

Exploration | Exploración

Toward self-determined reparative justice in Brazil: Indigenous leadership confronting human rights violations

Carlos Benítez Trinidad
University of Salamanca

Hygor Mesquita Faria
Federal University of Juiz de Fora (Brazil) / University of Santiago de Compostela

Abstract

Since the publication of the National Truth Commission (CNV) final report in 2014, Brazil has made significant progress in incorporating indigenous peoples into transitional justice mechanisms. In 2024, two key milestones marked this process: the progress toward establishing the National Indigenous Truth Commission (CNIV) and the fourth session of the Amnesty Commission, which, for the first time, considered and approved collective reparation requests for indigenous peoples affected by the military dictatorship. These events represent a significant shift in addressing reparations by recognising the collective nature of the harms suffered. This study suggests that these developments pave the way for a justice model that incorporates indigenous epistemologies, ensuring self-determination in the reparation process. Preliminary findings indicate that these steps set a crucial precedent for more inclusive and collective justice in Brazil. *Keywords:* Justice, human rights, indigenous communities, Brazil.

Resumen: Hacia una justicia reparadora autodeterminada en Brasil: Liderazgo indígena frente a las violaciones de los derechos humanos

Desde la publicación del informe final de la Comisión Nacional de la Verdad (CNV) en 2014, Brasil ha logrado avances significativos en la incorporación de los pueblos indígenas a los mecanismos de justicia transicional. En 2024, dos hitos clave marcaron este proceso: los avances hacia el establecimiento de la Comisión Nacional de la Verdad Indígena (CNIV) y la cuarta sesión de la Comisión de Amnistía, que por primera vez consideró y aprobó solicitudes de reparación colectiva para los pueblos indígenas afectados por la dictadura militar. Estos acontecimientos representan un cambio significativo en el tratamiento de las reparaciones, al reconocer la naturaleza colectiva de los daños sufridos. Este estudio sugiere que estos avances allanan el camino para un modelo de justicia que incorpore las epistemologías indígenas, garantizando la autodeterminación en el proceso de reparación. Las conclusiones preliminares indican que estas medidas sientan un precedente crucial para una justicia más inclusiva y colectiva en Brasil. *Palabras clave:* Justicia, derechos humanos, comunidades indígenas, Brasil.

Introduction

Between the 1980s and 1990s, several countries in Latin America initiated their respective democratic transition processes, accompanied by mechanisms aimed at achieving transitional justice. Transitional justice refers to a set of judicial and non-judicial measures – such as truth commissions, reparations, institutional reforms, and criminal prosecutions – designed to address the legacies of massive human rights violations. In this context, truth commissions became a key mechanism, as seen in emblematic cases like Guatemala and Peru, where state violence against indigenous populations was particularly severe and where, despite formal advances, implementation gaps persist. As Sieder and Sierra (2011) observe, although formal recognition of indigenous justice systems has increased, indigenous peoples – especially women – still face systemic discrimination and structural obstacles to accessing justice. The formal acknowledgement of rights often contrasts sharply with the practical enforcement of those rights across the region.

Quinalha and Teles (2020) argue that the discourse of transitional justice is commonly structured around four central pillars: the right to reparation, the right to truth, the right to justice, and the right to memory. Within this framework, truth commissions have become a paradigmatic mechanism, as highlighted by Hollanda and Israel (2019), who note that these commissions are usually addressed within the broader transitional justice literature. The term itself gained academic traction in 1992, when Ruti Teitel made a significant contribution by analysing the interplay between law and politics in emerging democracies. According to Quinalha (2020), many transitional justice processes operate through a shared repertoire of mechanisms that are frequently applied across different historical contexts. However, when these mechanisms are deployed without distinguishing between universal models and the particularities of each case, they risk imposing an analytical framework that obscures or limits the recognition of specific experiences. This is particularly evident in the case of indigenous peoples, whose experiences of violence and resistance often remain invisible within dominant transitional justice narratives. For these communities, principles such as the differential approach and the right to free, prior, and informed consultation are essential to ensuring meaningful reparative justice, especially in post-authoritarian contexts like those of twentieth-century Latin America (Clavero, 2008).

