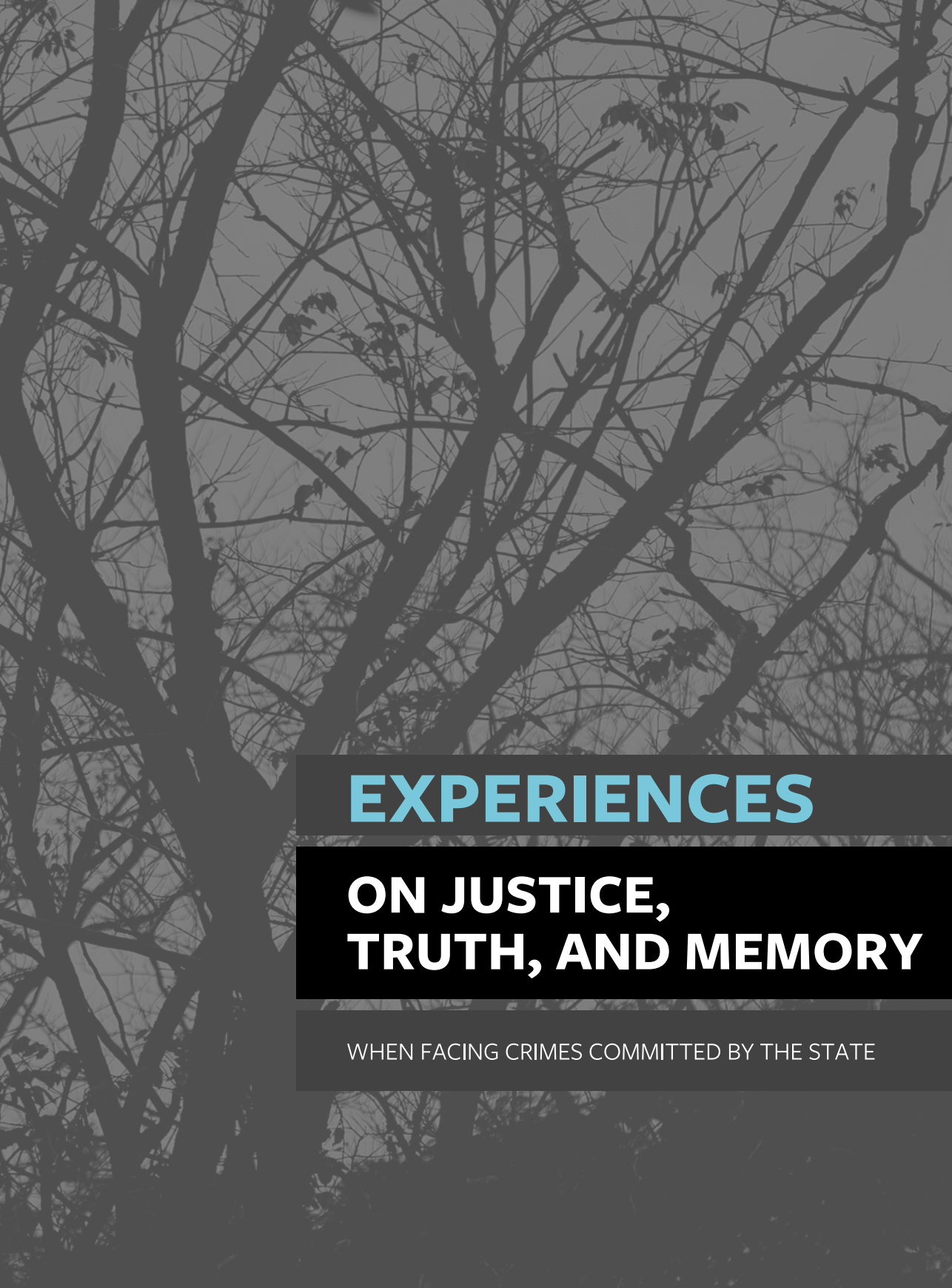
EXPERIENCES

ON JUSTICE, TRUTH, AND MEMORY

WHEN FACING CRIMES COMMITTED BY THE STATE



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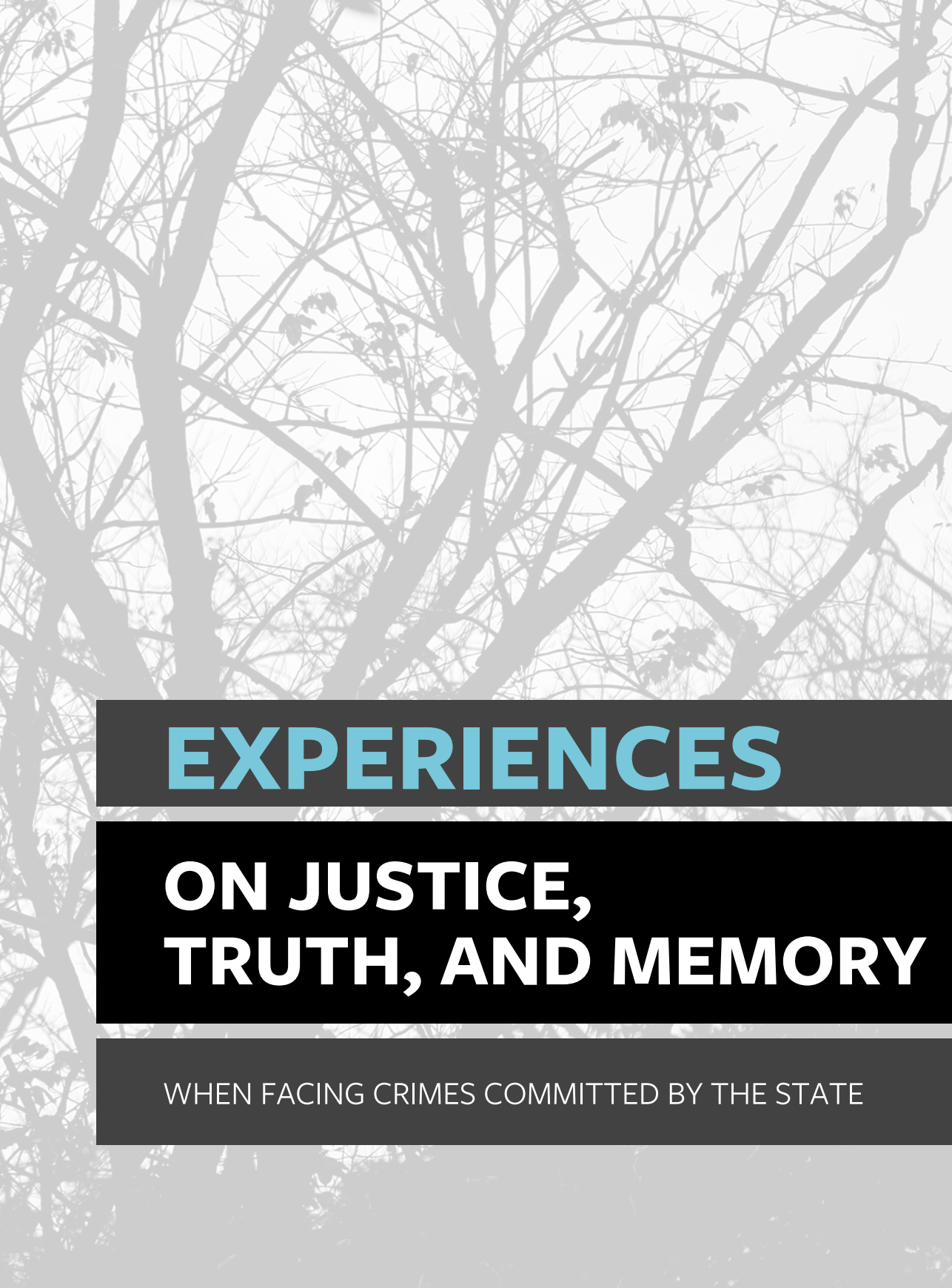

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The electronic book can be found at:
http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-experiencias-sobre-justicia-verdad-y-memoria-frente-a-crimenes-de-estado.pdf

ISBN: 978-607-97879-5-0

First edition, January, 2020.
Made in Mexico.

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* The writing of this book was done within the framework of the project "Strategies available to face impunity in Mexico," associated with the Academic Body "International justice, local contexts of injustice and human rights" of the Faculty of Law, Political Science and Criminology of the Autonomous University of Tlaxcala.

The coordinators thank Fatima Contreras and Paola Badani Zuleta for his support in the transcription of some of the papers.

The financial support of the Fund for Global Human Rights (FGDH) made the realization of this book possible. The contents are the responsibility of the Mexican Commission for the Defense and Promotion of Human Rights, and do not reflect the point of view of the FGDH

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INTRODUCTION

José Antonio Guevara Bermúdez
Lucía Guadalupe Chávez Vargas

In March last year, we, the Mexican Commission for the Defense and Promotion of Human Rights (Comisión Mexicana de Defensa y Promoción de los Derechos Humanos [CMDPDH]), the Miguel Agustín Pro Juárez Human Rights Center (Centro de Derechos Humanos Miguel Agustín Pro Juárez), Fundar, Research and Analysis Center (Fundar Centro de Análisis e Investigación), and *Article 19* Mexico office; arranged a seminar called "Impunity now and then, experiences from the global South of justice, truth, and memory when facing crimes committed by the state" in Mexico City. (Seminario: Impunidad de ayer y hoy, experiencias del sur global sobre justicia, verdad y memoria frente a crímenes de Estado)." Amongst others, members of organizations and Universities that belong to the Latin American Transitional Justice Network (Red Latinoamericana de Justicia Transicional [RLAJT]) participated. The texts contained in this work are the outcome of the contributions made by the experts from the various countries that are members of the RLAJT.

The presentations shared during the seminar were compiled in this book following an academic format, and contain experiences from Argentina, Brazil, Chile, Colombia, El Salvador, Guatemala, Mexico, Peru, and Uruguay, regarding how these societies addressed the atrocious crimes committed during military dictatorships, internal armed conflicts, and/or authoritarian democracies through policies on justice, truth, and memory.

The papers agree that these are long standing, long term processes, that although built from below, at community-level; whilst are directed towards modifying the institutional design of the State. In these processes, the central role of the victims is empathized, as well as how they have generated changes at community, social, or even national level. The victims, trade unions, and organi-

zations fight has also had an impact at international level, contributing to the jurisprudential development of the Inter-American Human Rights System; which, at the same time, has influenced advances in the field of justice at national level. Justice, in this region, is understood in a unique way. Although commonly viewed as achievable through the criminal justice system, in practice, in view of the scandalous impunity that exists in various countries within this region, victims have resorted to turning to international institutions, especially to those linked to the Organization of American States. The Inter-American Court of Human Rights has not just condemned States due to serious violations of human rights, it has also recognized the context in which such violations have taken place. Likewise, it has developed standards aimed at removing the obstacles that victims face in regard to access to justice. For example, the Court has spoken out against amnesty laws stating that they encourage impunity, inhibit resistance to forgetting, and are incompatible with the American Convention on Human Rights.

In the same way, the creation of extraordinary truth and justice mechanisms has been important as, amongst other things, they have allowed greater participation from the victims, and have contributed to ensuring that investigations are directed towards the identification of those perpetrators with the greatest responsibility for such atrocious crimes.

At the legal-political level, Governments' decisions aimed to the militarization of public security matters and granting additional privileges to the Armed Forces, as well as expanding military jurisdiction, are some of the most important challenges for this region. Brazil and Mexico are clear examples of this, with the Armed Forces committing gross abuses against civilians, including human rights defenders, in both cases.

A common denominator seen across the region is that it is largely indigenous populations, peasants and those living in low-income areas, who fall victim to the violence and suffer the consequences of the impunity that persists. For this reason, in countries like Chile, Peru, and Brazil, the suffering of these population has been included in the analysis of violence in order to achieve justice for the crimes committed against them.

On the other hand, the development of the right to the truth as an autonomous right is becoming more relevant in Latin America, with truth building exercises

emerging from victims' organizations, as well as the different actors involved in the conflict and the Government itself.

The creation of Truth Commissions has been key to achieving restitution for victims. These mechanisms have varied in their objectives, goals and organizational structures. Some Commissions have focused on collecting knowledge around murders and forced disappearances, excluding incidents of torture. Others have acknowledged the existence of a conflict and identified victims whilst at the same time, explaining the complexity of the phenomenon of the violence that occurred. The success or failure of truth commissions is closely related to their level of legitimacy, not just as perceived by the victims but by society and the public authorities also. In some cases, the Commissions' recommendations were met; in others, the recommendations just remained words on paper.

The investigations made by the Truth Commissions and their narratives have become a community exercise to acknowledge victims and preserve memory. One of the strategies that has been promoted to encourage resistance to forgetting, implemented throughout all levels of the education system, including universities, is the study of dictatorships and armed conflicts. The papers included in this book highlight the role of justice in memory building, specifically collective memory building.

The psycho-social impact of atrocious crimes is another element that is analyzed in this work, in particular those committed by the State, as well as the effects of impunity on the lives of victims, their families, communities, and society as a whole. The infringement of the norms that recognize and protect human rights generates distrust individually and socially in public institutions —and in the long term, in democracy and the Rule of Law.

Additionally, this book offers us some positive examples of justice that have emerged from the efforts of victims and their families, and even from the families of those responsible for committing atrocious crimes during dictatorships. For example, in Argentina, the children of perpetrators have rejected their parents' surnames.

All the experiences included in this publication, both positive and negative, are most useful for those who like us work to seek justice, truth, and retribution for the atrocious crimes that have been committed in Mexico for the past decades. Particularly, although not exclusively, since December 2006, when the war

against drugs was declared, thousands of crimes have been committed, such as incidents of torture, murders, and disappearances, by both the authorities and criminal organizations, as part of their security policies and to ensure territorial control, respectively. In almost all cases, impunity is the main character; as authorities in charge of investigating these crimes or administrative infringements have not been diligent in ensuring the prosecution of those responsible, thus encouraging repetition.

Finally, the coordinators would like to thank all of the authors that contributed to this book, as well as the host organizations of the event held in March 2018. We are confident that their experiences will continue to inform the debate surrounding transitional justice in Latin American and the policies that emerge from it.

CHAPTER 1

JUSTICE MEASURES

CATH COLLINS

Cath Collins runs the Observatorio de Justicia Transicional of the Universidad Diego Portales, in Santiago, Chile (www.derechoshumanos.udp.cl, Observatorio JT), which has worked closely since 2008 with relatives, activists, judicial personnel, police officers, and experts related to the search of truth and justice for human rights violations committed by the Chilean dictatorship, and publishes periodic electronic bulletins and an annual report on transitional justice developments in Chile and the region. She is a founding member of the Latin American Transitional Justice Network, and coordinator of outreach and formation for the legal team of the Chilean Association of Relatives of Victims of Political Executions. She has published various texts about, truth, justice, and reparations in Latin America. She is also Professor of Transitional Justice at Ulster University, Belfast, Northern Ireland and currently divides her time between Chile and Northern Ireland.

WHAT DO WE MEAN BY 'JUSTICE' FOR STATE CRIMES?

Cath Collins

Introduction

Finding a common thread for these comments was challenging, particularly, when faced with contexts as diverse as the countries who take part in the Latin American Network of Transitional Justice (www.rlajt.com).

Even if we limit our attention to a more or less bounded set of cases, that we could heuristically call the classic 'transitional justice contexts' —that is, Latin American countries that can be referred to as 'post-authoritarian,' or 'post-internal armed conflict' (although this is quite relative in some cases), plus Colombia, where there is an already long history of the use of mechanisms, vocabularies, and practices associated with transitional justice, even before the recent signing of the peace accords—, there are at least nine countries in the region that we should consider. These are Argentina, Brazil, Chile, Paraguay, and Uruguay (post-authoritarian); El Salvador and Guatemala (post-internal armed conflict); Peru (a hybrid case, with post-authoritarian aspects and post-internal armed conflict dynamics); and Colombia, a country with a long and complex internal armed conflict where we hope we are finally able to see 'the beginning of the end.'

These are countries that have legacies of recent, intensive, or extensive political violence, within an identifiable, bounded recent time period, in which we have witnessed subsequent practices, claimmaking, mobilizations, or state initiatives or public policies that are usually associated with transitional justice,

inter alia, truth commissions, criminal prosecution and/or amnesty for violations of international human rights law or international humanitarian law, reparations, etc. They are diverse countries, even within the two principal categories or ´blocs´ that emerge: on one side, the post-authoritarian countries, which tend to be those of the Southern Cone (including Brazil); on the other, those that suffered an internal armed conflict two Central American and two Andean States. We see immediately that although this volume focuses on state crimes, the proportion of the fatal violence at issue that was perpetrated by the State in these cases, varies considerably. Only in Peru, and it remains to be seen if also in Colombia, non-state forces can be said to have had the sad distinction of being attributed responsibility for more deaths and disappearances than state forces.

