

Reparations for Indigenous Peoples

International and Comparative Perspectives

Edited by
FEDERICO LENZERINI

OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Ankara Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece
Guatemala Hungary Italy Japan Poland Portugal Singapore
South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

Published in the United States
by Oxford University Press Inc., New York

© The several contributors, 2008

The moral rights of the author have been asserted

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Database right Oxford University Press (maker)

First published 2008

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
without the prior permission in writing of Oxford University Press,
or as expressly permitted by law, or under terms agreed with the appropriate
reprographics rights organization. Enquiries concerning reproduction
outside the scope of the above should be sent to the Rights Department,
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover
and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data

Data available

Library of Congress Cataloging in Publication Data

Reparations for indigenous peoples: international and comparative
perspectives / edited by Federico Lenzerini.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-19-923560-5

1. Indigenous peoples—Legal status, laws, etc. 2. Indigenous
peoples (International law) 3. Indigenous peoples—Reparations.
4. Reparations for historical injustices. I. Lenzerini, Federico

K3247.R47 2007

341.4'852—dc22

2007041689

Typeset by Newgen Imaging Systems (P) Ltd., Chennai, India

Printed in Great Britain
on acid-free paper by
Biddles Ltd., King's Lynn

ISBN 978-0-19-923560-5

1 3 5 7 9 10 8 6 4 2

Contents

<i>List of Contributors</i>	xiii
<i>Table of Cases</i>	xv

I. INTERNATIONAL LAW, REPARATIONS FOR HUMAN RIGHTS VIOLATIONS AND INDIGENOUS PEOPLES' RIGHTS

1. Reparations for Indigenous Peoples in International and Comparative Law: An Introduction <i>Federico Lenzerini (University of Siena)</i>	3
2. Reparation for Indigenous Peoples: Is International Law Ready to Ensure Redress for Historical Injustices? <i>Francesco Francioni (European University Institute—Florence)</i>	27
3. Reparations for Indigenous Peoples: The Present Value of Past Wrongs <i>Dinah Shelton (George Washington University Law School)</i>	47
4. The Trail of Broken Dreams: The Status of Indigenous Peoples in International Law <i>Federico Lenzerini (University of Siena)</i>	73
5. Indigenous Peoples, Afro-Indigenous Peoples and Reparations <i>Gerald Torres (Law School, University of Texas)</i>	117
6. Indigenous Peoples and Psychosocial Reparation: The Experience with Latin American Indigenous Communities <i>Nieves Gómez (ECAP—Guatemala)</i>	143

II. REPARATIONS FOR INDIGENOUS PEOPLES: INTERNATIONAL, REGIONAL AND DOMESTIC PRACTICE

7. Reparations for Indigenous Peoples: Global International Instruments and Institutions <i>Claire Charters (Victoria University of Wellington)</i>	163
8. Reparations for Cultural Loss <i>Ana F Vrdoljak (European University Institute—Florence)</i>	197

9. In Praise of Guilt: How the Yearning for Moral Purity Blocks Reparations for Native Americans <i>David C Williams (Indiana University School of Law)</i>	229
10. Repairing Reparations in the American Indian Nation Context <i>Sarah Krakoff (University of Colorado Law School)</i> <i>and Kristen Carpenter (University of Denver Sturm College of Law)</i>	251
11. Indigenous Peoples of Canada and Their Efforts to Achieve True Reparations <i>Bradford W Morse (University of Ottawa)</i>	271
12. Reparations for Indigenous Peoples in the Case Law of the Inter-American Court of Human Rights <i>Gabriella Citroni (University of Milano-Bicocca) and Karla I Quintana Osuna (Harvard University)</i>	317
13. Reparations for Indigenous Peoples in Two Selected Latin American Countries <i>Marzia Rosti (University of Milan)</i>	345
14. Reparations for Indigenous Peoples in Europe: The Case of the Sámi People <i>Stefania Errico (University Federico II of Naples) and Barbara Ann Hocking (Queensland University of Technology, Brisbane)</i>	363
15. Reparations and Africa's Indigenous Peoples <i>Nsongurua J Udombana (Central European University, Budapest)</i>	389
16. International Law and Reparations for Indigenous Peoples in Asia <i>Phutoli Shikhu Chingmak (Eleutheros Christian Society, Tuensang Nagaland, India)</i>	409
17. Reparations for <i>Masyarakat Adat</i> in Indonesia: A Sombre Tale <i>Adérito de Jesus Soares (East Timor National University)</i>	467
18. Why the Persistent Absence of a Foundational Principle? Indigenous Australians, Proprietary and Family Reparations <i>Barbara Ann Hocking (Queensland University of Technology, Brisbane) and Margaret Stephenson (University of Queensland, Brisbane)</i>	477
19. Reparations for Maori Grievances in Aotearoa New Zealand <i>Catherine J Iorns Magallanes (Victoria University of Wellington)</i>	523

III. OPERATIONAL STRATEGIES AND BEST
PRACTICES FOR ENSURING REPARATION
FOR INDIGENOUS PEOPLES

20. Reparations for Neglect of Indigenous Land Rights at the Intersection of Domestic and International Law—The <i>Maya</i> Cases in the Supreme Court of Belize <i>S James Anaya (Rogers College of Law, University of Arizona)</i>	567
21. Conclusive Notes: Defining Best Practices and Strategies for Maximizing the Concrete Chances of Reparation for Injuries Suffered by Indigenous Peoples <i>Federico Lenzerini (University of Siena)</i>	605
<i>Appendix</i>	623
<i>Index</i>	635