Despite significant advances in transitional justice across Latin America, the experiences of indigenous peoples have often been marginalised or treated as peripheral. This marginalisation reflects the broader trajectory of how indigenous issues have been incorporated – often inadequately – into transitional justice frameworks. Final reports from truth commissions in countries such as Peru, Guatemala, Paraguay, and Colombia have documented the extreme violence inflicted upon indigenous communities, including mass killings, forced displacement, disappearances, cultural destruction, and the appropriation of ancestral lands. Nevertheless, as Clavero (2008) observes, truth commissions often

approach the indigenous question through conventional notions of citizenship and the right to life. This reveals a fundamental contradiction: the reliance on a monocultural perspective within transitional justice mechanisms, which fails to engage with the multicultural realities of the region and limits the transformative potential of justice for indigenous peoples.

In Brazil, the progress made since the publication of the final report of the National Truth Commission (*Comissão Nacional da Verdade – CNV*, in Portuguese) in 2014 has been significant but uneven. The inclusion of indigenous peoples within transitional justice processes has encountered substantial obstacles, including limited access to information, insufficient resources, time constraints, and persistent resistance from political and military sectors (Faria, 2023, p. 63). Nevertheless, recent developments signal a crucial turning point in this trajectory. Notably, in 2024, two milestones marked a renewed commitment to addressing historical injustices. First, the institutional process began for the creation of the National Indigenous Truth Commission (*Comissão Nacional Indígena da Verdade – CNIV*)¹, a specialised body tasked with investigating the human rights violations committed against indigenous peoples during Brazil’s military dictatorship (1964–1985). Second, during the fourth session of the Amnesty Commission, for the first time in over two decades, crimes against indigenous communities were officially recognised, and requests for collective reparation were approved. These decisions represent an unprecedented step in Brazil’s transitional justice history, as they signify the legal recognition of collective reparations for indigenous groups.

These developments point to a promising reorientation of reparative justice in Brazil – one that not only acknowledges the historical crimes committed against indigenous peoples but also begins to incorporate indigenous epistemologies into the frameworks of investigation and reparation. Respecting indigenous knowledge systems and memory practices is crucial for establishing a transitional justice model that addresses the unique experiences and needs of these communities (Fernandes, 2022). This exploratory article examines these emerging dynamics through two focal processes: the advancement toward the creation of the CNIV and the outcomes of the fourth session of the Amnesty Commission. In doing so, it explores their broader significance for the contemporary indigenous agenda within Brazilian transitional justice, with particular attention to the role of indigenous movements in shaping demands for reparations grounded in the collective nature of the harms endured. As Rotondano and Beltrão (2021) highlight, indigenous movements across Latin America have increasingly engaged with state institutions to reinterpret and reshape legal frameworks. This “dual use of legal institutions,” capable of reinforcing or transforming existing structures, is evident both nationally and internationally. The central argument of this exploration is that these recent developments not only strengthen indigenous rights but also lay the groundwork for a transitional justice model that centres on their self-determination and cultural frameworks. In this context, the consolidation of indigenous justice mechanisms becomes essential to preventing the

recurrence of historical violence, reinforcing democratic processes, and ensuring the protection of their rights.

Brazil's National Truth Commission: Achievements and limitations

The inclusion of indigenous peoples as victims by the Brazilian National Truth Commission (CNV) process was marked by significant challenges, reflecting their historical marginalisation within the Brazilian state. Before the creation of the CNV in 2012, the crimes perpetrated against indigenous peoples during the military dictatorship (1964–1985) were not included in the agendas of commissions related to human rights and transitional justice (Faria, 2023). Although there were precedents for human rights investigations, particularly since 1995, they did not include the atrocities suffered by indigenous peoples. Despite initial attempts, incorporating indigenous issues into the CNV was neither automatic nor easy and required intense mobilisation from indigenous organisations and their allies.

A significant obstacle was the lack of systematised records of violence against indigenous peoples. The CNV's 2014 report highlights that the dictatorship failed to rigorously document atrocities, complicating efforts to gather evidence and testimonies. The complexity of indigenous issues – encompassing land, culture, and autonomy – presented additional challenges. Material and time constraints limited the CNV's investigation, preventing a thorough examination of the identified violations. The report acknowledges that only a fraction of indigenous cases were investigated, leaving hundreds of serious violations still insufficiently addressed (CNV, 2014). This was compounded by a lack of recognition of the severity of the violations suffered by indigenous peoples. “In the recovery of the silenced memories of an authoritarian past, Indigenous women remain forgotten” (Pankararu, 2023, p. 44), which greatly hindered their voices from being heard in official spaces. This deeply rooted marginalisation not only obstructed the inclusion of indigenous peoples in the CNV but also explains the lack of subsequent progress.