If we also wanted to add Mexico to the mix, with its context of 'macrocriminality' —traversed by the perverse dynamics of 'narco-state' and organized violence, with massive disappearances that remain endemic, associated with both explicitly political purposes and human trafficking— the chances of being able to say anything that is valid for all these places regarding the procurement of justice, the issue on which I have been invited to reflect here, are even more reduced.

Given this, I believe that the first question we must pose to ourselves is what "justice" or which "justices" are we seeking, and expecting, in and for each context.

Deepening our concept of 'justice' and the need for reform

What do we think of, when 'justice' is demanded? Formal, traditional, or popular justice? Criminal, civil, or constitutional justice? Centralist, customary, or autonomous justice? Pluralistic, regional, international, and universalizing justice? Reformed, reformable, or perfectible justice? Or existing, deficient, uneven, and corruptible justice? Because when it comes to justice, even specifically in the field of transitional justice, although the term could or should have a potentially broad meaning, it is clear that one usually thinks about formal justice and, specifically, about criminal justice within the framework of existing regulations. Then, sooner or later, we end up talking about the criminal prosecution of

individuals for serious violations of international law, either in domestic or international courts.

It seems to me that this approach is absolutely possible, permissible and, sometimes, necessary. However, it is essential to emphasize that, by focusing on such justice, we tend to set aside not only other abuses and other actors responsible for them but also critical considerations about the very concept of justice. Those considerations are also criticisms frequently formulated or shared by the same community of human rights defenders, which at the same time requires formal *accountability* for heinous crimes.

These criticisms originated *inter alia* from indigenist, feminist, and dependency theory traditions, as well as lines of Marxist critical legal thought. They point to the many shortcomings of our existing systems of justice in general, and our criminal justice in particular, including their colonial, neo-colonial, reductionist, and ontologically deficient character.

I am not referring here only to the grey areas, the 'minor' contradictions, into which we in the Southern Cone sometimes fall regarding the operation, rather than the very foundations, of our justice systems. When we seek, for example, the use of pre-trial preventive detention (remand) as an alternative form of punishment against ex-military perpetrators of crimes against humanity; at the same time as strongly opposing the same figure when used as a mean of social control against young people.

I am talking about the more substantial contradictions into which we fall when we insist that the same justice which we rightly qualify as inefficient or unsatisfactory, must nonetheless respond to the most serious crimes committed by actors who are, by definition, powerful. Faced with such a situation, it is always appropriate to ask ourselves how we intend, in the first place, to get a justice that is adequately improved or reformed in judicial culture, normative content (laws), and system operators, so as to be able and suited to punishing serious crimes.

Alternatively, perhaps, we believe or trust that the actual process of responding to heinous crimes may itself become a cause of, or catalyst for, the much-desired improvements and reforms in the same justice system. At least in my experience —which comes from two decades of observing and acting in and around the criminal prosecution of crimes against humanity in the Southern Cone and, to a lesser extent, in Peru and Central America— such changes and

enhancements, are not merely a chimera. In other words, they can happen, and we have witnessed them. But they are not an automatic consequence of domestic prosecution of crimes against humanity, nor can they be left to chance. They must be contemplated, planned, and consciously designed, as part of the process of activating accountability for serious crimes.

However, if we are not going to see justice system changes as either a prerequisite to or an outcome of accountability processes, we have to determine how to live, as promoters of accountability, with the contradiction implied by turning this same actually existing, deficient, justice system, into a repository of hopes, desires, and demands for justice, whether ours, or those of relatives, victims, and survivors. In simple terms, how are we going to convince ourselves, and then others, that this inefficient justice, does serve, or can serve, such a noble and yet difficult purpose as the judgement of the most powerful, cruel, inhumane criminals?

Selective, inaccessible, exclusive and/or unwanted justice

The difficulties are even worse when we consider the selectivity —and therefore the 'bias,' in the specific sense of having a necessarily limited scope— that is almost inevitable, even when acting in good faith in trying to give a criminal response to massive crimes in national courts. In passing we should however note that the history of the ad hoc and hybrid courts, as well as the International Criminal Court, shows even greater difficulties in this regard. In the probable case of an emphasis on justice for those violations considered more severe, almost inevitably, a 'hierarchy of victimization', and/or of perpetration, will be configured. As there are usually many individual crimes, there will also be many surviving victims whose cases are not "chosen" to receive a judicial response. This may happen because what took place is not considered 'serious,' 'massive,' or 'visible' enough; because the 'wrong' actor committed it (be this the State or another); because no applicable criminal offence was spelt out in the domestic criminal code at the time the crime was committed; or because prosecuting the

crime is considered too risky, not "strategic," or excessively expensive, by the Public Ministry, Attorney General, or equivalent.

I could offer the example of one man, the only survivor of a rural massacre perpetrated by the Army in the highlands of Peru, regularly visited by the Peruvian Forensic Anthropology Team (Equipo Peruano de Antropología Forense, EPAF). This man has been called on to tell his story before state officials dozens of times, to secure reparations and evaluate the possibility of a trial. But this has always happened at the behest of, or on behalf of, others: he is sought out by families of those killed in the massacre, to help them give the necessary information to prosecutors or administrators of reparations.

Despite the fact that this man was tortured, is clearly traumatized, and has been left virtually unable to work and provide for his family, there is nothing available to him. He, like so many others, has come to believe that it would have been "better" for him, and for his family, if he too have been killed. In that way, he says, his family would at least have been left with something. A similar example, less dramatic although on a larger scale, is Chile. There, the courts, which are today active in prosecuting dictatorship-era crimes against humanity, took the arbitrary decision that only cases of enforced disappearance or political execution were to 'count' as 'human rights cases' worthy of their attention. Thus, again, the survivors of concentration camps and torture chambers became instruments of justice for others. They were witnesses, "corpus delicti", sources of evidence, raw material, but not, initially, active legal subjects in their own right.

These situations accentuate the tension between the need for inclusive and "blind" justice, offered to everyone, and the impossibility of such justice covering the situations of so many victims. The tension between feeling with every fiber of your being that justice for everyone is necessary, and knowing or believing that 'usual justice' is not enough, sometimes translates into some quite justified skepticism expressed by victims, in particular, those from subaltern and historically excluded groups, towards formal justice. This skepticism is nothing less than realism, common sense difficult or impossible to refute, expressed by those who have good reason to know how little state institutions have historically offered to them, and how infrequently they have been considered, or protected.

“These situations accentuate the tension between the need for inclusive and “blind” justice, offered to everyone, and the impossibility of such justice covering the situations of so many victims.”

To demonstrate the above, let me mention the attitude of an indigenous leader in Chile, a Mapuche lonko. Someone tried to convince this man that his community had the "obligation" today, in the face of new possibilities for truth and justice, to denounce the multiple cases of disappearance and execution of indigenous people that, it is believed, were not reported to the first Truth Commission, held in 1991. The lonko replied: "we Mapuches have been disappearing in Chile since the time of Pedro de Valdivia...[1] So by this stage, a dozen more, a dozen fewer... what difference does it make?". There is also the case of three sisters I met in Hualla, Peru, each one absolutely empowered and active in the search for their father, killed by Shining Path guerrillas. They told us (the EPAF Field School team) "we're not looking for justice; because there is no justice in this life for the poor." Their father was targeted because his village had elected him as their magistrate, or justice of the peace. I also think about those families of the disappeared in Mexico who prefer to search, exhume, identify, and bury their loved ones with their own hands, because the worst thing that could happen to them is for the State to get involved, or find out about what they are doing.

These situations raise the question of what to do when the victim apparently does not want justice or, perhaps, does not share our formal definition of it. This leads us to a second dilemma concerning justice: where, at what level, or at what simultaneous levels should we seek and procure it?

Domestic justice and cross-border accountability

When we insist on the need for justice, do we think about it in terms of diversity or convergence? That is, do we want to pluralize, centralize, regionalize, or universalize response(s) to heinous crimes? If we accept or prefer justice at the community or subnational level, we would be living with different responses, even in the face of essentially similar crimes. It would probably mean very different results in rural areas contrasted to those in urban areas, with diverse

1 Pedro de Valdivia was part of the first invading Spanish army to arrive in what is today Chile. He (unsuccessfully) attempted to conquer the southern part of the country, Mapuche territory, in 1549. He was captured and killed by the Mapuche in 1553.

goals and aspirations. If we object to this diversity, as transgressing our precepts about legal certainty, the right to due process, or the vulnerability of victims to possible pressure, perhaps we will instead want to ensure that everything is judicialized at a a formal, central state level. Or we might want to resort, as a substitute or complement, to regional mechanisms such as the Inter-American Human Rights System, or to international organizations such as the United Nations. Either for them to take action on the matter, or as sources of principles, rules, guidelines, and relevant jurisprudence. In the latter case, we will be appealing to international human rights law, international humanitarian law, and public international law in general, to feed into, channel, and advise our national decisionmaking.

In the former case, if we seek not guidance but direct intervention from the international space, we can end up betting directly on the criminal prosecutions carried out by those external forums. To this end, we have had, since 2002, the International Criminal Court. However this, due to its temporal jurisdiction, cannot act over the mass crimes of the past in a good part of the nine countries that I mentioned. The only concrete exception is Colombia (a situation that, as we know, the Court has officially kept 'under review'), and eventually, potentially in Mexico (both States are parties to the Rome Statute of the International Criminal Court).

Similarly, we might appeal to the domestic courts of a third country. Cases of this type, activating an external domestic forum, do not always —in fact, rarely— invoke, at least successfully, the "pure" principle of universal jurisdiction. Many of them also appeal to traditional bases of jurisdiction or extradition. They rest on the classical doctrines of passive or active personality, that is, in the nationality of the victims and / or accused, as well as the extraterritoriality with which terrorism, whether State or not, usually operates. The examples, at present, are plenty. We have various criminal cases for the crimes committed in countries of the Southern Cone of Latin America (and beyond) by the illegal and lethal association between military regimes' Armed Forces that was Plan Condor. There are also civil lawsuits in the United States for situations that occurred in El Salvador, Chile, and other countries; criminal cases in Spain for crimes in Argentina, Chile, Guatemala and El Salvador; and a case over the victims of the Franco era in Spain, investigated in Argentine courts.

This diversification of levels and possible forums for criminal or civil action give rise to what we could call a "cross-borderization" of efforts against impunity in, from, and for the Latin American region.

This diversification of levels and possible forums for criminal or civil action give rise to what we could call a "cross-borderization" of efforts against impunity in, from, and for the Latin American region. It is a more empirical than a theoretical fact: it exists, and everything suggests that it will continue to exist; in large part because it is the product of "private" (nonstate) activism, rather than the selfless commitment of diplomats, super-judges or super-prosecutors. For this reason, although it may have less institutional power, it may be less susceptible to the political fluctuations of our region and others.

It is important to highlight at least two consequences of these various kinds of internationalization (those which seek international venues, or those which use other countries' existing domestic venues). The first of these proceeds from the nature of one of these international actors, specifically regional systems for the protection and promotion of human rights. When regional systems appear among cross-border alternatives, the focus on criminal liability of individuals is diluted. After all, the actions of our (the Americas) regional system, in particular —being bicameral— include a mandate that is more clearly political, or only quasi-judicial, inter alia regarding promotion and prevention. When the Inter-American Commission or Court addresses an issue, whether via a friendly settlement, advisory opinion, or contentious ruling, the results are a verdict on State responsibilities under the American Convention, not, directly, on criminal responsibilities. Even so, the exclusive mandate to consider states' compliance with their responsibilities may indirectly stretch to cover infractions committed by non-state armed actors; either because there are provable ties between paramilitary forces and the State —or, in the case of guerrillas or other anti-state actors, because states can be held to have neglected their duties to police, protect and prevent. Sometimes it is also clear that one of the stated or underlying purposes when there is resort to an inter-regional system, is to press the transgressing State to initiate, or expedite, the delivery of domestic justice which may require domestic criminal prosecution of perpetrators.

An example is a recent complaint filed by organizations of former Chilean political prisoners before the Inter-American Commission, alleging the denial of the rights to truth and justice, because the Chilean State has refused to institute, ex officio, the investigation of dictatorship-era torture as a crime against humanity. Incidentally, this claim is also illustrative of the space that regional systems give to protagonism from organized civil society; a place that, in general, is larger in our region than in may be in others, as a consequence of the relatively prominent space that some civil law tradition systems offer for the private exercise of the initiation of criminal action. The activity or activism of the Inter-American System in the field of transitional justice, and the diversification over time of the measures that has ordered in its rulings (regarding truth, justice, reparation, and memory) are mainly the product of the insistence and creativity of petitioners from civil society. These may be surviving victims, family members, or gatekeepers in the form of national and regional human rights movements.

The 'glocalization,' or globalization, of accountability

The second consequence to which I refer also proceeds from the multiplication of accountability interlocutors or actors. Greater resort to extra-national spaces —that is, the proliferation of boomerangs, bypasses, and other strategies that reach around recalcitrant national justice systems to supra-state bodies or other-state jurisdictions— has not necessarily led to a standardization or universalization of responses to serious crimes. On the contrary, we have often experienced a diversification or pluralization. This is in part because, whereas the use of third-country domestic courts, or appeal to Rome Statute principles, both generally take the form of criminal allegations (or, less often, civil claims) against named individuals, the use of the regional system can force States to interpret their transitional justice duties more broadly. In regard to enforced disappearance, for example, the Inter-American Court has established that States parties should have recognized the principle of collective reparation for indigenous communities; considered differential effects by gender; and treated relatives of detained-disappeared persons as direct, rather than secondary, victims.

We are, then, facing not the universalization of international justice but the emergence of a complex system —in a technical sense— of accountability for heinous crimes. Entities specifically designed as venues for the adjudication of international criminal justice (such as the International Criminal Court), have been added to the traditional organs of adjudication of international public law. Newer and existing norms empower, and even according to some readings oblige, each State to lend its domestic judicial space for the exercise of jurisdiction over certain heinous crimes. By adding international spaces to third and home-country national ones, and by facilitating communication of sub-state actors with these spaces, globalization or glocalization has generated multiple ways in which at least some previously subaltern or excluded nonstate actors, can acquire international influence. Thus they come to enjoy quasi-cosmopolitan citizenship —or at least, legal standing— even while their own State may continue to deny them exercise of their full status as subjects of law. And that is why, in my opinion, it makes sense to speak of a "justice cascade" which, if it exists at all, flows not only from top to bottom but also in the opposite direction. Thus, international law and custom, and the internationalizing practices of accountability, rise from, and do not only flow "down to", our region and its particular experiences. One evident example is the case of an International Convention against enforced disappearance of 2006, which was preceded by more than a decade, by its 1994 regional equivalent for the Americas. Moreover the International Convention exists, basically, due to the prominence and insistence of Argentina and other States from our region in calling for it. Similarly, we have what are referred to as the "Argentine articles" included in the International Convention on the Rights of the Child (for better or for worse). In my opinion, Latin America today is undoubtedly the largest producer of domestic and regional jurisprudence, forceful and consistent —more consistent than the European Court, which tends to exercise the doctrine of the margin of appreciation— in the field of transitional justice. The Inter-American System is, for example, (today) much less tolerant of attempts to introduce or perpetuate impunity through blanket domestic amnesties for serious crimes.[2]

2 This is particularly true since, from the 1990s, the Inter-American System began to asses domestic amnesties from a legal point of view, and not from a legitimacy one. Thus, it has taken an increa-

This jurisprudence and civil pro-accountability activism, sometimes complemented by prosecutorial or judicial accountability activism, travels, multiplies, proliferates, and generates new syncretisms, new interactions, and new legal cultures. In this way we experience, in the field of accountability, a microcosm of one outcome of globalization more generally. What was initially portrayed as a uniquely hegemonizing and overwhelming phenomenon, one which would annihilate particularisms, was instead being (g)located. The term 'glocalization' was coined to portray the creation, via interaction between local settings, and globalizing dynamics, of alternative and multiple versions of 'travelling' phenomena. In recent times, 'glocalization' has shaped, sustained and nurtured horizontal communities of legal activism for progressive causes ('cause lawyering', in the terms used by the English-language literature). These communities are political, symbolic, and affective, as well as legal and strategic. They usually have reach across regions, and in the case of Latin America, they have two practical advantages, each, paradoxically, a legacy of colonialism. The Hispanic world largely shares two mutually comprehensible official colonial languages —Spanish and Portuguese— as well as a "shared" tradition (imposed, in the case of Latin America) of justice systems arranged along broadly similar lines or with cognate legal epistemologies. The Latin American Transitional Justice Network is itself an expression of that, constituting, as it does, a forum for horizontal exchange that would be unimaginable, or at least much more difficult, in Europe.[3]

singly stronger position not necessarily against amnesties per se, but certainly against any amnesty that tries to include the core international atrocity crimes. In doing so it has left behind the differentiation that it tended to practise in the 1980s between democratically introduced amnesties, of which it was tolerant; and self-amnesties, of which it was more critical. *See* González, Felipe. (2013). Inter-American Human Rights System: Transformations and Challenges. Valencia: Tirant lo Blanch. pp. 263-292

3 In Europe, qualitative and ideological differences between transitional justice contexts that range from Northern Ireland and Kosovo, to the former USSR, are reflected in and amplified by the practical and linguistic challenges that activists and human rights defenders face when trying to find common cause, communicate, or develop common litigation strategies.

