7.

commission's investigations and recommendations. It is of great concern that testifying might be harmful because it directly threatens the viability of the truth commission model. If it is confirmed that the experience is harmful, logic would suggest that such commissions should not be used.

## V. A CONDITIONAL CATHARSIS? THE TEMPORARY BENEFIT OF TESTIFYING

The authors' research confirms the temporary beneficial effect of truth commissions with their emphasis on listening empathetically to the formerly voiceless to reconstruct a common version of history and to reveal the practices and institutions that led to their victimization.<sup>39</sup> After years of marginalization and ethnic discrimination, Peruvian victim-survivors finally encountered a state endorsed forum in which their stories and demands were heard and acknowledged.

The social, economic and cultural profile of the majority of victims undoubtedly led to this reaction. The majority of those who testified came from historically marginalized populations and, as the authors have noted, three out of four of the approximately 70,000 people killed and disappeared in Peru's internal armed conflict came from poor, agrarian communities, with a maternal language other than Spanish. The six regions most affected by the conflict are among the poorest in the country, and were historically neglected by the state.<sup>40</sup> Thus, for many victim-survivors their participation in the TRC was the first time they received recognition from a state entity, and were treated with interest and respect. For instance, the participation of victim-survivors in public hearings was "a key moment," especially for those who had never publicly told their stories, or perhaps had never told them at all.<sup>41</sup>

In particular, in the interviews with people who provided testimony to the TRC, many emphasized that it was significant to be heard by the state after years of being silenced. The TRC, as a state-endorsed institution, was the first step in this process, giving victim-survivors an active role in its work. Indeed, the truth commission's mandate allowed it to "[e]stablish appropriate communication channels and promote participation of the population, particularly of that most affected by political violence."<sup>42</sup> One important aspect of this work was the reliance on victim-survivors, and not only on

---

39. THEIDON, *supra* note 28.

40. CVR, *supra* note 5, General Conclusions ¶¶ 5–7.

41. Interview with Rocio Paz, Director of Training, Asociacion Pro Derecho Humanos, Lima, Peru (23 May 2005) (transcript on file with authors).

42. Decreto Supremo No. 065-2001-PCM, §6(f)(4 June 2001).

specialists, to contribute to understanding what happened. Victim-survivors did not necessarily use technical or legal terms; rather, as one person told the authors, she testified “not only to what I lived but to what I felt.”<sup>43</sup> Importantly, the TRC validated the experiences of those who provided testimony, and the accumulation of testimonies lent weight to the voices of those who spoke. The process of validating the experience of victim-survivors was furthered by presenting their words in the “official” form of a state report.<sup>44</sup>

Above all else, the hearings helped reveal that victim-survivors were not alone in their stories, but instead figured as part of a collective experience of suffering and survival.<sup>45</sup> Also evident in the authors’ interviews was the realization of a shared experience that helped dissolve feelings of isolation and even self blame; seeing the patterns of abuse made clear to them that what happened was systematic and not their fault. As the authors were told, people encountered solidarity in their common history, even though it was a horrible one. Taken together, each story confirmed the undeniable truth that a grave wrong had occurred, refuting attempts to deny the past.<sup>46</sup>

In her interviews with twenty victim-survivors who gave their testimony during the TRC’s public hearings, author Laplante did not find one person who described the actual experience the day they testified as negative.<sup>47</sup> In fact, all indicated that it was a positive experience, and for some it clearly had a cathartic effect. Most participants had a sense of relief after sharing their stories in public and felt like a weight was lifted off their shoulders. Some comments included:

I feel like what I had inside of me has been lifted and in other parts its like I’ve gained some kind of internal peace. . . I am learning more about my experiences and also I have seen how other friends who have participated in the Hearings