Despite the challenges, the inclusion of indigenous peoples in the CNV's final report in 2014 marked a significant milestone. Volume II² of the report, dedicated to thematic texts addressing groups especially affected by repression, includes a section on indigenous peoples. While the research presented in this volume was rather superficial, it represents the first acknowledgement in the history of Brazilian transitional justice that indigenous peoples were victims of systematic human rights violations during the dictatorship. This recognition encompasses crimes such as genocide, forced displacement, land expropriation, cultural repression, and the imposition of assimilationist policies. One of the investigation's key achievements was the recovery of the long-lost Figueiredo Report³, a critical document shedding light on these atrocities.

The report also includes several recommendations to remedy the injustices suffered by indigenous peoples. Among them was the need to create a National

Indigenous Truth Commission (CNIV), whose objective would be to continue investigating the cases not covered by the CNV (Zelic, 2023). This specific commission is viewed as crucial to achieving deeper justice that takes into account the unique characteristics of indigenous communities. However, despite the importance of this recommendation, it has not yet been implemented. Although the CNV recommended an official apology from the state to indigenous peoples for the violations committed, taking place for the first time in 2024, through the spontaneous initiative of Eneá de Stutz e Almeida, president of the Amnesty Commission. Simpler recommendations, such as establishing reparation policies for indigenous peoples, have also been overlooked. As Maíra Pankararu has pointed out, the Reparation Law (Law 10.559/02), designed primarily for urban political victims, is inadequate to address the reparation needs of indigenous peoples, whose social and cultural structures are collective. In her words, “the reparation law completely escapes the logic of our peoples” (Pankararu, Dino & Furtado, 2023).

A key criticism of the CNV’s work is its limited engagement with indigenous peoples in shaping both the recommendations and the investigative process (Demetrio & Kozicki, 2019, p. 162). Indigenous communities were neither meaningfully consulted nor allowed to influence the theoretical and methodological frameworks that guided the investigation. Notably, the CNV failed to incorporate oral memory – a central aspect of indigenous cultures – as a valid source of testimony. As a result, the indigenous understanding of the violations and how these communities narrate and preserve their histories was largely excluded. This omission hindered a more comprehensive and culturally grounded understanding of the violence they experienced. These shortcomings can be attributed to the prevalence of non-indigenous epistemologies throughout the investigation, which significantly influenced how the impacts of violence on indigenous nations – and their distinct temporalities – were perceived and interpreted.

Despite these criticisms, the CNV has had a profound impact on indigenous social and political movements, significantly shaping their strategies and demands (Morigi & Fornos, 2020). By exposing the human rights violations suffered by indigenous peoples during the dictatorship, the CNV amplified their struggles and reinforced the broader indigenous movement in Brazil. This influence was particularly evident in their growing presence and active participation in institutional spaces dedicated to memory, truth, and justice, which have become critical arenas for articulating contemporary demands. Organisations such as the Articulation of Indigenous Peoples of Brazil (APIB) and the Coordination of Indigenous Organisations of the Brazilian Amazon (COIAB) have played pivotal roles in indigenous demands. These groups have leveraged the transitional justice framework to advocate for land demarcation and the protection of their territorial rights, asserting that proper reparation must prioritise these fundamental issues. As APIB (2024) emphasised: “We vehemently reject any attempt by the federal government to resume public policies without ensuring the essential: the demarcation, protection, and sustainability of indigenous territories as a top

priority.” Through these efforts, the CNV’s legacy continues to resonate, providing indigenous movements with a platform to address historical injustices and pursue lasting reparation.

Truth and amnesty institutions for and with indigenous people

Indigenous communities, deeply tied to their territories and distinct cultural structures, require consideration of their specificities to avoid perpetuating historical marginalisation (Bengoa, 1995). The differential approach highlights the importance of respecting indigenous political, cultural, and spiritual systems, ensuring reparations address the unique violations they suffered. Reparative mechanisms must be designed collaboratively with affected communities, recognising their autonomy and self-determination (Ortiz, 2014). In Brazil, this approach is especially relevant due to the confluence of two factors. First, the vast diversity of indigenous peoples that inhabit the region, each with its own forms of organisation and worldviews. Second, the historical structural violence exercised against these peoples, both during the colonial and contemporary periods. In this sense, reparative justice must address not only the direct violations committed during the dictatorship but also the long-term consequences of land dispossession, cultural destruction, and forced assimilation policies that often accompanied these regimes (Moreira & Assirati, 2019).⁴