Diversification of types of actors and actions in law

We have seen, then, how internationalization of the regional and domestic justice stages have seen a growing diversification of types of justice actions in the field of transitional justice. This affects both the types of actor who feature and can drive actions, and the type and range of rights invoked and adjudicated. We are also seeing an increasing use of civil law, whether it be to hold individuals accountable when the threshold of criminal law is unreachable or unavailable, or to challenge public policies in matters of reparation or guarantees of non-repetition.[4] Civil lawsuits filed in the United States by Salvadoran and Chilean exiles and survivors have also produced, inter alia, deportations of perpetrators of crimes against humanity from the US, for infringements of immigration rules.[5]

We have also seen, in the domestic courts of the region, the increasing use of writs of *amparo*, habeas data, and similar legal instruments. These seek to take advantage of access to information laws, often introduced as part of general state modernization reforms, to access files related to past repression.

We must not, however, forget to take into account the fact that perpetrators and their representatives also experience the diversification of means and methods, and also make strategic use of these to oppose or block accountability entrepreneurship. In the Southern Cone, perpetrators of crimes against humanity from the military dictatorship era of the 1970s and 1980s have learned the rules of the new game, although they have seen their de facto power to evade criminal prosecution altogether, diminished. However, they take full advantage of legal loopholes, dilatory resources, and defensive strategies while waiting for the return of more favorable political times (a return that is imminent, or has already occurred, in several countries). And just as *los ricos también lloran*,[6] the perpetrators also have their attorneys or cause lawyers: sometimes good, almost always expensive. This represents a key disadvantage for victims or their

4 *See* the prologue and introduction of the ebook Osmo, Carla (ed.), 2016, Judicialización de Justicia de Transición en América Latina. RLAJT/ Ministry of Justice of Brazil/ PNUD.

5 Without a doubt, the instrumentalization by the human rights community of instruments or drastic rules for deportation which as a general rule it strongly opposes, is ironic.

6 This is an ironic allusion to a well-known Mexican soap opera, widely syndicated around the rest Latin America, which had this phrase (which means "the rich also suffer") as its title. Author's note.

representatives in committing themselves to pursuing justice in the existing formal justice system: it is almost impossible to sustain strategic advantage in that arena over the long haul. Just as Newton argued, each action generates an equal, and opposite reaction. The defenders of impunity realize what is going on, race to catch up, and often end up ahead us. It is unlikely that we will ever reach or be able to sustain 'equality of arms' on that level.[7]

Two strategic recommendations can be derived from that observation, for those of us who are interested in the fight against impunity for heinous crimes. The first would be to diversify our actions, without relying exclusively on judicialization —whether via the pursuit of criminal or civil liability— to provide an adequate response to the most serious crimes. Betting everything on the technocratic discourse of the courts, 'just because' in recent times some of these have gone our way risks an outcome of 'feast today, famine tomorrow'.[8] The eternal political "recycling" in our region of perpetrators and their supporters, in or out of uniform, as open demagogues or authoritarians, or in democratic guise, should be sufficient warning that our challenge is also sociological, cultural, and political. Secondly, and only apparently in contradiction, it can be useful for activists and empowered civil society to engage with at least some part(s) of the state apparatus, seeking to ensure that at least some 'enclave' of accountability cooperation is created or preserved, capable of exercising the state's duty to initiate, ex officio, criminal prosecution of international crimes. Even though that may sound utopian, and for some contexts appears, in truth, totally unattainable, it is a phenomenon that has been lived in some parts of the region, and needs to be cultivated so that it continues to grow.[9]

... to diversify our actions, without relying exclusively on judicialization -whether via the pursuit of criminal or civil liability- to provide an adequate response to the most serious crimes.

7 Which returns us to Marxist and Neomarxist critiques of the incapacity of law-as-it-is to provide a means for genuine or radical social transformation.

8 The (more widely used) Spanish idiom is *pan para hoy, hambre para mañana*. Both refer to a choice that may promise short-term returns, but risks causing or contributing to future adversity. Author's note.

9 *See*, as an example, the working paper 'Respuestas estatales a la desaparición forzada en Chile: aspectos forenses, policiales y jurídicos,' that shows the cultivation of collaborative rights 'enclaves'

This possibility proceeds from the fact that the formerly rigid dividing line between State and non-State —with each one considered, often correctly, to be anti- and pro- accountability, respectively— is becoming more porous or diffuse. This antagonistic binary has been overcome in some countries, especially when figures from the world of human rights, or at least actors and individuals trained in that world and in that culture, begin to enter the state apparatus. As such people, who include survivors or relatives of victims of repression, become judges, prosecutors, forensic scientists, attorneys, or even police officers, they may move into positions from which they can at least attempt to defend and promote human rights from within the State (including in dedicated human rights Ombudspersons offices, national human rights institutes, and the like). The attitudes and actions of these people, once within the State, can be much more conciliatory and effective in rights protection than those of their predecessors. There are notable exceptions, usually at the executive level, such as the administration of former President José Mujica in Uruguay, or the two periods of former President Michelle Bachelet in Chile, during which transitional justice progress had to be won despite, rather than due to, signals coming from the executive branch. However, in terms of actors who could be considered 'middle-ranking' public officials in institutions related to state justice, there has been some silent progress —albeit precarious and reversible— in several countries in the region.

Conclusions

I conclude by emphasizing the need for active cultivation of changes in attitude and culture within the State institutions most relevant to the fight against impunity for heinous crimes. It is from these institutions, above all, that we have to demand the fulfillment of commitments and precepts of human and funda-

within Chile's post-dictatorship institutionality to advance the progress of justice despite executive branch indifference. Paper available in Spanish via the Publications section of the web page of the Observatorio de Justicia Transicional, Universidad Diego Portales, Santiago de Chile, www.derechos-humanos.udp.cl, or published in English as Collins, Cath, 'Transitional Justice from Within: Police, Forensic and Legal Actors Searching for Chile's Disappeared', Journal of Human Rights Practice (2018) 10(1): 19-39.

mental rights. Therefore, we can and should build bridges with them, trying to generate enclaves favorable to accountability even within quite structural or ideologically hostile states.

In the most long-standing post-transitional cases, there have been additional winds of change in the form of natural turnover, amounting by now to a generational change within the civil service and most public bureaucracies. Amongst these new public servants we may find young prosecutors, technicians, and even police officers, who are willing to change themselves and their institutions for the better. In Chile, for example, we have several cases of people who have led 'from within' to create better conditions for the criminal prosecution of serious past crimes —among them the (now former) detective Sandro Gaete. Of course, such people meet internal resistance and often pay very high professional and personal costs; such as was the case of Claudia Paz y Paz, the Attorney General of Guatemala who was removed from her position early, for political reasons, due to her decisive action against historical impunity; or former judge Mariana Mota, who was sidelined and subjected to spurious disciplinary charges in Uruguay for similar reasons.

Nevertheless, it is possible to detect, or at least, express hope, that we are on our way to a new way of perceiving and cultivating the State —as something other than the embodiment of the interests and preferences of the government of the day. In the first post-authoritarian years of the Southern Cone, the human rights community was used to perceiving the State, understandably, as the undifferentiated enemy. We may have thereby foregone some opportunities to cultivate friendships or at least progressive alliances within institutions, especially —although not exclusively nor automatically— with younger public servants.

Today, this old prejudice in some parts is reversing, sometimes based on positive experiences in recent years. It is not even always necessary to even expect any special or explicit commitment to transitional justice or even human rights per se, from new officials. Sometimes, it is enough that these new generations have basic competence, a technocratic vision, and the willingness to do their job well. This can lead, at least, to improvements in the technical and forensic quality of the investigation of any case, whether contemporary or historical.

To 'capitalize' on these micro-changes in ways that favor the anti-impunity cause, it may be enough to understand that state institutions do not always

form an immense, contourless wall that seeks to hinder the purposes of transitional justice. The probability that the aforementioned positive micro-changes will take root, and continue to spread among the new generations of public officials, is increased if they are mirrored by 'micro-exchanges', whereby civil society seeks to support, reinforce, and multiply them. This at the very least helps to clothe such enclaves in more protection, making them immovable, or at least difficult and politically expensive to reverse. We can see this ratcheting process at work in Argentina, where all-party parliamentary proclamations declaring transversal repudiation of crimes against humanity, have so far survived despite the setbacks that many diagnose as having happened in the Macri period. An eventual complete reversal would be hard to imagine in the face of such momentum; something which is also true for Chile, with over 1,000 criminal cases ongoing and some 350 already resolved, despite an ever more faint-hearted, and in recent years openly hostile, political climate.

In other states and contexts, the challenge has been how to ensure that pro accountability changes, if and when they occur, are lasting. It is troublesome, for example in Central America, to try to institutionalize the value and determination of Guatemalan prosecutor Claudia Paz y Paz, or Guatemalan judge Yassmín Barrios. Such support as they enjoy, resides mainly outside government circles and often indeed outside the country. Their domestic support base is either small or, even when extensive, carries little political 'weight.' When shadowy *de facto* powers are still influential, the fight against impunity must necessarily try to be more collective than personality-led. It is in such circumstances, maybe, that regional networks have their role. The international visibility of some recent criminal prosecutions over crimes against humanity —among others, the trials of Ríos Montt, or the Sepur Zarco case, both in Guatemala— undoubtedly helped to guarantee or safeguard the autonomy of those specific processes (though it was not necessarily able to 'proof' the outcomes against subsequent reversal).[10] The creation of communities of reference, i.e., groups that recognize a common cause or motivation, across the state-nonstate actor divide, can be

10 An even more recent (May 2019) concerted domestic and international campaign against the passing of a thinly disguised second amnesty law by the outgoing FMLN administration in El Salvador, in which this author was involved, offers another good example.

decisive. Where individuals inside the state structure have the desire and motivation to help, but lack internal support, there is perhaps a call on the world of civil society human rights defenders, to seek ways to create common cause.

Maybe we should assess each judicial battle, not according to whether it proceeds from the State or not; whether it is formal or informal; whether domestic or international; but according to whether or not it genuinely includes victims, the public, and at least sympathetic components or officials of the current State. It is not advisable to seek yet more abstract achievements or pyrrhic victories, in which lawyers get to celebrate a new precedent, but there is no tangible or lasting outcome that improves the perception of justice that victims and society have. It is also good to consider, not least for the sake of the guarantees of non-repetition, the opportunities that a particular mooted case, or series of cases genuinely offer to improve the systemic capacity of the organs of justice in general. It is up to us to support the construction of justice responses that underwrite one other, and promise lasting change not only in case by case outcomes but in the quality of the justice field in which we engage.

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PROGRESS IN TRANSITIONAL JUSTICE IN GUATEMALA

Jo-Marie Burt

Introduction

The peace accords, UN-sponsored, and signed in 1996, ended a 36 years armed conflict between the state of Guatemala and the Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional de Guatemala [URNG]).

As part of the accords, the Commission for Historical Clarification (Comisión de Esclarecimiento Histórico [CEH]) was created to investigate the causes and consequences of the violations to human rights during the armed conflict. After two years of investigation, carrying out 17,000 interviews to people affected by the conflict, the CEH determined that 200,000 people died, 45,000 suffered forced disappearance, and a million people were displaced. The CEH documented 626 massacres and discovered that the counterinsurgencies operations carried out by the Guatemalan Armed Forces, destroyed 400 villages. According to the CEH, the state of Guatemala and paramilitary forces under its orders were responsible for 93% of rights violations, and four out of five victims were Mayan indigenous. The CEH also concluded that the state of Guatemala committed 'acts of genocide' against Mayan groups in four regions of the country between 1981-1983 and that the most violent period was under the ruling of Ríos Montt (March 1982-August 1983).

Additionally, as part of the accords, in 1996, the Guatemalan Congress passed the Law of National Reconciliation, which grants amnesty to political crimes and related crimes, but explicitly excludes international crimes such as genocide, torture, and crimes against humanity. However, the Guatemalan Army, just as their allies amongst groups of economic and political power, asserts that they

defeated the guerrilla and that they only did what was necessary for this end. Therefore, the military considers themselves as "heroes," and, according to them, "you can't judge heroes." In this context, the persistence of the arrangements that favor the fear legacy and impunity for those that ordered and committed all the atrocities meant that for many years the judicial authorities were reluctant to investigate these crimes.

Nevertheless, over the years, spaces have opened to prosecute some of the most severe human rights crimes committed during the time of the local armed conflict in Guatemala. How did that happen? Which has been the effect of these processes on transitional justice in Guatemala?

The beginning of justice in Guatemala after the conflict

In this context of institutional impunity and official denial, through many years, a group of actors inside the civil society worked to gather evidence, based on testimonies, physical proof, official documents, and other sources to prove that international crimes —including genocide— were committed in Guatemala. Associations of victims, human rights groups, progressive church sectors, forensic scientists, and activist lawyers did not stop their search for truth and justice in local, national, and international courts. Thanks to the Centre for Legal Action and Human Rights (Centro para la Acción Legal en Derechos Humanos [CALDH], one of the first cases to arrive at the court in Guatemala was the Masacre of Plan de Sánchez. After the case was dismissed, it was submitted before the Inter-American Human Rights System (Sistema Interamericano de Derechos Humanos [SIDH]). Later in 2004, the Inter-American Court of Human Rights (Corte Interamericana de Derechos Humanos [CIDH]) held the state of Guatemala responsible for the massacre and ordered to investigate, judge, and apply the appropriate sanctions. Through different rulings of the CIDH, the Guatemalan justice system received pressure to investigate this and other human rights cases.

Other factors contributed to open spaces at the Guatemalan courts to prosecute these crimes. In 1999, a little time after the detention of Pinochet in Chile and the search for his extradition to Spain, the Nobel Peace Prize winner Rigo-

berta Menchú Tum filed an indictment before the Spanish National Court against the Guatemalan military high command, for genocide and other crimes against humanity. The case remained inactive for years but was reactivated in 2005. The judge in the case, Santiago Pedraz, heard testimonies from survivors, he was able to evaluate the forensic evidence and the experts' reports. He finally ruled the request for extradition of Ríos Montt and other high ranking military officers. The extradition pressured national courts to judge these cases, even when it was rejected by the Constitutional Court of Guatemala.

The creation of the International Commission Against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala [CICIG]), a body established by the UN to reinforce the judicial system capability, was another factor that helped to select magistrates and public prosecutor, as well as a specialized court system to work on complex organized crimes cases and other type of cases. Since 2009, all the main cases involving organized crime and human rights violations have been judged in these specialized courts, or "High-risk Tribunals," which have contributed to generate 'greater judicial independence, more specialization, and wider protection for judges and other participants.'

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The CICIG was also fundamental to generate more transparent processes to select judges and prosecutors. For example, as of 2008, the selected independent prosecutors saw the need to investigate the cases of the recent past. Amílcar Velásquez Zárate (2008-2010), Claudia Paz y Paz (2010-2014), and Thelma Aldana (2014-2018) lead the effort to fight against the sadly high rate of impunity for serious crimes, including those related to the local armed conflict. Under their leadership, the prosecutors started to work closer to civil society actors that joined the cases as complainants, strengthening the capacity of the public prosecutor to build cases through the testimonies of survivors and other evidence. The fruit of these efforts is the number of cases brought to trial and which produced convictions in the last ten years (2008-2018). In that period, a total of 26 judgments were issued, with 35 convicts and three absolved.

The experience of transitional justice in Guatemala, 2008 to present

Since 2008, there are significant court rulings against the responsible for serious crimes in Guatemala. Perhaps the most known is the genocide trial against ex-dictator Efraín Ríos Montt and his chief of intelligence, José Mauricio Rodríguez Sánchez in 2013. This process was a watershed: high-rank officers were judged for the first time. In former trials, the accused were members of the civilian self-defense patrols, soldiers, and medium-rank officers occasionally. It was not until recently with the genocide case that a high-rank military officer was in the dock. Ríos Montt had evaded justice for decades; after the peace accords, he was repeatedly elected as a deputy, therefore, had immunity until 2011. The trial began on March 2013. On May 10, 2013, the court issued its ruling, which recognized that the Guatemalan Armed Forces committed genocide against the Mayan Ixil indigenous population, and convicted Ríos Montt for genocide and crimes against humanity, sentencing him to 80 years of prison. The court absolved Ríos Montt's Chief of Intelligence, Mauricio Rodríguez Sánchez.