- 
43. Interview with Gisele Ortiz, Petitioner before Inter-American Court of Human Rights and family of victim in the Cantuta Case, Lima, Peru (8 June 2005) (transcript on file with author).
  44. See Mark J. Osiel, *Making Public Memory, Publicly*, in *HUMAN RIGHTS IN POLITICAL TRANSITIONS: GETTYSBURG TO BOSNIA* 242 (Carla Hesse & Robert Post eds., 1999).
  45. Interview with Rocio Paz, *supra* note 41.
  46. Author Theidon was struck by this theme among staff of the TRC in the Ayacucho office. Although many of the staff members were from Ayacucho and had lived there during the internal armed conflict, it was common to hear them state that prior to their work with the TRC, they had no idea of the magnitude of the violence and loss of life. Author’s interviews.
  47. Study involved thirteen men and seven women. Those interviewed represented the range of victims: displaced persons, families of the disappeared, tortured and assassinated, those unjustly imprisoned, and those incapacitated as a result of the conflict. The perpetrators of these violations broke down to approximately 50 percent from the state and 50 percent from subversive groups. Those interviewed included professionals, peasants, clergy, police, government officials, and those with various political affiliations including oppositional parties. Results of the study also appear as part of the TRC’s impact assessment, see CVR *supra* note 5, *Public Hearings*, available at <http://www.cverdad.org.pe/apublicas/audiencias/index.php>.

propose and make their testimonies and I have learned from them and am changing from before, getting better.<sup>48</sup>

I am definitely relieved. I believe that being able to talk about the subject makes you feel like something has been lifted from your back that had been a heavy burden...I am satisfied with myself for having been able to do it, especially because many people did not know this history, didn't understand it.<sup>49</sup>

"When I told all I felt as if I healed a sickness. . . I talked about my pain in front of the public like a person healed of an illness."<sup>50</sup>

Despite these initial positive effects, our studies also confirmed that victim-survivor's participation rarely arose out of a gratuitous gesture, or the desire simply to be heard. Indeed, while many victim-survivors indicated that they shared their experiences with the hope that the violence would never occur again, the absolute majority explicitly justified their participation with the hope of some concrete redress from the government.<sup>51</sup> While not every person interviewed by the authors sought retributive justice in the form of criminal investigations and trials, everyone expressed the desire for restorative justice through reparations.<sup>52</sup>

In fact, during the truth commission's work, the authors detected high expectations of what the TRC would do in terms of restorative justice, leaving open the question of what would result if those expectations went unmet. Hamber writes:

The issue of reparation and particularly the concern of raising individual expectations are paramount. . . . Expectations and wishes vary a great deal. . . . The ultimate form of compensation would be to meet these needs, and conversely, the greatest disappointment and frustration would be to fail to do so.<sup>53</sup>

Experts caution against "using" survivors to share the terrible things they have experienced only to serve as subjects of a study that is unrelated to their own healing.<sup>54</sup> In relation to a TRC process, there is the risk that testifiers will view their participation as a mere exercise in data collection and see no concrete benefits in their own struggle for recovery and justice. In this situation, any of the temporary curative effects of giving testimony, as observed by the authors, may ultimately be undermined. Worse, by first

---

48. Interview with male, 41, Ayacucho, family of disappeared and affected community leader (4 Mar. 2003) (translation by author).

49. Interview with female, 31, Lima, family of extrajudicially killed (8 Jan. 2003) (translation by author).

50. Interview with female, 50, Ayacucho, family of disappeared (5 Mar. 2003).

51. Lisa LaPlante, *El Impacto de las Audiencias Públicas en los Participants*, available at <http://www.cverdad.org.pe/apublicas/audiencias/impacto.php>.

52. *Id.*

53. Hamber, *supra* note 37, ¶ 24.

54. JUDITH HERMAN, *TRAUMA AND RECOVERY* 240 (1992).

raising expectations and then leaving them unmet, the truth telling process could actually cause harm since victim-survivors could feel a deeper sense of deception and neglect. One immediate consequence could be that if potential beneficiaries of the truth commission process become disillusioned with a transitional justice project, they may cease to participate in the political struggle needed to continue the transition started by the TRC. They may stop demanding their rights, including the implementation of reparations. Yet, the authors have observed representatives of both civil society and government entities in Peru repeatedly confirm that the political pressure needed to assure that the TRC's recommendations stay on the public agenda depends on the political mobilization of the very people whose rights were violated and to whom reparations are due.