As discussed in the previous section, in the case of Brazil, the debate on the differential approach in reparative justice has been marked by the indigenous movement’s struggle to make visible the crimes committed against indigenous peoples during the military dictatorship (1964–1985) (Mundurukú, 2012; Ascenso, 2021). The limitations and challenges faced by the CNV led indigenous peoples to demand the creation of a CNIV. Since the CNV’s recommendation in 2014, the creation of the CNIV has progressed slowly, partly due to the Brazilian government’s lack of political will. However, some important steps have been taken. In September 2024, the “Indigenous Peoples: Memory, Truth, and Justice” Forum was established, a space led by APIB and the Federal Public Prosecutor’s Office, to consolidate information on violations of indigenous rights and develop a concrete proposal for the creation of the CNIV (Fasolo, 2024). This forum has been a key space for mobilising the indigenous movement. It has highlighted the need for investigations into violations against indigenous peoples to be conducted from a perspective that prioritises the voices and memories of the affected communities. The forum has also encouraged the participation of indigenous researchers in collecting testimonies in the villages, to avoid a centralised approach that does not consider the specificities of each community.

A crucial aspect of the CNIV is that its creation must respect the principles of the International Labour Organisation (ILO) Convention 169, which Brazil has ratified. This means that indigenous peoples must be consulted at all stages of the process, from the design of the commission to the implementation of its recommendations. This principle has been defended by the Federal Public

Prosecutor's Office, which has argued that the CNIV should be under the supervision of the newly created Ministry of indigenous peoples to ensure compliance with Convention 169 and to guarantee that the process is truly participatory (Fasolo, 2024). In 2024, indigenous peoples in Brazil were taking decisive steps toward achieving collective justice that addresses their specific needs and objectives, despite numerous institutional and social challenges. A notable example of progress is the recent decision by Brazil's fourth Amnesty Commission, which, for the first time in more than two decades, considered collective reparation requests for crimes committed during the military dictatorship (1964–1985) against the Krenak and Guarani Kaiowá peoples (Araújo, 2024). This decision marks a significant milestone in the pursuit of memory, justice, and reparation for indigenous peoples, reflecting the growing evolution of indigenous demands in Brazil toward a justice system grounded in self-determination and the collective recognition of the harms endured. This progress culminated in Amnesty Commission president Enea de Stutz e Almeida issuing an official apology: “on behalf of Brazil, of the Brazilian State, I want to apologise. And may you carry this apology to all your people, on behalf of the Amnesty Commission and the Brazilian State” (Rodrigues, 2024). This apology was made during the fourth session of Brazil's Amnesty Commission on April 2, 2024, to mark the sixtieth anniversary of the military coup, and represented more than a commemorative gesture – it is a powerful outcome of decades of indigenous resistance and advocacy.

One of the most significant elements of this fourth session was the active presence of indigenous representatives in the debates on memory, truth, and justice. This presence challenged the traditional logic of domination and subordination that characterised Brazilian indigenist policies for decades. This paradigm shift was clearly expressed by Joenia Wapichana, the first indigenous president of the National Indian Foundation (Fundação Nacional dos Índios, FUNAI, in Portuguese), who stated during the session's opening: “Never again a Brazil without us” (Pajolla, 2023). The involvement of indigenous leadership in institutions such as FUNAI⁵ has transformed not only the management of indigenist policy but also the way the relationship between indigenous peoples and the state is perceived.

Another fundamental aspect that emerged during this session was the inseparable link between reparation and the historical demand of land demarcation (Teixeira & Silva, 2022). As Marcelo Zelic (2022), a human rights preeminent activist, says: “Demarcating is necessary. Demarcating is reparation. Demarcating is breaking the cycle of violence.” The military dictatorship implemented a national development project based on the occupation and exploitation of indigenous lands, including the usurpation and militarisation of indigenous territories. This legacy persists today, as extractivist policies and agribusiness continue to threaten indigenous lands, perpetuating the structural violence increased by the authoritarian regime (Silva, 2018). Stutz and Almeida, during the fourth session of Brazil's Amnesty Commission, emphasised the urgency of territorial and

