

February 2014

Dictatorships, refugees and reparation in the Southern Cone of Latin America

Juan Pablo Terminiello

Since the return of democracy to Argentina, Bolivia, Chile, Paraguay and Uruguay there has been particular recognition of forced displacement within the framework of reparations for the abuses suffered under dictatorial governments.

The 1970s and a large part of the 1980s saw the countries of the Southern Cone of Latin America¹ governed by civil-military dictatorships. Inspired by the doctrine of national security, these governments implemented systematic plans for the violation of human rights with the aim of erasing all opposition to their authoritarian practices and imposing their political and socio-economic models.

‘Exile’ is the usual term used for the displacement of thousands of Latin American people forced to flee to other countries of the region and other parts of the world, although no definitive statistics are available on the number of individuals exiled as a consequence of the repressive actions of the authoritarian governments.

Forced displacement was not merely a consequence of the repressive actions of military governments; displacement in some cases became a component of the strategies of repression implemented by the dictatorships. For example, in Chile, the military dictatorship headed by Augusto Pinochet enacted a number of regulations to force the displacement of members of the opposition and to thus redraw the political map of the country. A decree granting discretion to expel citizens from December 1973 allowed all of the detainees being held but who had not yet been tried to apply for release conditional on their immediate expulsion from the country. A law of 1974 then granted the dictatorship the authority to refuse re-entry of Chilean citizens to the country. The application of these decrees forced thousands of Chileans to abandon their country – and prevented their return.

Reparations

The return to democracy and the re-establishment of constitutional governments confronted the countries of the Southern Cone with the need to implement complex processes of transitional justice to deal with the serious human rights abuses committed by the dictatorships. These countries have been pioneers in implementing a variety of political and legal approaches and strategies to deal with their recent history of human rights violations. The trial and punishment of perpetrators, the establishment of truth commissions and the adoption of regulations to permit amnesty or pardon for perpetrators form part of the complex range of options applied by the countries of the region to deal with their recent past of human rights abuses.

Recognition by the state of the abuses and the establishment of reparations for the victims – either monetary or in terms of assistance – were also part of the transitional justice processes implemented in these countries. These reparations have mainly been for individuals who were illegitimately deprived of their liberty and/or were tortured or were for the families of those who were assassinated or who were ‘disappeared’. Exile,



The ‘Platform of Advocates Against Impunity and Bolivian Dictatorship Survivors’ demands the recognition of dictatorship years, and an end to impunity for human rights abuses.

February 2014

however, has so far received relatively less attention from those establishing mechanisms for reparations, and less attention still has been given to the punishment of those responsible for imposing exile.

In Bolivia and Uruguay, exile had been explicitly taken into account in the recognition of state responsibility for human rights violations. In the cases of Argentina, Chile and Paraguay, forced displacement as a form of human rights violation was not initially expressly recognised in the laws for reparations, and only later declarations or judicial rulings recognised it as a human rights violation, leading to, or at least suggesting, measures for reparations.

In Bolivia, the law of compensation expressly established “exile and banishment” as one of the factors deserving compensation. However, the same law made granting of reparations to exiles conditional on them providing proof that they had been deprived of their liberty and had suffered persecution. The necessity to provide proof has frustrated the right to reparations of many former Bolivian refugees.

In the case of Uruguay, Law N° 18.596 (October 2009) recognises state responsibility for the infringement of the rights of those individuals

who were forced to leave the country due to political, ideological or trades union-related causes. It does not set any economic compensation for their time in exile, although Law N° 17.449 (January 2002) had established the time in exile as “effectively worked” in calculations for retirement and pension benefits. This has allowed many

Uruguayan former refugees to receive a retirement payment or old-age pension.

Victim compensation laws in Paraguay did not consider exile or the forced displacement of individuals within the class of violation considered eligible for compensation. However, the report produced by the Paraguay Truth and Justice Commission in 2008 recognised exile as one of the human rights violations perpetrated during the dictatorship and stressed that it affects not only the rights of the subjects of forced displacement but also those of their families. It also indicated that the transitional governments had failed to encourage the return of exiles through the creation of social and political conditions that would have favoured their reinsertion. In spite of the return to democracy, those Paraguayans residents abroad continued to be prevented from participating in elections in their country for many years, and they faced obstacles in conferring their nationality on children born abroad. In the case of Paraguay, there was no economic compensation for exiles, nor were there any other measures even as symbolic reparations.

In Chile, the state adopted a series of laws in favour of those persons who had suffered exile, including one to facilitate the return of exiled Chilean men and women, through the adoption of measures related to re-entry into the labour market, health care, education, housing, legal aid and international cooperation to ensure the continuity of pension payments. However, the reality is that there was no specific legislation establishing economic compensation for those people who had been forced into exile.

Under Argentine law, exile was not initially considered grounds for economic reparations but a decision by the Supreme Court in 2004 ruled in favour of extending the economic benefits of the law for the compensation of persons illegitimately deprived of their liberty to a family that had been forced into exile. That ruling encouraged thousands of exiled individuals to present claims for compensation.



of Justice and Historical Memory of reparations promised to survivors of the loss to military documents from the human rights violations. 2012.

February 2014

Conclusion

The transitional justice processes in the region have played, and continue to play, a determining role in the reinforcement of democracy and in preventing a repeat of the human rights violations committed in periods of dictatorship. The exposure of forced displacement as a human rights abuse and the recognition of state responsibility constitute important steps toward the prevention of forced displacement in the future. However, significant difficulties remain in ensuring that those people who experienced exile receive adequate and

comprehensive reparations for the damage caused to them. Lastly, legal strategies still need to be defined in order for the forced displacement of the population to be officially recognised as one of the abuses for which those responsible for human rights violations must be made to answer before the law.

Juan Pablo Terminiello jpterminiello@gmail.com is Teaching Assistant in International Refugee Law at the Law School of the University of Buenos Aires, Argentina.

1. The southernmost part of South America, approximately south of the Tropic of Capricorn.