In South Africa—where prosecutions were mostly precluded through political amnesties—the government's failure to pay or institute timely and adequate reparation to victims has created renewed political tensions that threaten to undermine the work of the truth commission and even demean its credibility and beneficial effects.<sup>55</sup> In Peru, more than two years after the publication of the TRC's final report in August 2003, there is a high level of disappointment due to the government's failure to implement the recommendations made by the TRC. Among the most disappointed—those who outrightly reject the work of the TRC—are victim-survivors who mistakenly believed their testimony would result in immediate compensation for their suffering.<sup>56</sup> Even for those who understood that implementation would be a process, as time goes by without concrete results there is growing disillusionment, increasing distrust of the government, and continued impunity.

Thus the restorative justice component of the transitional formula still remains an ideal. Moreover, as the authors speculate, maintaining the positive effects of the truth commission seems to be inextricably linked to the realization of follow-up measures such as reparations. Truth alone is insufficient.

---

55. Brandon Hamber, *Reparations as Symbol: Narratives of Resistance, Reticence and Possibility in South Africa*, paper presented at the *Reparations: An Interdisciplinary Examination of Some Philosophical Issues*, Queen's University, Kingston, Canada (6–8 Feb. 2004), available at <http://www.brandonhamber.com/talks2.htm#2004>.

56. In the region of Ayacucho, the highlands of Peru where the greatest violence occurred, there are reportedly three communities inhabited mostly by older women left widowed or childless by the conflict who held this belief and currently express outright rejection of the TRC due to the failure to meet this promise. This belief was common throughout rural areas, particularly with older women who tend to be monolingual Quechua speakers. Diffusion regarding the TRC was insufficient in rural areas, and this was compounded by a misinformation campaign launched by opponents of the Commission.

## VI. HOW AND WHEN IS JUSTICE SERVED IN THE TRANSITIONAL JUSTICE FORMULA?

Justice depends on redressing past wrongs and it plays a crucial role in transitional contexts. Criticism that the South African truth commission equated truth with reconciliation, bypassing justice, and thus leaving many victims unsatisfied and angry, echoes a growing consensus that breaking with the past requires some form of justice.<sup>57</sup> However, while justice plays an imperative role in transitional contexts, it remains uncertain how and at what point justice is finally served since this may depend overwhelmingly on subjective criteria.<sup>58</sup>

As mentioned, when interviewing victim-survivors in Peru it is common to hear requests and expectations for monetary and non-monetary reparations and not just criminal convictions of the perpetrators of human rights violations. Indeed, in her work on community mental health, reparations, and the micropolitics of reconciliation, Theidon found that compensatory conceptions of justice were generalizable and form a key component of communal forms of adjudicating conflict.<sup>59</sup> Moreover, the pronouncements, publications, and posters of victim-survivors call for “truth, justice and reparations” as the three-pronged approach to breaking from the past, because each is perceived as a form of justice.<sup>60</sup> Thus, while “justice” is traditionally conceived to signify criminal prosecution, reality shows that justice comes in many forms.

### A. Substitute or Complement? Reparations as a Mechanism of Justice

Perhaps because traditional theories of retributive justice—prosecuting and punishing perpetrators—hold strong moral authority as the only way to satisfy individual and societal needs for justice by bringing wrongdoers to account, it tends to dominate the discourse related to ending impunity and building the rule of law.<sup>61</sup> The authors’ interviews with victims in Peru revealed that

---

57. See *THE PROVOCATIONS OF AMNESTY: MEMORY, JUSTICE AND IMPUNITY* (Charles Villa-Vicencio & Erik Doxtader eds., 2003).

58. Roy Brooks, *Reflections on Reparations*, in *POLITICS AND THE PAST*, *supra* note 9, at 109.

59. THEIDON, *supra* note 17; Kimberly Theidon, *Justice in Transition: The Micropolitics of Reconciliation in Post-War Peru*, 50 *J. CONFLICT RESOL.* 433 (2006).