However, as the economic and military elites lobbied, the Constitutional Court partially suspended the judicial process, leaving the sentence pending. Both military men went back to 'processing' status, under house arrest, but there were a lot of obstacles to start a process against them again.

Finally, the process started in November 2017, but in separate trials as Ríos Montt was declared insane and, in consequence, he had the right to have a hearing in camera, without him being present and without media nor audience. It is difficult to know anything beyond what the lawyers and those present at the hearings said. Mauricio Rodríguez Sánchez was put on a public, open, separated trial. Ríos Montt died in April 2018 before his sentence was issued. The trial against Rodríguez Sánchez ended in September 2018. The court determined that the Guatemalan Army committed genocide against the Mayan Ixil population, but a 2:1 divided vote absolved Rodríguez Sánchez.

In 2013, survivors of the Mayan Ixil genocide filed a complaint against the state of Guatemala before the Inter-American Court of Human Rights (CIDH) for the continued impunity on the case. They are still waiting for their case to be heard at the Court.

The counterattack against transitional justice

A counterattack was built, aimed to stop the transitional justice process when the survivors tried to bring to trial some high-rank military officers of the Guatemalan Army. What happened during the genocide show us how a pro-military sector was organized for that end. During the trial, they started a campaign in social media, using the hashtag #NoHuboGenocidio (#ThereWasNotAGenocide). (It's worth mentioning that people that favored the justice processes responded with #SíHuboGenocidio [#ItWasGenocide]).

During the trial, anonymous letters aimed to threaten participants of this process were frequent. Also, acts of intimidation and attempt to murder some judicial operators were part of all the processes.

When the trial was getting to its closing arguments phase, the media streamed a smear campaign against the court, the public prosecutor's office, and the justice process itself. It stated that the trials were dividing, an obstacle to peace and reconciliation. The written media presented a series of anonymous, intimidating pamphlets, as well as paid advertising spaces, some of them signed by the Foundation to Counter Terrorism (Fundación Contra el Terrorismo [FCT]) -a little group made up by retired military officers, who participated in the counterinsurgency war and opposed to judging military men due to the armed conflict. Pamphlets showed that the accusations of genocide were made up and pointed to the judicial operators and persons who supported the processes for sympathizing with the guerrilla (that didn't exist after the peace accords).

Other papers were more openly threatening, for example, a six pages, unsigned circular titled, 'Faces of Infamy.' It stated that the genocide trial was the result of an international conspiracy. It presented photographs of the principal actors for the hearing, including former Attorney General Claudia Paz y Paz, public prosecutor Orlando López, judges, the victim's attorneys, and even former US Ambassador Arnold Chacón. With the same language dead squads used during the worst years of the armed conflict, it said: "This is forcing us the real Guatemalan people to exhibit the FACES OF INFAMY against our country, so that this generation and the next NEVER forget their faces, and fulfill the obligation to punish these PEACE TRAITORS."

Besides, in the middle of the genocide trial, it became known that two supposedly important actors, among them the former president Eduardo Stein, signed a document named, "Betray our country and divide Guatemala," that stated that the genocide trial meant an "end to the peace accords and the beginning of a new violent era in Guatemala." The communiqué, published on April 16, 2013, a few days after 'Faces of Infamy,' asserted that the genocide trial was not only to Judge Ríos Montt and Rodríguez Sánchez, not even the Armed Forces of Guatemala, but against the state of Guatemala itself. For that reason, a guilty sentence would mean ‹great danger to our country, including an exacerbation of social and political polarization that would bring down the peace we have reached.› This document was particularly disconcerting as it came from influential politicians, who were considered moderate.

The pressure finally got impunity for the genocide case. Claudia Paz y Paz was removed from her position six months earlier. Many people saw this action as a reprisal for Ríos Montt's hearing. Some presented complaints against the public prosecutor on the case, the judge at the court, the director of the organization that carried out the forensic examination, among others. They talk about the restoration of military and elite ultraconservative sectors.

Given this situation, in 2015, there was in Guatemala an immense wave of protests of young people from all social classes against corruption. In the end, the president and vice president were arrested, along with other officers, and Guatemala could feel a change. This process transformed the country's scenario and opened new perspectives for transitional justice.

In 2016, new high-impact transitional justice processes started. On January, 18 high-rank military officers were arrested, among them the former Chief of Guatemala's Armed Forces staff, Benedicto Lucas García, and the Chief of Military Intelligence, Manuel Callejas, both accused in Molina Theissen and Creompaz cases. On February of that same year, two militaries were convicted in the Sepur Zarco case, a shocking case about sexual violence, sexual slavery, and domestic slavery committed to 15 Mayan Q'eqchi women. In May 2018, seven former military commissionaires were accused of sexual violence against 30 Mayan Achí women.

The Creompaz was about the old Military Zone No. 21 where, with a warrant, forensic investigators found 565 human remains in 85 graves. Thanks to DNA

techniques, 143 of the victims were identified and recognized as victims of forced disappearance during the armed conflict between 1981 and 1988. In this case, eight out of the 14 arrested militaries have been sent to trial. Although, they have presented appeals that stuck the trial for over three years.

Five high-rank military officers were judged in the Molina Theissen case. It is about the illegal detention, torture, and rape of Emma Molina Theissen, 21 years old, and the forced disappearance of her younger brother, Marco Antonio, 14 years old, in 1981. The trial started on March 2018, and on May 2018 the court sentenced four out of five defendants to 33 to 58 years of imprisonment, including former Chief of Staff of the Guatemalan Armed Forces, and mastermind of the counterinsurgent strategy, Benedicto Lucas García, and former Chief of Military Intelligence, Manuel Callejas y Callejas, due to his role in organized crime. It is important to note how relevant was to Emma Molina Theissen to see the Ixil and Q'eqchi women testify about the sexual violence they have suffered. Emma told me she did not feel the right to claim justice for her, only for her brother. Nevertheless, after finding out about these other judicial processes and the testimonies of Ixil and Q'eqchi women that went through similar circumstances, she changed her mind and decided to pursue for justice for herself, too.

Why is the Guatemala's case important?

The transitional justice process in Guatemala is significant due to the active and persistent participation of survivors and victims' families, and their tireless claim for truth, justice, and memory. Over the years, a net of different organizations that help and support the processes have been created. Thus, a really valuable network of solidarity among the victims has been developed.

Likewise, Guatemalan and international human rights organizations have played a significant role. Organizations like the Centre for Legal Action and Human Rights (Centro de Acción Legal para los Derechos Humanos [CALDH]), Law Firm for Human Rights (Bufete Jurídico de Derechos Humanos), Women Transforming the World (Mujeres Transformando el Mundo), amongst others, have worked hand in hand with victims, not only at the court but also with the psychosocial and psycho-legal work, acknowledging the suffered trauma, and

...the transitional justice process in Guatemala is significant because it is allowing armed conflict survivors and victims' families to reach truth and justice, even if it is true that only a small percentage of victims can present their case.

trying to ensure that they are not revictimized during those processes. Besides, international organizations have played a significant role. Organizations like the Centre for Justice and International Law (Centro por la Justicia y el Derecho Internacional [CEJIL]), which helps to represent the cases before the Inter-American System; Impunity Watch; Washington Office of Latin American Affairs (WOLA); and Open Society Justice Initiative (OSJI), which performs advocacy work, monitoring and matching processes and complainants.

Likewise, it's necessary to signal the role of the judicial operators. The Public Ministry and high-risk tribunals, which works with human rights cases, have been strengthened through the years. Institutional capacities have been built in the Public Ministry and the Judiciary. It is true that these institutions still have numerous issues of corruption and influence peddling, and even when you can call them 'islands,' it is possible to manage autonomy and excellence, and prosecutors and judges accomplish their mission professionally and with integrity. As an example of that, even though the Attorney General finished his term in 2014, institutionalism remained and the investigations continued, along with the court proceedings.

It is particularly remarkable the careful development by the Human Rights Unit of the Public Ministry of competent legal strategies to investigate and prosecute complex human rights crimes, and the adoption of innovative strategies to develop a court proceeding sensitive to the needs of the victims, which is of fundamental importance in cases of transitional justice. These reveal the Public Ministry's ability to work side by side with the complainants to meticulously build cases based on the survivors and expert's testimonies, as well as on physic, forensic and documentary evidence, despite the elapsed time.

Finally, I believe that the transitional justice process in Guatemala is significant because it is allowing armed conflict survivors and victims' families to reach truth and justice, even if it is true that only a small percentage of victims can present their case. But it is also relevant because through these processes is possible to fight the denial narratives with concrete evidence that prove the participation of the Guatemala Army, and they provide more elements to re-

write the history of the recent past with the testimonies of the survivors and the "judicial truth" of Guatemalan courts.

Conclusion

The Guatemalan case shows that, despite a hard and even hostile context, the transitional justice process has advanced. The commitment of the victims, human rights organizations and judicial operators have been central to this process. The fact that even today there are new attempts to impose amnesty, and close these processes, speaks for the relevance reached by now, and the need to walk side by side with Guatemalan civil society and democratic institutionality through the path of truth, justice, and memory.

RAÚL OLIVERA

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SOUTHERN EXPERIENCES ABOUT JUSTICE, TRUTH, AND MEMORY AGAINST STATE CRIMES.

PROCESS OF LAW ENFORCEMENT: THE URUGUAYAN CASE.

Raúl Olivera

Introduction

The sentence issued on February 2011 by the Inter-American Court of Human Rights (IACHR) for the disappearance of Maria Claudia García de Gelman in 1976, condemned the State of Uruguay to do what was claimed by the victims of State terrorism for over 30 years. The sentence took place at a time when the two parties that were political supporters of impunity no longer governed: Colorado and the National. On the contrary, with parliamentary majorities, since 2005, the Government was controlled by a single political force, the Frente Amplio, composed mainly by organizations that had been the main target of the State terrorism of the dictatorship (1973-1985), and the period of State authoritarianism that preceded it (1968- 1973).

This explains the expectation of the State ending impunity that took place in 2011. The Gelman sentence was perceived as a ray of light on a legal and political scene that remained populated with darkness for many years.

By forcing the State to investigate serious human rights violations effectively and within reasonable time limits, and giving victims access to all stages of the investigation, the sentence posed a challenge for the State and the political

system that, until that moment and with nuances, had acted on the logic of the limits imposed by impunity policies. To meet that challenge, Uruguay was obliged to ensure that a Law of Impunity —passed in 1986 at the end of the dictatorship under pressure from the Armed Forces and subsequently ratified in a referendum and a plebiscite— will not continue to be an obstacle to punish the crimes committed on political mobiles by the military and the police during State terrorism.

The sentence was also a challenge for both, victims and human rights defenders. We had to provide ourselves with new fighting tools that would allow us to keep an active vigilance so that the mandate of the Inter-American System for the Protection of Human Rights was fulfilled, in a new scenario which substantially incorporated the judicial system, which until that moment had had a marginal or null roll.

Besides, knowing that governments are always less inclined to confront armed institutions, especially when they hold power, the innovative tool that we set out to build was the Luz Ibarburu Observatory. It had to have a double purpose: to act on the judicial system and the other powers of the State, and to contribute to strengthening civil society so that it has the largest capacity to neutralize a foreseeable lack of willingness of the political system to question and thoroughly purify the repressive bodies.

This capacity and strength were achieved in first instance by bringing together the experience of the trade union movement, the visions of other society's organizations, and the contribution of the academy. That is the Luz Ibarburu Observatory, created in 2012 from a decision of the trade union movement.

At the Observatory, compliance with the ruling of the Inter-American Court became one of the main axes of its strategy.

At the State level, the responses tested to execute the sentence were hesitant and mostly ineffective. It seemed that there was a political will to comply with the Inter-American System due to the vast number of organizations created; but, in reality, this was inefficient because of a notable absence of political will to prosecute the State terrorists. This was evident in the recommendations of the United Nations Special Rapporteur and the non-appearance of Uruguay at the IACHR hearings of May 2017.

The Presidency of the Republic created a Secretariat of Human Rights, an Interministerial Commission to oversee the compliance of the sentence, a Secretariat for the Recent Past, a Working Group for Truth and Justice, a Special Unit inside of the Ministry of Interior, for terrorism offenses of the State, a Special Unit of the Prosecutor's Office, and in these last days (at the beginning of 2018) a Special Prosecutor's Office, composed only by a prosecutor and two assistants, to handle all causes in the country, that if the State doesn't provide more human and material resources, this office will not meet its main objectives.

At the parliamentary level, without hearing a proposal from civil society, a law was passed that should have the purpose of solving some foreseeable legal difficulties, such as the non-application of the Law of Impunity and other internal excluding rules of criminal responsibility, such as the prescription, *res judicata*, and due obedience. However, it ended up being —except perhaps in one of its articles— functional to impunity strategies.

Indeed, only the article that re-established the punitive claim that had been renounced with the Law of Impunity so far has not been labeled unconstitutional by the Supreme Court. It has to be taken into account that this aspect was settled by the Gelman case itself and two years earlier by a Supreme Court ruling that in 2009, unanimously, declared the unconstitutionality of the Law of Impunity, recognizing for the first time the existence of a blockage of the constitutionality of fundamental rights that clearly goes in favor of jurisprudence that states that international human rights conventions are integrated to the Constitution of the Republic according to its article 72, because they are inherent rights to human dignity.

It is not precipitate to say that from these events a debate which crossed Uruguayan society was concluded: the Law of Impunity approved by a democratic parliament, and later ratified or backed twice by citizens in a referendum (April 1989) and a plebiscite (October 2009), could no longer be invoked to justify the inaction of the State in the face of the continuous and systematic violation of the American Convention on Human Rights.

Summarizing: the norms of international law and the protection of human rights were constituted after the decision of the Inter-American Court, in a solid limit to the rule of majorities that had twice ratified the validity of the Law of Impunity.

It is essential to analyze how the ruling of the Inter-American Court set the scenario, and how the State has continue to manage the consequences of state terrorism until today, to understand the role of civil society organizations facing State crimes.

This reflection is significant because the judgment of the SCJ of 2009 was followed by a series of sentences from 2013 declaring the unconstitutionality of two articles of Law 18.831, which were followed by sinuous pronouncements accordingly to the integration of the SCJ that issued decisions both favorable and unfavorable to the constitutionality of the same law.

Nowadays, there is a majority in the highest body of the Judiciary, against the constitutionality of a law that declares the crimes of State as crimes against humanity, and imprescriptible, constituting a serious threat to the future.

The prelude to impunity

There is a period between authoritarian regimes and restored "democracies" that has been denominated "transitional." While it is true that these transitions had their particularities and specificities in the different countries of the Southern Cone, it is our interest to examine, albeit schematically, this phenomenon in Uruguay, and thus be able to understand and explain some aspects that had been little or insufficiently analyzed. Among them the so-called "transitional justice."

To accept a denomination that may imply the existence of a trimmed justice is a vision to the future, a path that the most consistent sectors of the defense of human rights refuse to passively walk. In fact, in Uruguay, a transitional justice sought, by all means, to not prosecute severe violations of the dictatorship. To legitimize this option, the State argued that through this actions, the transition would be peaceful. The approval of the Law of Impunity —called the Expiry of the Punitive Pretension of the State —was the most important juristic/political tool so that there was no criminal prosecution. The truth and justice claims of the victims in Uruguay were always in conflict —of greater or lesser intensity— with the efforts made by the State and the political system to refrain from seeking the truth and undertaking criminal prosecution. The argument: the price of peace that society had to pay was the absence of justice. The claim: a policy of

consistent and effective criminal prosecution would trigger new violence, and jeopardize a transition in peace.

To clarify: the Law of impunity in Uruguay, unlike others, was legal-political. Its application in each case —i. e., what conduct a judge assumed before a complaint committed by the dictatorship that was formulated to be investigated and to punish the responsible— depended on a political decision of the Executive Power that determined the application or not of impunity.

During the transition, the logic of this kind of transitional justice sought to provide the legal and political means to find the most appropriate ways for the management of the past to be carried out within the framework of the reconciliation between the military power and the civil power.

For a long time, the process was successful, blatantly pointing that the restoration of democratic principles was necessary to solve a fundamental condition for the rule of law: the collective need to know the truth in the pursuit of justice.

The collective need to know the truth in the pursuit of justice.

Some approaches have tried to build a somehow equilibrated narrative to understand this period. According to these, to get a "democracy" means to inevitably accept, more or less, the persistence of remnants of the authoritarian State. These are the cost, the price to pay for the transition. That was the only way to ensure the harmonic coexistence between past and present, even if that meant generating distrust in the State and its institutions.