collective reparation, stating: “The Amnesty Commission is a state body with the constitutional mandate to promote reparation programs. Last year, we introduced a regulatory change enabling us, for the first time, to consider collective reparation requests” (Comissão concede reparação, 2024). This change marks significant progress by addressing the communal nature of indigenous suffering, which has long been overlooked in state reparation policies. Collective reparation thus becomes both a symbolic gesture and a tangible step toward justice, aligning with indigenous demands for self-determination and autonomy. Nevertheless, this progress still faces significant challenges. Zelic (2022) emphasises the need for non-repetition mechanisms to prevent ongoing violations against indigenous peoples, including land demarcation, indigenous leadership in indigenist institutions, stronger territorial control in conflict zones, and plebiscitary consultations with communities. Implementing these measures requires institutional reform and shifts in state policies, demanding both political will and changes in entrenched societal attitudes.

Final remarks

The self-determination of indigenous peoples and their active participation in justice processes are fundamental to ensuring that reparation policies meet their needs. However, consolidating these rights requires a strategy of resistance and collaboration involving various actors, both at the national and international levels. Indigenous organisations have been crucial in amplifying indigenous demands in Brazil and pressuring the state to meet its obligations. However, these organisations need to strengthen alliances with social movements, academics, international organisations, and judicial actors. From our analysis of recent events, we conclude that advancing justice for indigenous peoples requires more than symbolic recognition – it demands a shift toward a justice that is both reparative and transformative. This means confronting the structural roots of violence and exclusion that have historically affected indigenous communities, while actively fostering a pluralistic and inclusive society. In this process, we identify self-determination, memory, and truth as foundational pillars of collective justice. These principles, in our view, underscore the crucial role that indigenous peoples must play in shaping a more just and equitable future for all.

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Carlos Benítez Trinidad is a historian specialising in contemporary Brazil, trained in Spain, Brazil, and Portugal, with a PhD from the University of Seville and the University of Salvador de Bahia. His research focuses on indigenous peoples, particularly during the military dictatorship, examining their resistance to state policies. He has led international projects on indigenism, authoritarianism, and the Amazon, utilising a combination of archival and ethnographic methods. Currently an Assistant Professor in Salamanca, he directs funded projects,

edits academic journals, and coordinates outreach initiatives that link local knowledge with historical research.).

Address: C. Cervantes, s/n, 37002 Salamanca, Spain.

Email: carlos.bt.86@gmail.com

Hygor Mesquita Faria holds a BA in History (UEMG) and an MA in History (UFJF). He is a PhD candidate between UFJF (Brazil) and the University of Santiago de Compostela (Spain). His research focuses on indigenous rights violations during Brazil's military dictatorship and indigenous issues in Latin American transitional justice. He is affiliated with UEMG's Centre for History and Memory and UFJF's LAHPS, and contributes to the project *História da Ditadura*.

Address: Rua Alecrim 33, Bairro Vacia, 35845-000, Cidade Santana do Riacho, Minas Gerais (MG), Brazil.

Email: hygorfaria@gmail.com

Notes

- 1 https://www.youtube.com/watch?v=CVAB7a8HPhQ&ab_channel=CanalMPF
- 2 https://www.gov.br/memoriasreveladas/pt-br/assuntos/comissoes-da-verdade/volume_2_digital.pdf
- 3 The Figueiredo Report, which documented massacres, torture, and other atrocities against indigenous communities in Brazil, resurfaced in April 2013 after being lost for 45 years. Originally believed to have been destroyed in a fire, the 7,000-page document was found nearly intact at the Museum of the Indian in Rio de Janeiro. The report, written in 1967 by prosecutor Jader de Figueiredo Correia, detailed human rights violations such as deliberate infection with smallpox and the poisoning of food, and will now be analyzed by the Truth Commission. https://www.docvirt.com/docreader.net/MI_Arquivistico/201427
- 4 Such approach has been promoted, for example, in Colombia under the Victims' Law, which recognizes the need for differential reparation for indigenous and afro-descendant peoples (Ruíz Serna, 2017).
- 5 In 1910, the Brazilian government established the Indian Protection Service (SPI) with the aim of protecting and "civilizing" indigenous populations through a legal framework rooted in racism, positivism, and tutorship (Lima, 1995). After decades of corruption scandals, the SPI was replaced in 1967 by the FUNAI, which incorporated authoritarian ideology into its operations. This tutorship legal framework was finally dismantled with the promulgation of the 1988 Constitution.

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