60. Lisa J. Laplante, *Entwined Paths to Justice: The Inter-American Human Rights System and the Peruvian Truth Commission*, in *PATHS TO INTERNATIONAL JUSTICE: SOCIAL AND CULTURAL PERSPECTIVES* (Maria Dembour & Tobias Kelly eds., forthcoming 2007).

61. Carlos Santiago Nino, *RADICAL EVIL ON TRIAL* (1996); Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, in *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES* (Neil Kritz ed., 1995); Juan E. Méndez, *Accountability for Past Abuses*, 19 *HUM. RTS. Q.* 255 (1997).

certain sectors expect prosecutions even after decades of awaiting criminal investigations, thus aligning themselves with traditional notions of retributive justice. Many of the people with whom the authors work have expressed that after so many years they are still waiting for “*un poco de justicia*”—a bit of justice. Indeed, the authors agree that some form of criminal justice must follow periods of systematic and prolonged human rights violations to confront impunity.

However, it has also been observed that political and legal realities can make this goal unattainable. For instance, a preference for retributive justice may follow class lines and is a luxury afforded only to victim-survivors without economic hardship. Among the rural poor, demands for justice are overwhelmingly expressed in an economic idiom: the struggle to survive results in practical considerations such as the need for farm animals, suitable housing, or education for their children. In contrast to Argentina, where some mothers of the disappeared refused compensation on the grounds that it was a means for the state to evade criminal responsibility, poorer victims in Peru are less likely to express such a reaction.<sup>62</sup> Poverty denies them the option of refusal. Here, the social, economic, and historical location of the victim-survivor clearly molds his or her conceptions of justice and of its attainability.

In addition, the authors’ research indicates that retributive justice remains irrelevant for some victim-survivors, such as those who were tortured, blindfolded, or never discovered who disappeared or murdered their loved ones. These people do not pursue criminal investigations or trials because, quite simply, they cannot identify the perpetrator. Moreover, countries like Peru, emerging from periods of violence and oppression, face judicial systems that function barely, if at all. Indeed, these inadequacies permitted the break down of the rule of law in the first place.<sup>63</sup> Additionally, for poor, marginalized sectors of the population the national legal system may be viewed with suspicion especially since it failed to protect them during the years of political violence. Thus, there is minimal faith that justice can be won through this venue. Although Peru did not offer political amnesty as was done in South Africa, it nevertheless faces the reality of a judicial system that cannot be reformed overnight, preventing timely and workable trials.<sup>64</sup> Upon terminating its work, the TRC transferred forty-three of the most

---

62. See Osiel, *supra* note 44, at 248.

63. [I]t is precisely the concern of *transitional justice* that these regular institutions cannot yet be taken for granted; under the prior regime, the very foundation of law and of public institutions were perverted. A new culture of rights and equal citizenship must still be ensued. Alex Boraine, *The Moral Foundation of the South African TRC: Truth as Acknowledgment and Justice as Recognition*, in TRUTH V. JUSTICE, *supra* note 7, at 138.

64. Minow, *The Hope for Healing*, *supra* note 7, at 238.

emblematic and substantiated criminal cases to the Minister of the Interior for further investigation.<sup>65</sup> Yet more than two years later, twenty-four had still not been open for investigation and only one had resulted in a final sentence: acquittal.<sup>66</sup> In actuality, even in the absence of amnesty, political influence delays and even obstructs criminal investigations and trials. A recent report from the Peruvian Ombudsman's office reveals a myriad of suspicious obstacles presented by the military such as refusing to share evidence, thus undermining the handful of criminal investigations opened pursuant to the TRC's recommendations.<sup>67</sup> Similarly, when a human rights prosecutor in Ayacucho initiated prosecution against a former president, the National Criminal Court issued a decision that jurisdiction for crimes against humanity belongs to courts in the urban capital of Lima, some eight hours away from evidence and witnesses.<sup>68</sup>