Besides that narrative, the two demons present in that historical period share almost equal responsibilities: the subversion of civilians and the response of the military. For them, the coup d'état was a massive intrigue and not a violent action, and it was more or less violent in its beginnings and subsequent development according to the resistance than internally or from political exile opposition.

On this note, on December 22, 1986, shortly after the reinstatement of democracy, the majority of Parliament passed Law No. 15.848 on Expiry of the Punitive Pretension of the State, which established that the crimes committed by the members of the security services of the past dictatorship were not subject to trial and punishment.

Along with the approval of this Law of Impunity, an operation began, in which a dozen disappearances occurred in Uruguay, as a result of excesses, and other criminal behaviors of the dictatorship were ignored. It was the beginning of a political operation that over many years struggled to exclude torture, political assassinations, and sexual violence from any consideration. The first prosecution for torture, until today, happened in 2017; and still there are none for the appropriation of minors.

Two and a half years after its approval, the Expiry Law was ratified by a referendum in 1989.

The transition in Uruguay explain the facts that caused the law and the fight for its repeal. In that period, the set of contradictions and challenges for the novel and restored democracy summed up in the management of the authoritarian past in the face of Armed Forces that maintained the power behind the Government's power.

The popular mobilization

The mobilization for the defense of human rights, still during the dictatorship, was the most notable expression of civil disobedience against the military order. Even now, in addition to its humanitarian character, it is a reaction of civil society, closely linked to the current existence of authoritarianism remains that manifest themselves through threats to human rights defenders and the performance of intelligence services on social organizations. The reaction of civil society was —and is— an emerging challenge introduced into our society, and an action to denounce the State inactivity against the effects of military despotism. Hence the issue of human rights has been established as a reference for action at all levels of the democratic struggle.

Limiting the crimes of State terrorism to disappearances in Uruguay, and not considering disappearances that occurred abroad as a result of the repressive coordination of the Condor Plan, was one of the objectives of impunity policies followed by another deeper attempt: the endpoint for disappearances.

That strategy consisted, as a first step, in limiting the recognition of human rights violations to disappearances, and then orchestrating a solution to disappearances that did not imply the criminal responsibility of the guilty parties.

The attempt that made the most progress in this regard was a commission called "for the peace" which, after 2000, decreed the death of missing persons, and considered that their remains should not be sought for having been incinerated and thrown into the sea. There was no need to continue asking where they were. That was the possible truth that years later proved to be another lie when three bodies appeared buried in the barracks.

The rescue of the memory

For many years in Uruguay, there was an operation from the State to force Uruguayan society into oblivion. The borderline experiences that the community lived operated for quite some time as another mechanism for blocking collective and individual memory. Collectively, those situations of the societies, victims of State terrorism —whether in the immediacy of the murders, torture, kidnappings, disappearances or their deferred conscience until they are verified— have particular meanings for both each citizen and each society.

For the direct victims, survivors of abuse, forgetting can be lived as "rest," or "peace," after long periods of extreme tension. You might even venture that, for some, oblivion is lived as "security," after the uncertainty generated by state terrorism. The dictatorship and its inhuman practices left a society with citizens saturated with tears and suffering. From the power of the State of recently reinstated democracies, about that legacy, victims and society were questioned with threatening interrogations: What is the purpose of rekindling the pain of the past? Why insist on invoking a subject that divides the community and takes away the peace of the spirits?

The so-called "do your thing" of the neoliberal policies of the 90s, "live in the present," was both a hymn to individualism and a way to disregard the past. When the Uruguayan nation was immersed in that environment along with the debates of what to do with its recent past, civil society organizations and victims had to solve that challenge, trying to integrate the past into an environment

that was not very favorable. It was a scenario where those who forgot —due to political convenience— wanted to force others —the ones who did not want or could not forget— to do the same. The government pleaded to its reasons and the maintenance of "peace" to impose oblivion and impunity (a condition to the "transition process.")

In each of the countries that suffered dictatorial processes in Latin America, the transition had its characteristics, particularities, but in many aspects, there was a common denominator: not resolving its past following international norms and standards.

With the means and the force granted by that power of the States, the proposal of omission played with the innocence of the common man, stirring the ghosts of fear, so that individual memory would end up destroying the recollections of collective memory.

In this context existed, although marginalized and increasingly ignored, the "rememberful," the witnesses of terror, the accusatory consciences that represented a danger to the strategies of oblivion. Therefore, attempts were made to silence human rights activists, condemning them to silence in most of the media. That fight is not over yet.

The experience of social organizations at the Luz Ibarburu Observatory

In the fight against impunity, to prevent its perpetuation, it is essential to enforce the rules of law created along with the effort of civil society through all those years. The Luz Ibarburu Observatory develop various strategies at the political and judicial level within that framework and goals.

The idea is to articulate, from civil society, a new collective effort that allows continuity to a long-standing struggle in this new stage toward which the Uruguayan State must go if it does not want to incur international responsibility.

We have the firm hope that the activity of the Observatory, as a space for social action, transcends the struggle for the consequences of State terrorism and becomes an experience, in an effort of permanent unity of those social ac-

tors who must have a fundamental role in the process of the defense of human rights in their entirety.

This effort concentrated in the Luz Ibarburu Observatory was articulated by promoting norms, public policies, identifying difficulties, and denouncing deficiencies or obstacles that we detect in legal and administrative level, institutional design, and, specifically, in political visions and positions. In other words, at the Observatory, we developed a tool from which we join efforts and expertise to demand the compliance that Uruguay should give to the rulings of the IACHR and its international obligations.

In this scenario, it was essential to monitor this process, to detect and graph the difficulties, as well as to promote the necessary measures. At the beginning of 2012, the efforts to form the Luz Ibarburu Observatory began. An Observatory of judicial causes and public policies in the field of human rights, to contribute to improve public policies to ensure full access to justice.

The first task was to create a public database with free access. As there were causes that did not have legal advice nor investigation, the contribution of information and, in particular, the testimonies, made necessary the participation of the victims. From a determination of the member organizations of the Observatory, the work of sponsoring was assumed. Historically, the causes of State terrorism were and are almost exclusively dependent on the complainants.

To this day, civil society is the one who continues to assume a role that corresponds to the State and continues to be the main auxiliary of justice.

A real battle against time was notorious due to the unified strategy of the lawyers of the military centers carrying out multiple actions to delay the processes, the position of the majority of the SCJ concerning Law No. 18.831, and the general validity of the ruling of the Inter-American Court. The perpetrators, the victims and the witnesses died. In the case of the perpetrators, who inexorably interrupted the process, they produced difficulties in clarifying the facts, and those responsible. We were in a stage in which factual impunity came together, and created the threat of another of a legal nature.

With this panorama, the Observatory decided to incorporate into its initial objectives another role: being active in the cases. For that, it was necessary to implement a legal team that assumed the sponsorship of these.

For that role, one could not continue thinking about the pro bono work of professionals. Because of that, a legal team was formed with the contributions of the trade union movement and international financing; it began to develop a work plan that allowed it to know in time the content and the situation of the totality of the cases, and to realize the legal sponsorship of around half a hundred of them. It is a universe that today comprises about 308 cases.

The information and its systematization offered by the Observatory database do not exist anywhere else. The Judiciary does not know how many cases there are or what their situation is, which indicates the lack of interest to monitor compliance of the decision of the Inter-American Court.

Having updated and useful information for the justice process is a responsibility of the State that has had to be assumed by civil society through the Luz Ibarburu Observatory.

Based on the work of the legal team, the Observatory now assumes the legal representation of a significant number of cases, makes the accompaniment to the complainants and witnesses in the hearings and impels them procedurally when appropriate.

The omission of the State in taking administrative and/or legislative measures to improve the treatment of the causes is notorious.

The same must be said about the access to information in the hands of the State: there is a policy of secrecy towards civil society organizations that little or nothing contributes to collaborate with the justice process.

In summary: to the extent that it collects and systematizes information on the causes of State terrorism, the Luz Ibarburu Observatory is more than just its narrator: it gives an interpretation and understanding of the facts that occur in the justice process. Contrary to other situations experienced in the fight against impunity, society's reaction partly materializes in the creation of the Luz Ibarburu Observatory. Its conformation is not due to an unfavorable situation prevailing like when the judicial system was hampered, but rather it seeks to consolidate a favorable change manifested in the importance of international regulations, and the partial elimination —even in debate— of obstacles to that process, giving a fair answer to the question of "Why does justice exist"?

If civil societies are weak and static, there are no guarantees of solid democracies. All advances in public human rights policies have been the result, fun-

damentally and mainly, of victims and human rights organizations. All these advances were made almost without financial resources, with the effort of victims and human rights defenders who have fought against State policies that for many years have opted to maintain impunity.

Conclusions

The Observatory concentrates and synthesizes the experience and collective ability of its component organizations, in addition to the people who represent them in the Observatory. They have an outstanding performance in defending human rights at a national and international level, and, in several cases, they are complainants in international trials and consultants in aspects related to the subject.

To this, we must add the contribution that is carried out in the Observatory between law students doing internships in the Observatory, added with exchange programs with foreign universities that send students to volunteer. The recent incorporation of a professional in communications also makes it possible to improve the work of systematization of information and its dissemination, as well as to open internships with the faculties of political and communication sciences.

The Uruguayan criminal process is not transparent, nor does transitional justice in Uruguay reveal significant progress after a momentum that was stopped in 2012. Victims have not found adequate support in state structures, nor is there an effective prosecution of state crimes revealed in state terrorism. The formation of a legal team linked to the organizations of victims and human rights activists and dedicated specifically to transitional justice is a unique case in Uruguay. There is no other equipment with these characteristics.

> If civil societies are weak and static, there are no guarantees of solid democracies.

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THE MILITARIZATION OF POLITICS IN BRAZIL UNDER THE TEMER GOVERNMENT

Emilio Peluso Neder Meyer

Introduction

In recent decades, the 'judicialization of politics,' understood as the involvement of courts and judges in political issues once monopolized by legislative and executive authorities has emerged as an influential force in Brazil. The Brazilian judiciary has assumed a central role in elections by regulating legislative and executive terms, as well as by influencing political decisions and democratic norms. This is not specific to Brazil. The judicial authorities have wielded their powers to protect powerful interests when threatened by changes of power in Canada, South Africa, Israel, and New Zealand in Hirchl's account (2004).[1] Alarmingly, the relationship between judicial authorities and the Brazilian military is well established and has long been the subject of investigations. For example, Anthony Pereira's research (2005) on the connections between the judiciary and military institutions in Argentina, Chile, and Brazil concluded that the close ties between the courts and the military led to 'legalized' repression. In Argentina, transitional

1 *For an analysis of the role of constitutional courts in democracy after transitions*, *see* Samuel Issacharoff, Fragile Democracies: Contested Power in the Era of Constitutional Courts (2015). For the case of 'judicialization of politics' in Brazil, *see* Emilio Peluso Neder Meyer, 'Judges and Courts in Unstable Constitutionalism Regimes: The Brazilian Judiciary Branch's Political and Authoritarian Character,' German L. J., forthcoming.

measures of accountability have held the military and some segments of the judiciary responsible (Bohoslavsky, 2015).

Still, aside from limited steps by the Brazilian former governments to protect Brazilians' right to truth and memory, neither Brazilian military officials, nor judges, have been held responsible for abuses committed during the military dictatorship of 1964-1985.[2]

A few years ago, my colleagues from the Federal University of Minas Gerais and I discussed the political significance of military officials publicly supporting a 'military intervention' in response to the ongoing Brazilian political crisis (Peluso Neder Meyer, Cattoni de Oliveira y Bustamante, 2017). During Temer government, ignoring the claims of Raul Jungmann, the former civilian leader of the Ministry of Defense, the Army Commander, General Eduardo Villas Bôas, did not punish the statements from General Antonio Hamilton Martins Mourão, who proposed a military solution to incarcerate corrupt politicians. Mourão was elected for the Vice-Presidency in the 2018 elections. These tensions and movements are representative of the broader political conflict taking place in Brazil.

In this article, I aim to show how the recent 'judicialization of politics' in Brazil has been accompanied by an equally worrisome 'militarization of politics.'[3] Little has been done since the Brazilian Constitution of 1988 to rebuild the relationship between civilian and military authorities. Led by military officials selected by former President Michel Temer, members of the Armed Forces have organized political protests, intervened in state and federal affairs, occupied relevant positions in public administration, and hindered the conduction of investigations and processes related to their own peers and other public security measures, besides the effect on the civilian command. At the same time, Brazilian courts and judges have refused to hold Brazilian military members accountable for the crimes they have committed. As the cherry on the top, there was the election of Jair Bolsonaro for Presidency, along with 73 military legislative representatives, and the nomination of former Armed Forces members to occupy high-rank po-

2 For a view on the Brazilian National Truth Commission achievements and shortcomings, *see* Marcelo Torelly, 'Assessing a Late Truth Commission: Challenges and Achievements of the Brazilian National Truth Commission,' 12 *I.J.T.J.* 2, 2018, p. 1-22.

3 Zaverucha (2003:399) calls 'militarization' to the process through which society accepts military values.

sitions in public administration. This has allowed the military to gain an unprecedented level of political participation and power without being held accountable for violations of human rights (Sikkink, 2011).[4]

Military Jurisdiction

Changes in the judicial system in favor of the Brazilian military have also drawn widespread concern. Statute Law nº 13.491, passed on October 13, 2017, changed the jurisdiction of military crimes committed by members of the Armed Forces by reestablishing a legal system from the early 1990s. These modifications mean that the Military Criminal Code now calls for crimes committed by members of the Armed Forces against civilians to be tried by Brazilian military justices, rather than in non-military courts where there are fewer conflicts of interest.

These rules apply for crimes committed during operations run by the President or the Ministry of Defense, and for crimes committed during activities of military nature and peacekeeping operations. Military courts will also hold jurisdiction over crimes committed during operations to guarantee "law and order" (*Garantia da Lei e da Ordem, GLO*), which is a system that allows the military to act on national security matters in extraordinary situations, established by Complementary Law nº 97 of 1999. The jurisdictional shifts were severely criticized by organizations such as the UN High Commissioner of Human Rights Regional Office for South America and by the Inter-American Commission on Human Rights (Conjur, 2017). These groups were alarmed for a good reason. In the state of Rio de Janeiro, two Presidential decrees allowed the deployment of members of the Armed Forces during public security operations from July 28, 2017, until December 31, 2018. These federal troops have carried out violent operations to "guarantee law and order."

> "...the Military Criminal Code now calls for crimes committed by members of the Armed Forces against civilians to be tried by Brazilian military justices, rather than in non-military courts where there are fewer conflicts of interest."

4 Kathryn Sikkink does the association between the lack of accountability for past violations of human rights and high levels of present violations.

The Military's Political Speeches

A few months after General Mourão publicly called for the military to interfere in politics, the Commander of the Brazilian Army, Villas Bôas, removed him from his position in the Army Secretariat for Economy and Finance. Yet, this dismissal only occurred after Mourão publicly criticized the Temer administration a second time, saying it ignored the needs of the Brazilian public and focused only on corporate interests (de Souza, 2017). Shortly afterward, on February 28, 2018, General Mourão retired and announced that a group of military candidates would run in the 2018 elections. He also praised Colonel Brilhante Ustra, a military officer that was found to have committed torture in a civil lawsuit by the Brazilian Superior Court of Justice (*Superior Tribunal de Justiça*). The right-wing President Jair Bolsonaro also supported Colonel Ustra during Dilma Rousseff's impeachment in 2016 (Falcão, 2016). Finally, General Mourão stated that politicians like President Michel Temer, and others could not legitimately participate in the politics because of accusations of corruption, and should be purged by the judiciary (Victor 2018). As abovementioned, Mourão would be later the Vice-President of Brazil.

The most glaring example of a military official threatening a Brazilian politician occurred when General Villas-Bôas criticized ex-President Lula da Silva's trial before the Brazilian Supreme Court after he filed a writ of *habeas corpus* to avoid imprisonment. Later, Lula was condemned in a very controversial criminal lawsuit that accused him of corruption and money laundering related to the supposed purchase of an apartment in the coast of the state of São Paulo.

In February 2016, by a strict majority, the Brazilian Supreme Court had decided that appeals to third level courts were not enough to avoid imprisonment. Satisfied with the ruling from second level tribunals, the strict majority, however, was confronted in other singular cases, opening the way for overruling the precedent. Villas-Bôas posted on Twitter claims that indicated that the Armed Forces shared Brazilian citizens' concerns against impunity and that they were aware of their 'institutional duties,' indicating that Brazilian Supreme Court should not grant the *habeas corpus* writ to Lula (Odilla, 2018). The former president was arrested and, now, disclosed conversations have shown that prosecutors and the federal judge that tried Lula — and became Bolsonaro's Minister of Justice

— were in a collaborative effort to condemn him even in face of the lack of evidences (Phillips, 2019).