In addition, the Peruvian Ombudsman's office reveals that of the 1,512 victim-survivors involved in these legal cases, only 364 count on legal assistance to assure the case moves forward.<sup>69</sup> Peruvian human rights organizations bringing criminal complaints on behalf of victims acknowledge that they have limited resources and can only present the most emblematic complaints—the “pattern violation” cases—or pursue criminal prosecution against the most egregious of violators. Additionally, given Peru's scant record of criminal prosecutions for human rights violations,<sup>70</sup> reparations may be the only form of justice left to Peruvian victim-survivors and may be “the most tangible manifestation of the efforts of the state to remedy the harms that these victims have suffered.”<sup>71</sup> Thus victims who cannot look towards criminal prosecution to satisfy their needs for justice often focus on the receipt of reparations instead. “Clearly, both kinds of efforts, the penal and the reparative, can be considered elements of justice, yet an important dimension of the latter has not received sufficient systematic attention.”<sup>72</sup>

65. Laplante, *Entwined Paths to Justice*, *supra* note 60.

66. Defensoría del Pueblo, *A Dos Años de la Comisión de la Verdad y Reconciliación: Informe Defensorial No. 97*, at 49–52 (2005), available at [http://www.ombudsman.gob.pe/modules/Downloads/informes/defensoriales/informe\\_97.pdf](http://www.ombudsman.gob.pe/modules/Downloads/informes/defensoriales/informe_97.pdf).

67. *Id.* at 149–70.

68. Interview by Germán Vargas Farías with Cristina Olazábal, Fiscal Especial de Derechos Humanos de Ayacucho, in *Ayacucho, Peru* (May 2005), available at [http://www.justiciaviva.org.pe/nuevos/2005/entrevista\\_olazabal.doc](http://www.justiciaviva.org.pe/nuevos/2005/entrevista_olazabal.doc).

69. Defensoría del Pueblo, *supra* note 66, at 57.

70. Walter Chiara & Lisa J. Laplante, *Prosecutors in Peru. Testing the Limits of Impunity*, THE REPARATION REPORT 4 (2004), available at [www.redress.org/reports/april2004.pdf](http://www.redress.org/reports/april2004.pdf).

71. Pablo de Greiff, Executive Summary: The Role of Reparations in Transition to Democracy, Achieving Global Justice Seminar at the Carnegie Council (5 June 2004), available at [http://www.cceia.org/resources\\_papers/4980.html.\\_res/id=sa\\_File1/4980\\_Greiff\\_Reparations\\_and\\_Democracy.pdf](http://www.cceia.org/resources_papers/4980.html._res/id=sa_File1/4980_Greiff_Reparations_and_Democracy.pdf).

72. Pablo de Greiff, Addressing the Past: Reparations for Gross Human Rights Abuses, presentation at *Repairing the Past: Confronting the Legacies of Slavery, Genocide, & Caste*, Yale University, New Haven, Connecticut (27–29 Oct. 2005), available at <http://www>

## B. Paying Reparations: Holding the State Accountable

The authors also observe that reparations serve an important symbolic role for Peruvian victim-survivors who view the state as having failed to protect them. Indeed, the state must be brought to account for its acts and omissions that violated the human rights of victim-survivors. Yet, criminal justice, with its emphasis on prosecuting individual perpetrators, precludes holding the state accountable for having caused or permitted serious human rights violations. As a *non persona* entity, the state cannot face criminal charges despite its abuse of and failure to protect its citizens, and thus reparations become a means of “making the government pay.”<sup>73</sup> While economic reparations in the case of massive human rights violations can usually at most be a modest amount that cannot truly indemnify the personal harm suffered from political violence,<sup>74</sup> it nevertheless offers important symbolic value by signaling the state’s assumption of responsibility for past wrongs and in acknowledging victims’ suffering.<sup>75</sup> Thus while reparations respond to human and material damages, they arise out of rights and serve as measures of accountability.<sup>76</sup> In this way it resembles the satisfaction achieved through successful criminal prosecutions by satisfying the need for “righting a wrong” and may work toward settling accounts.

## C. The Guilt of Nations or the Right of Victims?

While reparations serve an important function in holding the state accountable, in reality the enforceability of reparations may depend on whether or not the state adopts the viewpoint that reparations are the rights of victim-survivors. The authors have observed that critical sectors of the central government, namely the executive and the Minister of Economy and Finance (MEF), have failed to embrace this perspective resulting in what victim-survivors view as an outright lack of political will and a tolerance for further impunity. However, regional governments and other sectors of the central government such as the Minister of Health have begun to assume

---

yale.edu/glc/justice/greiff.pdf (to be published in *RULE OF LAW AND CONFLICT MANAGEMENT: TOWARDS SECURITY, DEVELOPMENT AND HUMAN RIGHTS* (Agnes Hurwitz ed. forthcoming).

73. See Lisa J. Laplante, *Bringing Effective Remedies Home: The Inter-American Human Rights System Reparations and the Duty of Prevention*, 22 *NETH. HUM. RTS. Q.* 347 (2004).
74. Brian Walsh, *Resolving the Human Rights Violations of a Previous Regime*, 158 *WORLD AFF.* 118 (1996).
75. Patricia E. Standaert, *Other International Issues: The Friendly Settlement of Human Rights Abuses in the Americas*, 9 *DUKE J. COMP. & INT’L L.* 537 (1999).
76. See Roman David & Susanne Choi Yuk-ping, *Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic*, 27 *HUM. RTS. Q.* 430–31 (2005).

the perspective that reparations arise out of rights and consequently are in the process of implementing reparations programs.<sup>77</sup>

The Peruvian truth commission's recommendations on reparations offer both ethical and legal justifications for reparations, reflecting two divergent perspectives of the issue: while some commentators regard reparation programs as the moral and political prerogative of a repentant state,<sup>78</sup> others argue that reparations should also be seen as a legal right of victims that creates a corresponding obligation on the state.<sup>79</sup> The rights-based approach to reparations strengthens victim-survivors' claims for reparations, especially given the politically and economically unstable conditions of a country such as Peru. Framing reparations as a right does not leave it to the discretion of the state to locate reparations among competing social needs and a shrinking share of the economic pie. If left to morality, reparations remain the prerogative of the state; conversely, if framed in terms of rights, victim-survivors gain more power to oblige compliance from the state.<sup>80</sup> Framing reparations in terms of rights—and not just moral obligations—promotes the overall task of building respect for equal rights, which is fundamental to establishing the rule of law, liberal democracies and stable legal institutions.<sup>81</sup> Reparations that are delivered as a corresponding obligation for past wrongs helps serve the need for accountability. This works towards ending impunity because “reparations help to make the notion of human rights seem real and enforceable.”<sup>82</sup> Indeed, through framing reparations as a right, one often hears victim-survivors indignantly declaring that it is “my right, not a gift.”

In the almost three years since the presentation of the TRC's Integral Plan of Reparations, its implementation has been slow at best. To the outrage of victim-survivors' organizations and the human rights community, President Alejandro Toledo waited several months before responding to the TRC's Final Report, and then promised only a program of social development thereby sidestepping reparations.<sup>83</sup> In 2004, the government formed a special commission charged with developing a program of reparations based on the recommendations of the TRC, a project that culminated in April 2005 with the presentation of the “Plan of Reparations 2005–2006” which the Council

---

77. See Lisa J. Laplante & Roxana Castellon, *Expanding the Definition of the Right to Mental Health: Attending To Victims of Political Violence and Armed Conflict in Their Communities Of Origin*, 2 ESSEX REV. HUM. RTS. 52 (2005).

78. ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* (2000).

79. Stef Vandeginste, *Reparations*, in *RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK* 145 (International Institute for Democracy & Electoral Assistance eds., 2003).

80. Elazar Barkan, *Restitution and Amending Historical Injustices in International Morality*, in *POLITICS AND THE PAST*, *supra* note 9, at 93.