Military Officials in Office

The growing wave of military officials participating in Brazilian politics is reminiscent of the Temer Administration's previous security policies. Unlike ex-President Rousseff's approach to national security, President Temer created an Institutional Security Cabinet (*Gabinete de Segurança Institucional*), responsible for discussing security issues directly with him. Also, its functions were analyzing potential security risks, avoiding crises of institutional instability, and coordinating federal intelligence activities through the Brazilian Intelligence Agency.[5] The President then nominated General Sérgio Etchegoyen, who has questioned the legitimacy of social movements like the MST (*Movimento dos Trabalhadores Rurais sem Terra*, or Rural Workers without Land Movement) and compared them to terrorist groups, to lead this cabinet.

General Etchegoyen's family background is practically a case study in the history of the militarization of Brazilian politics. His grandfather, Alcides Gonçalves, served as Getúlio Vargas's chief police chief during part of the dictatorship of 1937-1945, fighting anti-government activists.[6] He was the replacement for Filinto Müller, known as a Nazi sympathizer, who visited Germany in 1937 to meet with Heinrich Himmler after the beginning of the dictatorship.[7] General Etchegoyen's father, Leo Etchegoyen, took advantage of the repressive Brazilian dictatorship that lasted from 1964 until 1985 by being advisor of Dictator Emilio Médici. His uncle, Cyro Etchegoyen, was also head of the Army's Center of Information (*Centro de Informações do Exército*). After the fall of the dictatorship, the Brazilian National Truth Commission investigated both these men for in-

5 *See*, also, Agência Brasileira de Inteligência, 'ABIN volta a ser subordinada ao GSI,' http://www.abin.gov.br/abin-volta-a-ser-subordinada-ao-gsi/, last visited 6 March 2018.

6 *See* FGV CPDOC, entry Alcides Gonçalves Etchegoyen, http://www.fgv.br/cpdoc/acervo/dicionarios/verbete-biografico/alcides-goncalves-etchegoyen, last visited 17 July 2018.

7 *See* FGV CPDOC, 'A Era Vargas: Dos Anos 20 a 1945,' entry Filinto Müller, https://cpdoc.fgv.br/producao/dossies/AEraVargas1/biografias/filinto_muller, last visited 17 July 2018.

volvement in human rights violations. Cyro Etchegoyen was eventually accused of commanding an infamous torture site, known as the Petrópolis House of Death (*Casa da Morte de Petrópolis*).[8]

Several other high level positions in the Temer Administration were also filled by members of the Armed Forces, including the National Public Security Secretariat, the Presidency of the National Indigenous Foundation (*FUNAI — Fundação Nacional do Índio*) and Civil Office of the Cabinet of the President of the Republic[9], among others (Valente, 2018).

The Brazilian military has a long history of interference in domestic politics. From the foundation of the republic in 1889, the military has played a central role. It involved itself in struggles against the presidential election results of 1930, which led Getúlio Vargas to create a provisionary government. After the presidential elections of 1934, which Vargas won, he staged a coup d'état with the support of the military. His government then imposed the Constitution of 1937 to solidify control. However, in October 1945, disgruntled members of the Armed Forces again seized power, but this time in opposition to Vargas. In 1964, another coup d'état put the military in charge of the presidency, which led to the dictatorship of 1964-1985. Only popular discontent during the Constituent Assembly of 1987-1988 brought down the planned transitional government envisioned by the Armed Forces, although minor institutional reforms were made.

The Ministry of Defense

The nomination of the new Minister of Defense was also a step towards the militarization of politics. In order to create a new Ministry of Public Security, the President split up the Ministry of Justice. The former civilian Minister of

8 *See* Comissão Nacional da Verdade, *Relatório Final*, http://cnv.memoriasreveladas.gov.br/textos-do-colegiado/586-epub.html, last visited 6 March 2018. On pages 1.963 and 1.964, a confessed torturer, Paulo Malhães, in testimony before the National Truth Commission, indicates Cyro Etchegoyen as the one responsible for the House of Death of Petrópolis. On pages 2.094 and 2.111, the names of Sérgio Etchegoyen's relatives appear as public agents responsible for structures and administration and procedures conducing to gross violations of human rights.

9 Like the Ministry of Internal Affairs.

Defense, Raul Jungmann, took office as the new Minister of Public Security, allowing President Temer to select the General of the Army Reserves, Joaquim Luna e Silva, to take charge of the Ministry of Defense (Matais, 2018). At first, this does not appear to be problematic; however, the Ministry of Defense was created to remain under civilian control according to Constitutional Amendment nº 23 of September 3, 1999. President Temer's nomination contradicted this fundamental premise.

Federal Interference

To present a way out of the public security dilemmas of the State of Rio de Janeiro, Temer resorted to an intervention described in the Brazilian Constitution of 1988 as 'federal interference' (Constitution of the Federative Republic of Brazil, 1988: art. 34; Decree no. 9.288/2018). Although he was criticized for invoking unprecedented measures for his benefit, Temer decided to use Article 34 of the Brazilian Constitution to bypass the State of Rio de Janeiro's autonomy. Basing his intervention on language in Article 34 which outlines exceptions to state autonomy in cases of 'grave compromises of the public order,' (*grave comprometimento da ordem pública*) Temer implemented his security policies, justifying his actions by claiming Rio was unable to control drug trafficking and violence.

Shortly after the nomination of Army General Walter Braga Souza Neto as Federal Intervenor, General Villas Bôas, Commander of the Brazilian Army, stated in a council meeting that the military should be guaranteed that a Truth Commission would ever be created (Lôbo, 2018). The Army went as far as proposing 'collective warrants' for its intervention, which would encompass streets or neighborhoods and allow military forces to search and apprehend suspects with impunity. However, the government backed down after a heated debate, and significant criticism by lawyers, public attorneys, civil society, and organizations like Human Rights Watch (Araúgo et al, 2018; Rosa, 2018).[10]

10 Right after the federal interference decree, three black young activists, AD Junior, Spartakus Francisco, and Eduardo Carvalho recorded a video in which they guide the communities on how to act before the repression that would increase with the interference. Simple tips like go to walk with identification documents, keep the cell phone charged, tell a friend where you are going to, may

It is relevant to note that former United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, criticized the involvement of military forces in Brazilian law enforcement and public security issues. He urged the Brazilian government to respect the human rights of its citizens by avoiding racial discrimination and criminalizing the poor (Abdala, 2018).

Federal interventions did not occur after the Constitution of 1988, possibly to avoid authoritarian interferences in states, as they happened under Vargas (1937-1945) and the military dictatorship (1964-1985). The text of article 34 of the Constitution of 1988 provides the remedies for interference in an 'exceptional language': 'The Union shall not intervene in the States or the Federal District, except to: . . .' There is a clear connotation, from normative stipulations to political practice, that this is not a day-by-day act: it is exceptional and against the basis of a principle that cannot even be taken off of the Constitution of 1988, that is, federalism. As article 60, 4th paragraph, says, this is a non-amendable clause or, more clearly, no constitutional amendment can be considered if it aims to set aside Brazilian federalism (Constitution of the Federative Republic of Brazil, 1988: art. 60, 4th paragraph, no. 1).

Brazil faces a political crisis since, at least, Dilma Rousseff's reelection in October 2014. When Temer took office in April 2016, there was a political and also economic crisis. His government had publicly advocated an overcoming of the economic crisis. However, he was unable to deny the existence of the ongoing political crisis, especially with such low popularity levels (Mazui, 2018). As Levitsky and Ziblatt showed, crises create the path for authoritarian abuses that can ameliorate governments' popularity: this happened with George W. Bush Patriot Act in 2001, a response to terrorist attacks that elevated his popularity to unprecedented levels at the same time that restricted fundamental rights. The same would go for Fujimori's 1992 coup, followed by approval rating of 81 per cent. Indeed, elected autocrats often *need* crises — external threats offer them a chance to break free, both swiftly and, very often, "legally".

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seem futile, but they can really make a difference in daily life. See Ana Beatriz Rosa, 'Jovens negros do Rio que gravaram manual de sobrevivência temem intervenção federal,' *HuffPost*, http://www.huffpostbrasil.com/2018/02/20/jovens-negros-do-rio-que-gravaram-manual-de-sobrevivencia-temem-intervencao-federal_a_23366801/, last visited 6 March 2018.

Impunity for Crimes Committed Under the Dictatorship

Another issue related to the broader problem of military involvement in politics is that military officials will be responsible for investigating human rights violations involving their peers. If the Brazilian civil justice system is unwilling to enforce human rights law and hold the military accountable for its crimes, how can anyone reasonably expect military courts to do so? With recent human rights violations mounting and significant conflicts of interest, military courts have demonstrated their inability to function properly and conduct transparent investigations. Brazilian judges and courts have consistently refused federal prosecutors' attempts to hold public agents accused of crimes against humanity accountable for their actions during the Brazilian dictatorship of 1964-1985 (Peluso Neder Meyer, 2017: 41-71).

> ...military courts have demonstrated their inability to function properly and conduct transparent investigations.

Based on the Brazilian Supreme Court ruling on the ADPF nº 153, which dealt with Statute Law nº 6.683 of 1979 in an abstract constitutional review meant to exclude the interpretation of auto-amnesty for agents of the dictatorship, federal judges have been reluctantly rejecting criminal lawsuits, arguing that a supposed 'political agreement' prior to the Constitution of 1988 should be respected.

None of the 40 criminal lawsuits filed since 2012 against the military and other public agents accused of crimes against humanity committed during the dictatorship has resulted in successful convictions.[11] Structural flaws in Brazil's justice system, which were criticized by the Inter-American Court of Human Rights during the *Gomes Lund case*, remain unaddressed. The case referred to events which occurred between 1972 and 1973 in a central region of Brazil called Araguaia. Members of the Communist Party of Brazil, (*PCdoB*) settled in that region

11 The documents concerning the criminal lawsuits, including prosecutors' petitions and judges' rulings, are available at the Federal University of Minas Gerais Study Center on Transitional Justice: http://cjt.ufmg.br, last visited 7 March 2018. *See*, also, Brasil, Ministério Público Federal, 2ª Câmara de Coordenação e Revisão, Crimes da Ditadura Militar (2017) (available at: http://www.mpf.mp.br/atuacao-tematica/ccr2/publicacoes/roteiro-atuacoes/005_17_crimes_da_ditadura_militar_digital_paginas_unicas.pdf, last visited 7 March 2018).

and started to build a rural guerrilla campaign with around 70 fighters. The military regime received information about this guerrilla group and sent troops to Araguaia on three occasions. Though the military's initial agenda may have been to arrest militants and try to collect information, by the third operation, soldiers left no one alive.

The ruling of the IACtHR stated that Brazil must investigate and prosecute all forced disappearances that took place in Araguaia. Thus, in the context of the Inter-American System of Human Rights, amnesty laws can no longer be used as an excuse to not investigating and punishing past violations of human rights.

The Brazilian judiciary has recently faced an additional problem dealing with human rights. The IACtHR ruled, in a second case, against the interpretation that avoided accountability for the previous government's crimes against humanity in the *Vladimir Herzog case* (IACtHR 2018). Herzog was a journalist, member of the Brazilian Communist Party. He was illegally detained, tortured, and then assassinated during Operation Radar, a series of operations that eliminated members of the Brazilian Communist Party. These targeted killings were run by the Army Center of Information (*CIE – Centro de Informação do Exército*) and the DOI-CODI (the Department of Information Operations-Center for Internal Defense Operations, the agency that coordinated between military and civilian state forces).

The IACtHR collected Brazilian federal prosecutors' arguments to demonstrate the systemic and general nature of political repression. The government's national security doctrine began the repression directly after the 1964 coup d'état. In March 1970, the Internal Security System was created following a Presidential Directive on Internal Security. The DOI-CODI created the opportunity for joint operations involving all types of security forces. Furthermore, the judicial system was organized to protect those responsible for violence by excluding 'acts of revolution' (institutional and complementary acts which are parallel, contrary and superior to constitutional norms) from judicial review. For example, the Institutional Act No. 5 of 1968, which suspended the *habeas corpus* for political crimes, couldn't be questioned in court, even though it was

anti-constitutional.[12] The elimination of all political opposition and the creation of secret torture centers also helped to shape the nature of violent repression.

What's at Stake?

Although the Constitution of 1988 subordinated the Armed Forces to the control of the civilian President of Republic, there were several difficulties to make this text effective (Constitution of the Federative Republic of Brazil, 1998: art. 142). Accountability, open dialogue, expanded access to truth, and the crucial recognition by the Armed Forces that their members committed human rights violations, contributed to three important effects. First, the continuity of a doctrinal approach guided by Cold War premises in the education of younger offices. There was no clear break, especially in the Army, with the kind of approach that led to the creation of the main schools that shaped the way Armed Forces *see* their political roles (Martinis, 2006). Second, the absence of real subordination to civilian authorities, despite their political bias or political plans; and third, a strong belief that public security operations should be conducted by the Armed Forces, though they were not trained in law enforcement, which created problems for Brazilian democracy.

President Temer made a decision, and it had a lot to do with his populist agenda. His administration concluded that one of its key objectives, social security reform, would not get the support it needed to pass the legislature. Because it was an election year with important races at federal and regional levels, the Temer Administration used hardline public security policies as a means to secure conservative votes. Due to the popularity of the Armed Forces among Brazilian conservatives, the Temer Administration counted on its security policies to help him reach other political goals. However, by allowing the military to expand its powers, the Brazilian government risked enabling unwanted and unconstitutional political participation by the military.

12 It is no coincidence that the nowadays supporters of the dictatorship of 1964-1985 would consider one "new" Institutional Act No. 5 of 1968: in face of the ongoing political crisis, federal representative and President Jair Bolsonaro's son, Eduardo Bolsonaro, admitted this could be a way out if left-wings movements adopt a radical tone (Bergamo, 2019).

...the unintended effects of militarized politics reached an insurmountable level when on March 14, 2018, Marielle Franco, 38, a black, leftist, lesbian female Rio de Janeiro city councilor (the only one amidst the 51 municipal representatives) was shot dead...

A clear example of such defiance to the Brazilian Constitution of 1988 and the legislation that regulates it, comes from public declarations and a proposal in the Federal Senate. Retired General Augusto Heleno and Army's Commandant Villas Bôas proposed in interviews that suspects carrying a gun in Rio de Janeiro's streets could be legally shot by military forces (Valente, 2018). However, Senator José Medeiros presented a proposal modifying the Brazilian Criminal Code to allow violence in self-defense when public security agents kill or wound someone illegally carrying a restricted firearm (Federal Senate, Senate Legislative Bid nº 352/2017). The justification of the legislative proposal explicitly used 'legitimate defense of the society' terms. The bid is supposed to be discussed in Federal Senate's Commission of Constitution and Justice, an organ that shall verify the constitutionality of the bids. A survey in Senate's website showed, on March 20, 2018. The support of 32,194 internet users favoring the change. Only 1,058 people opposed the bid.[13]

Politically, the unintended effects of militarized politics reached an insurmountable level when on March 14, 2018, Marielle Franco, 38, a black, leftist, lesbian female Rio de Janeiro city councilor (the only one amidst the 51 municipal representatives) was shot dead, along with her driver, Anderson Gomes, 35. As a severe critic of the way young people were being killed in Rio de Janeiro's marginalized communities (or 'favelas'), Franco denounced the violence committed by security forces, most of them part of the so-called regional military police.

The assassination led to a series of protests around Brazil and the globe —including London, Paris, Munich, and Stockholm—, transforming her death in a symbol against racial oppression (Faiola y López, 2018). Little is known until now; however, the investigation suggests it was a professional killing that could only have been committed by corrupt police officers. Unsurprisingly, it is also later revealed that Marielle Franco had been chosen to help lead a commission investigating possible abuses committed during the federal military intervention

13 *See* https://www25.senado.leg.br/web/atividade/materias/-/materia/130958, last visited 20 March 2018.

declared by Michel Temer (Greenwald, 2018; *see*, "Vereadora Marielle Franco fiscalizava intervenção federal no RJ," 2018).

Conclusions

In a world where there are constant abuses of judicial instruments to protect authoritarian power (Attila, 2017), it seems problematic that the military are gaining space in the Brazilian political arena. However, if the historical relationship between civilian and military powers is understood, it could be seen as part of the explanation in the absence of a serious institutional reform that could have limited the Armed Forces since the end of the dictatorship. It is interesting that the judiciary would present the same problems in recent Brazilian political crises and would not submit itself to serious reforms (Peluso Neder Meyer, 2018).

The political transitions that do not properly confront the issues of authoritarian institutions must face the reappearance of dictatorial governments, sooner or later. The problem is even worse in Brazil, considering the militarizing process of politics, which had as ultimate act the election of the radical Jair Bolsonaro. Along with him, 72 militaries reached political positions. Recent movements in public security issues show that the line which started during the dictatorship, uncontrolled after 1988 y deepened by Temer, continues with violations to human rights.

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CHAPTER 2

EXPERIENCES OF THE RIGHT TO THE TRUTH

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EXPERIENCE OF THE TRUTH IN GUATEMALA

Rafael Herrarte Méndez

Introduction

The purpose of this text is to give some references for how the truth about the severe human rights violations in Guatemala has emerged from under the rocks. I will try to mention these experiences considering the comprehensive efforts —like the ones proportioned by the Truth Commissions that outline the dimensions of the Guatemalan holocaust—, to move to more concrete experiences which contribute to the tireless work of the victims to show their truth.

The first truth reports

In 1995, two years before the signing of the peace accords between the state of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), a sector of the Catholic Church, led by the Bishop Juan José Gerardi, activate the initiative of gather testimonies about human rights violations in Guatemala. For that purpose, he leaned on religious groups denominated supporters of the Recovery of Historical Memory (Recuperación de la Memoria Histórica [REMHI]). Amidst fear and insecurity, this alternative of disseminating the facts of the political violence gave the first chance to the victims, survivors, and relatives to share their experiences, disclose what happened, or expose the responsible.

Explicitly, the REMHI organizers intended to provide basic information and set a minimum standard for the future Commission to Clarify Past (CEH, for its name in Spanish), which fundamental agreement denominated Comprehensive Agreement on Human Rights was established in March 1994.

To make possible the report for the truth of the Church, it was necessary the participation of the dioceses that had the more numerous concentration of violations of human rights, like Quiché, Alta and Baja Verapaz, Huehuetenango, Petén, San Marcos y Quetzaltenango; as well as El Estor, part of the Izabal diocese.

These are zones that match in "four maps," 1) the ones with most overall poverty; 2) populated by indigenous communities; 3) with higher levels of violence; and 4) where, currently, is present an extractivism strategy and the utilization of natural resources for business purposes.

The REMHI report, with more than five thousand testimonies, was presented in April 1998 by Bishop Gerardi, and 48 hours later, he was brutally murdered, exposing that the truth makes powerful and perpetrators uncomfortable alike.

In June 1994, the Unidad Revolucionaria Nacional Guatemalteca and the state of Guatemala subscribed to the "Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused Guatemalan Population to Suffer." This Commission was constituted by the UN, led by Dr. Christian Tomuschat, a German attorney at law, specialized in International law, and Guatemalan Alfredo Balsells Tojo, jurist, and Otilia Lux de Coti, an expert on indigenous issues. The Agreement had as a mandate "to elaborate a report of the results of the investigations, and which offer unbiased judge elements about what happened during this period, comprehending all the factors, both internal and external." Nevertheless, this Commission missed something that hindered victims' expectations for justice, and it was the absence of a criminal procedure; for this reason, it did not have the power to identify by name the individual responsible for the facts that needed to be clarified.

The suppression of the identity of the perpetrators of the human rights violations translated into the omission of the names of the responsible for the crimes and violent acts committed. However, the report of the Commission to Clarify Past defined that during 36 years of internal armed conflict, in a coun-

try with a population of less than eight million, 45,000 people were disappeared, 200,000 lost their lives, and more than a million was displaced from their original home.

On February 25, 1999, the report from the CEH was presented, amidst huge expectations in the country. Álvaro Arzú, president at that moment, refused to receive it despite being present at the ceremony and delegated it to the Peace Secretary. This character has been in politics since then, denying the facts, and today, he leads the opposition to the actions that the International Commission against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala [CICIG]) and the Public Ministry takes against corruption, and he has been pointed for using public funds for politic campaigns.

The CEH report, under the strategic dispute concept, besides contributing to the knowledge of what happened, has set the grounds for some kind of jurisprudence in Guatemalan justice by admitting valid information in legal processes against the military responsible for the facts. It implies that neither the facts nor their violence frame —as the outcome of the described counterinsurgency strategy— are questioned. For its part, the 52,000 victims identified in the CEH report are automatically qualified to obtain compensation for damages in the National Reparations Programme in Guatemala.

“The CEH report, under the strategic dispute concept, besides contributing to the knowledge of what happened, has set the grounds for some kind of jurisprudence in Guatemalan justice by admitting valid information in legal processes against the military responsible for the facts.”

The files containing the truth

Another essential contribution to the awareness of the truth was a fortuitous event in July 2005. When verifying the storage of explosives that were a latent risk for the surrounding population of the police facilities, the investigators of the Human Rights Ombudsman (Procuraduría de los Derechos Humanos [PDH]) discovered numerous documents: the Historical Archives of the Guatemala National Police (Archivo Histórico de la Policía Nacional [AHPN]). The documents were stacked, in terrible conditions for their conservation, in the al-

most abandoned facilities of what was projected as the building for the National Police Hospital.

The document archive of the National Police (PN) contains almost 8 km of sheets, with registers from the end of XIX century to 1997. This archive of approximately 60 million sheets, was denied to the CEH when it required access to police documentary sources. The CEH considered that this security force participated in human rights violations as established by countless complaints.

Initially, the PDH based on tens of special investigations orders for missing persons sent by the Supreme Court of Justice had a legal ground to guard this archive, primarily ordering to recover, preserve, and safeguard the documents corresponding to 1975 to 1985, which represents the more politically violent period in the country.

The investigation of that time is particularly relevant because both the National Police and the Judicial Police were repeatedly pointed out and accused by the victims' relatives, as well as national and international organizations for the defense of human rights, of being executors of severe and systematic violations that remained unclarified until the discovery of the archive.

Along the way, the archive has proportioned documentary information and elaborated expert investigations about forced disappearances of the cases that had accessed to justice or are being investigated by the MP, such as the ones for Fernando García, Paredes Chegüén, Carlos Ernesto Cuevas Molina, Otto René Estrada Illescas, Rubén Almílcar Farfán, Gustavo Adolfo Fuentes Castañón, Héctor Elirio Interiano Ortíz, Luz Leticia Hernández, Saenz Calito, victims of the Spanish Embassy and the funeral procession of February 2, and currently the Molina Theissen case.

By this time, the AHPN team have managed to digitize more than 19 million sheets, and an assigned work team is investigating the books which contain photographs of 79,000 identified persons with name and detention motive, many of them for political reasons. This work is a concrete response to the demand for truth and justice raised by the victims' families.

The archive and its contribution to the awareness of the truth: the Ramírez Monasterio case

I believe it is relevant to expose a case to demonstrate how the information from the archive contributes to the awareness of the truth, and I take as reference the case that was the first request of information by the AHPN. This request is related to the extrajudicial execution of the Father Augusto Ramírez Monasterio. The family of this religious man were looking for data for over 15 years, trying to clarify the reasons and circumstances surrounding his death. Father Augusto was a Secular Franciscan, in charge of the San Francisco El Grande de la Antigua Guatemala Church, and was Chairman of the Hermano Pedro Committee. "He was an exemplary priest, related to those sectors in need of support from the Church, and distinguished himself for the incorruptible defense of truth," said Father Juan Carlos Córdoba, spokesman of the Archbishopric when denouncing the murder in 1983.

In 1992, when Pope John Paul II visited Guatemala, Father Augusto's name was included in the list of Faithful Martyrs and Witness of the Gospel. This claim disturbed the priest's family and increased their interest in searching for the truth about the facts that finally led to his execution to determinate if it had been a martyrdom.

After many years, they began to have answers, "in 2005 we saw in the press that they found the archive. Then my Mom told me, 'Let's write a letter! Let's ask, go, find out'! We wrote a letter and sent it. In addition, when we brought it, they laughed and said, 'We found this only yesterday. We can't say anything but we'll file your request.' And then they called us when the documents about my uncle's death started to show," says Ana Judith, his niece.

Father August's case is paradigmatic because of the request for access to the information about it was the first received 24 hours after the discovery of the archive. As a result of the processing of the existing documents it was determined that between July and November in 1983, Father Augusto was subject to surveillance and persecution. The information proportioned from the archive ratified the version that a villager from the Parramos area in Chimaltenango, said to his family the dilemma of a farmer, part of the guerrilla, who was looking to use an amnesty announced by the government in 1983, for which he needed to

take on a case of relief institutions or the Church. That is how he got to the San Francisco Church, in the Old Guatemala, where Father Augusto was the parish priest.

The compiled documents indicate that the priest and the farmer were detained and taken to military zone 302, in Alameda, a place created to form teachers but occupied by the military as repression center in Chimaltenango. In that place, Father Augusto was beaten, burned, and tortured in an extreme way to force him to say what the farmer revealed to him. Then he was executed, and his remains were in the only highway of the capital city. Later, in November 1983, he was identified by his relatives in the morgue.

"The information from the AHPN was worthy, as we were able to access to the forensic report, the documents the judge redacted when they found the body, and all the information that the police used to divert the attention from the motive and murder of Father Augusto. Through testimonies and the collected information, we were able to determinate that those who murdered Father Augusto were elements of the Elite Police that joined the Armed Forces and National Police, which had its headquarters in the Periférico, near to San Juan Av," explains Ana Judith.

This testimony exemplifies how many families had seen their right to the truth, giving them the possibility to close a long cycle of pain and uncertainty in front of forced disappearance or murder.

The truth of forensic investigations

The CEH report says that the genocide acts in Guatemala caused 669 slaughtering, which is the murder of more than five persons. Today, more than 1,500 forensic investigations have been conducted, and thanks to them, nearly 7,000 abandoned victims' remains have been recovered from improvised cemeteries. The forensic reports establish the violent circumstances, which match with the collected testimonies. A blatant example was discovered at the military zone in Cobán, a place renamed as Regional Peacekeeping Training Centre (Comando Regional de Entrenamiento de Operaciones de Paz [CREOMPAZ]), where

soldiers receive training for missions from the UN. People denounced mass graves in this place, and 533 remains were retrieved from 84 graves.

They belong to victims executed between 1981 and 1982, mostly young men. Many corpses had their hands tied, with a tourniquet on the neck, and blindfolded, as clear evidence of summary executions. The forensic reports give an account of bodies and objects that match cases of forced disappearance and crimes against humanity against peaceful population.

The firsts DNA comparisons are rendering the victims' names; some of them are persons abducted by the Army in 1982 in Río Negro, Alta Verapaz. This community is one of the 33 that were affected by the construction of the hydroelectric plant of Chixoy. All those communities opposed to retreating from the place that was going to be flooded by the reservoir of that mega-project. The way to define the resettlement was through extreme violence that caused three slaughterings with more than 300 victims, and the exhumations in CREOMPAZ helped to establish mass abduction.

The firsts DNA comparisons are rendering the victims' names; some of them are persons abducted by the Army in 1982 in Río Negro, Alta Verapaz.

This case raises a double dimension. The first dimension allows explaining why do communities strongly oppose to extraction and use of natural resources projects, when past examples are as ludicrous as the one mentioned here. The second dimension is the relevance of the identification of the victims for their families and other survivors because it shows in front of everyone else that their account of the facts is true, cleaning their reputation from lies.

The findings in CREOMPAZ are giving access to the victims, since January 6, 2016, triggering a legal process against the responsible and the detention of the involved militaries. A group of militaries related to the Molina Theissen case were brought to justice on that same day. In all, 14 retired militaries were held responsible for forced disappearance and crimes against humanity, guilty of the murders of 533 victims from the military base in Cobán.

Out of the 14 identified militaries, 11 are linked to a process: General Manuel Benedicto Lucas García, José Antonio Vásquez García, Carlos Augusto Garavito Morán, Raúl Dehesa Oliva, Gustavo Alonzo Rosales García, César Augusto Cabre-

ra Mejía, Ismael Segura Abularach, Juan Ovalle Salazar, Byron Humberto Barrientos Díaz, César Augusto Ruiz Morales, and Luis Alberto Paredes Nájera.

The Molina Theissen case brings justice for the forced disappearance of Marco Antonio, 14 years old, in October 1981, an example of extreme cruelty. The testimonies say that he was kidnapped by soldiers in regular clothes in front of his mother, Emma Theissen, at the family's house, because his sister Emma managed to escape from a military base to which she was transferred after being abducted a month before in a military roadblock. She was tortured and raped on multiple occasions. The appointed to this case are: Colonel Francisco Luis Gordillo Martínez (ret.); Second Command Edilberto Letona Linares; Intelligence Officer Hugo Ramiro Zaldaña Rojas; and Major General Manuel Antonio Callejas, in charge of Army Intelligence.

General Callejas deserves a special mention because the power he acquired inside the Army, which implied he controlled the customs office, the national boundaries, and the network of informants used for illegal business. Today, the case "Línea", of former President Pérez Molina, is judged for the control of the costumes, and fiscal frauds made to give free access to the illegal transfer of goods, and General Callejas was his mentor.

Conclusion
Truth brings transparency to the past

These cases, like Father Augusto's, are examples of the battle to help the truth to prevail, and they go hand in hand with the undermining of impunity in the country. The continuous victims' efforts to spread their truth; the truth, is a way to bring transparency to the present because of the strong bond between the past facts and the impunity and corruption of the present.

The awareness of these truths is the best formula to dignify the victims and nurture justice because they contain a probative value backed by pieces of evidence, which are the result of years of investigations. Beyond the debt that is still pending with justice, truth is prevailing, as it was shown in the national debate about the Ixil genocide case. The sentence in favour of the victims brings as a consequence that the business chambers and sectors allied to the military

joined to pressure the Constitutionality Court to rule a sentence. The message sent to the people from the powerful confirmed the genocide.

Many of the main actors of corruption acts or political figures that today use the power for personal benefits played a significant role in the strategies of the counterinsurgent past. By being state politics, the Army occupied the direction of ministries and institutions that they considered crucial, and from controlling the State, they proceeded with impunity, creating an institutional culture where everything is possible at no cost. This idea of holding the power and taking advantage of it remains, and represents a wicked institutional culture. To correct the course starts with finding out about the truths of the past, and their links to the present.

More recently, we saw how the veterans formed their politic party and brought Jimmy Morales to the presidency; many of them are being processed in the aforementioned cases and others, for being part of the organized crime. Particularly, General Edgar Ovalle, FCN party General Secretary, elected deputy, is fugitive from the justice for the CREOMPAZ case for being in charge at the moment the summary executions occurred. This fight for the truth is an endurance battle that is beginning to render fruits, 30 years after the atrocities. To prove that the actors of the past who manipulated the truth are the ones trying to gain control today did not seem as clear as is today.

These actors, protected by impunity in the past, today are against the wall, which is shown by the permanent tries to reach a total amnesty for no-derogable offences, because the fear and danger mechanisms brought by raising the voice are increasingly fractured. The best way to be sure, as self-defense, is doing nothing, the so-called "learned impotence," is being surpassed as the impunity is being weakened.

In this process, it is essential to have a system of judicial justice that can respond to the claim of knowing the truth, because silence and impunity are a risk for repetition of the severe human rights violations from the past. Besides, those responsible for these actions still have control of the current political process, as the Guatemalan reality have been proving.

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EXPERIENCES ON THE RIGHT TO THE TRUTH IN FRONT OF ATROCIOUS CRIMES COMMITTED BY PUBLIC OFFICIALS:

THE SALVADORAN CASE.

Benjamín Cuéllar Martínez

"En mi país, qué tristeza, la pobreza y el rencor.
Dice mi padre que ya llegará desde el fondo del tiempo
otro tiempo y me dice que el sol brillará sobre un pueblo
que él sueña labrando su verde solar [...]
Tú no pediste la guerra, madre tierra, yo lo sé.
Dice mi padre que un solo traidor puede con mil valientes;
él siente que el pueblo en su inmenso dolor hoy se niega a beber
en la fuente clara del honor".

("Adagio en mi país", Alfredo Zitarrosa)[1]

Introduction

Even now, more than 25 years apart from the end of the war that happened from January 10, 1980, to January 16, 1992, in El Salvador, there may be someone who still believes that the peace process that began with the Geneva Accord is an ex-

1 Translation available at the end of this chapter.

ample for the world as to how to achieve —besides "to silence the rifles"— the democratization of a country, the irrefutable respect of human rights, and the "reunification" of its society. These were the four components of that process, consigned in the document signed on April 4, 1990, by the confronted parts, the government and the insurgency. However, in my country —so sad!— peace has never been reached.

There were five accords more after the Geneva Accord; two took place in the beloved Mexico City. One on June 27, 1991, and the last one, to make official the cessation of hostilities, on January 16, 1992. On these, it was established the creation of the Commission on the Truth and its mandate.