81. Boraine, *supra* note 63, at 138.

82. Torpey, *supra* note 30, at 5.

83. Lisa J. Laplante, *Reparations for Justice*, 40 *LATINAMERICAPRESS* 3–4 (17 Dec. 2003), available at <http://www.latinamericapress.org>.

of Ministers approved through executive decree.<sup>84</sup> Again, civil society groups observed that this proposed plan falls short of the ambitious reparations plan embodied in the PIR, and funding for its implementation has come up short. The government also issued an Executive Decree to create the legal framework for the PIR, requiring the various ministers to begin developing reparations programs.<sup>85</sup> However, numerous civil society organizations have pointed out that this framework relies on the professional and personal commitment of individual ministers to fulfill the supposed obligation, and thus does not ensure continuity of commitment. Similarly, while it was considered a great triumph when the Peruvian Congress approved a Law of Reparations in July 2005, civil society organizations are now confronting the technical obstacles that the state presents to delay its implementation, such as the need for a national registry of all victims.<sup>86</sup>

Most importantly, while these steps indicate movement forward in the pursuit of reparations, Peruvian civil society groups dismiss these developments as being in vain as long as the Minister of Economy and Finance refuses to allocate the necessary funds to support proposed reparations. Despite the normative developments in reparations explained above, the government has systematically failed to designate sufficient funds to implement the plan in full; even when it has promised a symbolic amount, MEF has systematically failed to transfer these contemplated funds.<sup>87</sup> The Minister's boilerplate assertion that "there are no funds" elicited great distrust on the part of victim-survivors when the next week it approved a large spending package on the military.<sup>88</sup> The government loses credibility every time it secures funding for politically popular causes, like the armed forces or a special subsidy program for the poor within the context of the upcoming presidential elections, while complaining that it is lack of funding that serves as the obstacle to implementing the PIR. Victim-survivors also learn about the government failing to respond to offers of international cooperation to finance assistance for reparations in the form of debt exchange. Thus, civil society groups have realized that without strong public pressure, the government will continue to evade its obligation to provide reparations. In other

---

84. Plan Integral de Reparaciones: Programación Multiannual 2005–2006, Decreto Supremo No. 047-2005-PCM (6 July 2005).

85. Aprueban marco programático de la acción del Estado en materia de paz, reparación y reconciliación nacional, Decreto Supremo No. 062-2004-PCM (27 Aug. 2004).

86. Ley que crea el Programa Integral de Reparaciones—PIR, LA LEY No. 28592 (29 July 2005).

87. Nelson Shack Yalta, *Avanzando hacia la Cuantificación del Gasto público en Materia de Reparaciones*, Recopilación de Instrumentos Legales Sobre la Implementación de Recomendaciones de la Comisión de la Verdad y Reconciliación 57 (2006), available at <http://www.regionhuanuco.gob.pe/gr/grds/PIRAPCI/PIRES%20FINAL.pdf>.

88. *Un Poco Tarde: Reglamentan Fondos para FFAA y PNP*, CORREO (3 May 2005), available at [http://www.correoperu.com.pe/paginas\\_notas.php?nota\\_id=2592&seccion\\_notas=1](http://www.correoperu.com.pe/paginas_notas.php?nota_id=2592&seccion_notas=1).

words, political will can be an imposed volition. This process, however, depends on the political pressure that victim-survivors of the internal armed conflict can mount.

#### D. Putting the Reparative in the Transitional Justice Model

In a restorative fashion, reparations often become the preferred option—a preference that may reflect necessity and pragmatism—to help satisfy victim-survivor's and society's need for and expectations of justice, to assist victim-survivors in rebuilding their lives, and also to hold the government accountable in instances of mass atrocity.<sup>89</sup> Restorative justice can offer the advantage of foregrounding the role of victim-survivors as opposed to perpetrators, as is the case with retributive justice, and may afford them more opportunities to reclaim their human and civil dignity.<sup>90</sup> Focusing on victim-survivors is also a pragmatic matter since observation demonstrates that to ignore their needs risks new cycles of frustration, revenge, and violence.<sup>91</sup> Reparations thus become imperative since a delay in some form of prompt justice can nullify the positive results of a truth commission, or worse, put the country at risk for an imminent backslide to violence.

The authors' observations of Peru's transitional justice experience and the opinion of victim-survivors reveal that reparations can be considered just as important as criminal trials, making both justice measures a legitimate form of redress. Moreover, trials cannot replace legitimate demands for other forms of redress that may more fully reflect victim-survivor's conception of justice. While the ideal is to offer both, and thus offer a more comprehensive response to victim-survivors' conceptions of justice, reality dictates that at times reparations becomes the only feasible option, at least in the short and medium term. For these reasons, forms of restorative justice, while always complementary, may sometimes be an alternative within the transitional justice scheme.

Despite this preliminary observation, given that few post-truth commission countries have implemented reparations programs, it remains to be fully assessed whether reparations satisfy victim-survivors' and society's need for and expectations of justice in the long run.<sup>92</sup> Based on other experiences

---

89. Naomi Roht-Arrianza, *Reparations in the Aftermath of Repression and Mass Violence*, in *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* (Eric Stover & Harvey M. Weinstein eds., 2004).

90. Elizabeth Kiss, *Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice*, in *TRUTH V. JUSTICE*, *supra* note 7, at 71.

91. Minow, *The Hope for Healing*, *supra* note 7, at 236.

92. Some believe social transformation—building the rule of law, reconciliation and the overall process of reform—are strengthened by, if not perhaps impossible without,

in countries like South Africa and Chile where victims insist on criminal trials even after being paid reparations, it appears that reparations cannot substitute for prosecutions. Reparations are at most a necessary complement and provide temporary satisfaction in the interim while awaiting criminal prosecution. However, as more truth commissions produce reparation plans around the world, reparations in themselves are proving to be an essential transitional justice measure, necessary for serving the justice requirement of the transitional justice formula and, importantly, the conceptions of justice that victim-survivors articulate.

## VII. CONCLUSION

We present this Final Report as a mandate on behalf of the absent and the forgotten of this nation. The history contained herein speaks of us—of who we have been and who we must cease to be. This history speaks of our tasks. This history begins today.<sup>93</sup>

Reparations as part of post-conflict transitional justice processes have been labeled a “preeminently modern phenomenon.”<sup>94</sup> Although “there is perhaps no more contentious an issue in international human rights today than the question of reparations,”<sup>95</sup> there is “very little published academic work that deals specifically with this phenomenon.”<sup>96</sup> The authors hope the preceding discussion captures the complexity of the reparations debates in Peru in order to contribute to the work of future truth commissions, as well as to the struggle of Peruvian victim-survivors for justice.

In our research, the demographics of the violence in Peru are embodied before us. The people with whom we work come from those sectors of the population that bore the brunt of the internal armed conflict and of longer-standing forms of structural violence, including poverty and ethnic discrimination. One component of the reparations program is symbolic and includes the recognition that for the duration of the conflict, those belonging to the poor and ethnically marginalized sectors of Peruvian society received second-class treatment, based on the denial of their full citizenship. Reparations are one step in demonstrating that all citizens have the right to live in a country that protects their fundamental human rights and that their

---

reparations. Robert I. Rotberg, *Truth Commissions and the Provision of Truth, Justice, and Reconciliation*, in *TRUTH V. JUSTICE*, *supra* note 7, at 12; see also Minow, *The Hope for Healing*, *supra* note 7, at 252.

93. Salomon Lerner, Former President of the TRC, (28 Aug. 2003).

94. Jeffrey K. Olick & Brenda Coughlin, *The Politics of Regret: Analytical Frames*, in *POLITICS AND THE PAST*, *supra* note 9, at 44.

95. Brooks, *supra* note 58, at 103.

96. Lean, *supra* note 9, at 171.

country will take steps against those who seek to violate them.<sup>97</sup> Throughout this article the authors have argued that the truth is not enough. Truth commissions begin a process that limits the range of permissible lies,<sup>98</sup> raises expectations for justice, and promises to repair some of the damage done either through crimes of commission or omission. To fulfill the expectation that truth can be the bridge to a future that does not repeat the past, then the expectations of those who provided testimony to the violence they suffered and endured must inform post-conflict policies. Thus reparations may be essential to constructing that bridge.

---

97. Brandon Hamber, *Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition*, in *THE HANDBOOK OF REPARATIONS*, *supra* note 4, at 566.

98. MICHAEL IGNATIEFF, *HUMAN RIGHTS AS POLITICS AND IDOLATRY* (2003).