As a whole, the six agreements were initialed "at the [negotiations] table," and with the mediation of the UN. But there was another, without the presence of the UN, and "under the table." It was about the agreement on impunity. The referred parts began another "war," not in the trenches but the polls, one by action, another by omission, they agreed to protect each other to participate in the elections without obstacles; then, they should guarantee the political protection and survival of some of their leaders, pointed as responsible of severe human rights violations, war crimes, and crimes against humanity.

This was what the "right-wing" and "left-wing" political parties did best, they created, real election machines in the post—war that —for more than two decades— have disputed the victories on the ballot to benefit hidden and visible powers but, without a doubt, at the expense of the popular majority. They are the Alianza Republicana Nacionalista (ARENA) and the Frente Farabundo Martí para la Liberación Nacional (FMLN). Hence, that pair does not have a hint, or nothing at all, of democratic.

Considering the last, I must present my apologies for not abiding exclusively to the particular experience on the right to the truth in front of the atrocities attributable to agents of the State, committed both during the pre-war time and on the frame of the armed confrontation. It is because of the following.

The two Salvadoran "demons?"

"The distortions in the spirit produced by the conflict led to paroxysm." That is what the Commission on the Truth for El Salvador (the Commission for now on) said in its public report, and it was right (UN, 1993: 3). The report continued, "thus, a priori, the civil population that lived on the dispute zones or those controlled by the guerrilla was identified as an enemy [...] There were also similar attitudes on the other side [...]" (UN, 1993: 3).

The creation of the Commission was in Mexico City; its mandate was captured in those two agreements, to investigate serious acts of violence occurred between 1980 and 1991, "which impact on society urgently [claimed] the public knowledge of the Truth." (UN, 1993b: 17). Also, it had to "clarify and overcome all the signals of impunity of the officials of the Armed Forces," especially when "the respect for human rights [were] committed."

Likewise, both parts —Government and guerrilla— acknowledged "that acts of that nature, regardless of the background sector of their authors," would be "object of the exemplary function of the justice courts" —check it out!— to apply to their "responsible the sanctions provided by law." (UN, 1993b: 55).

Unlike Sábato's Argentina —who presided the National Commission on the Disappearance of Persons (CONADEP) — and his original prologue for the final report of that entity, called "Never again" and published on 1984, in El Salvador of the 70s and the 80s did exist "two demons," both waving their flags ("saving the country from international communism," and "get the socialist revolution to thrive") and waged war until turning the country in a living hell.

The Commission described this hell; the violence "was a fire running through the fields [...]; invading the villages; blocking the roads; destroying highways and bridges; sweeping away energy sources and transmission networks; arriving at the cities; went into the families, the sacred places, and the educational centers; hit the justice, and filled the public administration with victims; pointed out as enemy to anyone who didn't appear in its list of friends. The violence turned everything into destruction and death [...]. The victims were Salvadorans and foreigners from every place, from all the social and economic status, as the violence level everything in the helplessness of its cruelty." (UN, 1993a:1).

The insurgents exerted selective and cruel violence against the political, economic, and social powers; but it is true that they also murdered, disappeared, tortured, and massacred the people —farmers, workers, and more—, considered as enemies.

Imagine the sinister situation, there is a territory of just a little more than 21,000 km² (8108 sq. mi) inhabited back then by approximately four million and a half people, and 11,903 of its civil and not–combatant population were killed, according to the Socorro Jurídico Cristiano (SJC); in 1981, the numbers went up to 16,266. (UN, 1993a:18). In total, there were 28,169 fatal victims in those two years, with a rate of 265 inhabitants out of 100,000 during the first year, and 361 in the second; the monthly average was almost 1,180.[2]

Comparing with other countries is illustrative. In Mexico, during those two years, it would be almost 415,000 extrajudicial executions for political reasons, and a monthly average of approximately 17,300; the Mexican rate for those 24 months would have been 620 inhabitants out of 100,000. The report doesn't mention other serious crimes that also happened, like torture and forced disappearance of people.[3]

There were many victims from various backgrounds, but a large part of them from the more vulnerable and impoverished communities, especially the rural sector, and the State agents or civilians with its acquiescence were held accountable. The insurgents exerted selective and cruel violence against the political, economic, and social powers; but it is true that they also murdered, disappeared, tortured, and massacred the people —farmers, workers, and more—, considered as enemies.

These victims were a lot less than the State's. Nevertheless, I don't think that a mother who still seeks information about the location of her child, taken by the guerrilla, could be comforted with that argument. No, please. The point of the issue is not the quantity but the quality of the actions. One side took up in arms and acted outside the current law, regardless of the legitimacy of its postulates, as a whole or part of them; the other side was the governmental institutions, constitutionally in charge of guaranteeing the human rights, not

2 Salvadoran human rights body funded in 1975, in the Jesuit College in the country. Years later, it became the team that supported the brave and well-founded denounce of the (now) Blessed Óscar Arnulfo Romero y Galdámez.

3 The National Institute for Statistics, Geography and Information Technology (INEGI) reported a total population of 66,847,000 in Mexico in 1980.

devoted to its violation. Even beyond how and how much things happened, both parts attacked population's dignity.

As already established, the last of the six agreements that ended the war —the one signed at the Chapultepec Castle—, both the Government and the guerrilla implicitly admitted their severe violations of human rights, war crimes, and crimes against humanity; they also indicated the impunity for the authors, and suggested it should be overcome. The Commission was asked to, besides the investigation of the crimes, propose what to do to avoid its repetition. It did it knowing that both parts forced each other to comply with its recommendations —on the paper, at least—, which would be legal, political, and administrative. (UN, 1993b: 32). So they recognized it and committed to doing it, but they didn't.

Because of that, I can't solely talk about the right to the truth in front of the atrocities of the State; I must talk about the ones committed by the insurgents. We should present that perspective from the Commission's approach.

What did the "right" do?

Before the publication of the report of the Commission ("report" from now on), the highest official and extra official levels sought to prevent the explicit pointing of state institutions. When they could not do it, they tried to prevent the publication of the names of the responsible. (UN, 1993b: 32). The Legislative Assembly passed the General Amnesty to Consolidate Peace Law ("amnesty" from now on), a euphemism to name the award to the aggressors and the punishment to their victims, five days after the presentation of the report; before the promulgation of the amnesty, there were reactions against the document from ARENA spokespersons and government officials administering that political party at that time.[4]

President Alfredo Cristiani established the official stance on March 18, 1993, by pointing out that the report didn't answer "the longing of the majority of

4 Cristiani declared to Mexican newspaper Excélsior that they've suggested, "because of internal reconciliation reasons, trying to avoid confrontations, and publish later, when appropriate, the names, if there is any engaged in a case."

Salvadorans, that is to forgive and forget that painful past, which brought an enormous pain to Salvadoran family;" he did not consider "fair to apply certain measures" to some, "when others, because they were not part of the sample, have to be forgotten." He meant the actions attributable to the FMLN. Finally, he insisted on what he said four days early, before the presentation of the report, that he supported "a general and absolute amnesty." (Comas, 1993).

Along with Cristriani's, the military officers attacked the report, more fiercely, as "unfair, incomplete, illegal, not ethical, biased, and defiant;" its "biased treatment" denoted a "clear intention to destroy institutionality, social peace, and the Armed Forces." From that particular point of view, the "historical reality" was distorted by presenting "unacceptable manipulations without a base and objectivity against the institution." (Armed Forces of El Salvador, 1993: 485–86).

The judicial body didn't remain silent; it energetically rejected "the conclusions and recommendations against the justice administration in El Salvador and the Supreme Court of Justice and its president," contained in the report (Supreme Court of Justice, 1993: 490), that pointed that entity as an accessory for the committed atrocities, and its leader as someone who obstructed justice in the case of the most horrible massacre in Latin America during the second half of the XX century, the one in El Mozote and neighboring cantons.

Nevertheless, it wasn't enough. They had to ensure impunity. Because of that, the ARENA allied with other parliamentary "right–wing" groups to create an ample, absolute, and unconditional amnesty that violated all the international standards in human rights, that was passed on March 20, 1993. Saturday, a holiday! The report had been presented in New York, only five days before. So, the truth about what happened —a guarantee to not repeat it— was buried vilely, and the opposite of what should have happened occurred; lies and concealment raised as a guarantee for the repetition of the atrocities.

What did the "left–wing" do?

At the Supreme Court of Justice, several claims of unconstitutionality questioning the amnesty were presented to the corresponding authority. The first

of these, in May 1993; a few weeks after the passing of the law. The FMLN, in contrast, did not react as fast. On April 15, 2005, at the legislature, Hugo Martínez said: "We ask the other actors of the conflict to be brave, to reveal the truth." He was a representative of the former guerrilla party, and he asked the derogation of the law. His leader, Schafik Handal, accused one of the "right–wing" parties of opposing to it to protect some militaries in its ranks. (Rivera, 2016).

To Salvador Sánchez Cerén, the amnesty violated "the right of access to justice of certain cases that had not been spread [...] in the country." "As long as there is no justice, the structures committing severe violations to society will continue unpunished." Specifically, he asked to study the abolition of the amnesty. (Zometa and Marroquín, 2016). He said that on 2007, as chief of the legislature of said party, which was part of the opposition at the time. On 2009, accompanied Mauricio Funes as a candidate for Vice–President, and won the elections for that year. From his proselytizing campaign, to win, Funes promised not to touch the amnesty; he fulfilled his promise. Sánchez Cerén, his right hand, was silent. And silence means consent.

Later, in 2014, he jumped to the presidency. He said on July 14, 2016, "As we repeatedly pointed in front other resolutions of the Hall, these are not facing the real and current problems of the country, and they don't help to solve the daily issues of Salvadoran people, they increase them." The decisions of the Hall, he continued on the radio and television, "ignore or do not consider the effects that may have, not only on the fragile coexistence within our society but they also do not contribute to strengthening the current institutionality." (Cáceres, 2016).

I'll be specific. When he said "Hall", he meant the Constitutional Hall within the Supreme Court of Justice; the "resolutions" and "decisions" are related to three judgments published on July 13, 2016. From these, the relevant for us is the one that declares the amnesty as unconstitutional. This is the illustration of the stance of the second Salvadoran president from the "left–wing," which speaks for itself. That is why I'm going to tell you about the comforting and generator of optimism part inside this same story.

What did the victims do and should continue doing?

To defeat amnesty, of course! After the war, fighting the stances of ARENA and FMLN, it is maybe the greatest success in the battle against impunity, an excellent step to progress into the respect of the rights of the victims, the cherished opportunity to start a healthy functioning of the institutions, and hope for the way to peace that haven´t been found. Because the atrocities have continued since the war ended, El Salvador is considered one of the most violent countries without war in the world, even maybe the number one, for 25 years.

Today, there are three "wars", Maras versus Maras; Maras versus people; and state agents against the population who survives in the former "battlefields." It is a highly violent context, where about 75% of the Salvadoran militaries are doing public safety tasks that are not their responsibility. That has been the situation since 1993, when, "as an exception," the Army engaged in that environment that should be —constitutionally— the duty of the National Civilian Police. But that "exception" remains effective.

How was the amnesty left behind? On May 11, 1993, along with Socorro Jurídico Cristiano, we filed the claim aiming to declare, for the first time, its unconstitutionality. On May 20, it was declared "inadmissible." Our formulations were "purely political questions [...] external to the knowledge of the courts;" to admit them would affect "the wisely established by the Constitution balance and independence of the powers," and it would disrupt "the social peace." (Constitution Hall, 1993). On May 27, 1993, the same Hall "notified" to Segundo Montes (a Jesuit priest killed on November 1989, three and a half years earlier) that his claim of November 1987 against the amnesty was also "inadmissible." They took more than five years to rule on Montes' claim; ours, from May 1993, only nine days.

On May 20, 2013, eight people (including me) presented the last lawsuit against the harmful law of March 20, 1993; after exactly two decades of its approval. It gets the unconstitutionality, after 23 years of being an obstacle to the search for the truth, justice, and total reparation for those who suffered humiliations. Today, my nation can strive to be ordinary and decent, with institutions imparting justice despite who is the victim and who is the aggressor; with a demanding society who turns the State into a real guarantee of the respect to human rights;

without a useless and obscene "polarization" because —deep down— they are only different by names, flags, and rhetoric. It is evidenced by the stances of the "two demons."

How can El Salvador be normalized and tidied up? Complying the judgment, applauded even outside its territory and questioned by an internal minority, forcing the doing of what those eternal "rivals" agreed to do in Chapultepec: to judge and sanction the responsible for the atrocities, despite their side. The cases published by the Commission have broad and advanced investigations useful to facilitate their presentation before the courts of justice that should act as an example.

Forgiveness can't be forced by a decree or political convenience.

For their part, smart and creative, the three government bodies should encourage a humanitarian and essential strategy in the nation, as broad as possible. I'm talking about, and dreaming with the creation and function of spaces to directly heal the wounds of individual and collective victims; and for the expiation of the aggressors' guilt. A place for the victims to speak without fear, freely; for the aggressors to speak the truth and ask for forgiveness, giving information for the localization of the missing persons, so their families can honor them. Forgiveness for those who ask for it and contributes to the fulfilment of the demands for truth, as well as to the peace in the country; sanction for who deserves punishment, for example, with community service.

Forgiveness can't be forced by a decree or political convenience. That have been the paths taken by those who should have done things in another way; that is why they are two "demons." To not being demons, they should have promoted the knowledge of the truth and the administration of justice to aspire to deserve forgiveness; they should have done it sincerely, timely, and productively. But they didn't do it, so after the defeat of the amnesty —with all the due integrity and legitimacy— there are and will be victims asking for investigations, processes, and punishments. It is their unique and inalienable right.

To make it worth it, the Public Ministry should seek legal practice at a university level, controlled by the General Attorney, to investigate facts and responsibilities; also, it should look for psychosocial support for the victims —also at the university level under professional´s supervision— who, after suffering for

a long time the contempt from the State, decide to walk through this healing road. Likewise, psychosocial support should be provided to the aggressors within the communities.

We work as hard and as relentless as possible on all of the above. We have done it through "strategic litigation," and with various initiatives, like the Truth Festival (AFP, 2007), initiated in 1998, and the International Tribunal for the Implementation of Restauration Justice in El Salvador, that began to work in 2009. (Human Rights Institute of the Universidad Centroamericana, José Simeón Cañas, 2009). Today, from another "trench," we think in some more ideas, and we are pushing them.

Conclusion

It is not worth it to lose time arguing about the impunity with "wordy people;" we'll let them speak because it is an absolute lie that the agreements between the "warriors" —currently experiencing an almost exclusive peace, even though with fear to the justice effort of the victims— considered the amnesty passed on March 20, 1993.

To say that "wounds will be open" is not true and does not deserve arguing if the wounds in the suffering soul of the victims have never closed. Neither is worth it to discuss a supposed "witch hunt," because the responsible did not curse people, they damaged, offended, insulted people, and deserve punishment for all of it. That is what the aggressors from both sides and their supporters said before the rendition of the report of the Commission, after its public presentation, when they passed the amnesty, before the unconstitutionality judgment, and after the publication of this ruling. It doesn't make sense to continue arguing it. Today, in El Salvador, we are at another level. "We cannot celebrate the victory for the validity of human rights, Montes asserted on his last work, but neither is it time to lose hope."

Strategically, it is better to bet to overcoming the current situation of the country, generated by hunger and blood that directly painfully affect the popular majorities, valid problems because of the also valid impunity; they also cause the mandatory displacements in the risky attempt to leave the "hell" in which they "ill–live" or "ill–die" to get to the "paradise", despite the dangers of the "purgatory."

These are the "actual and current problems of the country" that President Sánchez Cerén should point out; besides, he should be grateful with the Hall for declaring the unconstitutionality of the amnesty, as it gave tools to the society to overcome the foundation of the evil —the impunity— and the "fragile coexistence within" the society, besides its contribution to "strengthen the current institutionality." The opposite to the claims of the President in his toxic message to the nation.

With the defeat of the amnesty, we didn't reach the goal due to, in words of Andrés Domínguez: "This is not a speed contest but a marathon;" I asked him

permission to modify his phrase, and did it this way: "It is not a marathon but a decathlon, with big obstacles, and needed relay." Actually, in the country, we began another stage of this legitimate, necessary, and fair stage, as long and complicated as the last time. That is why we should remember the ending of "Message to the Christians," by Camilo Torres, published on "Frente Unido," in Bogotá on August 26, 1965: "The battle is long, we should begin now."

Adage in my country
By Alfredo Zitarrosa

In my country, so sad, poverty and resentment.
My Father says that from the bottom of time
another time will come and the sun shall shine over a people
that he dreams while farming his green solace [...]
You didn't ask for war, Mother Earth, I know.
My Father says that one traitor can defeat a thousand brave men;
he feels that the people refuses to drink its immense pain
by the clear source of honor.

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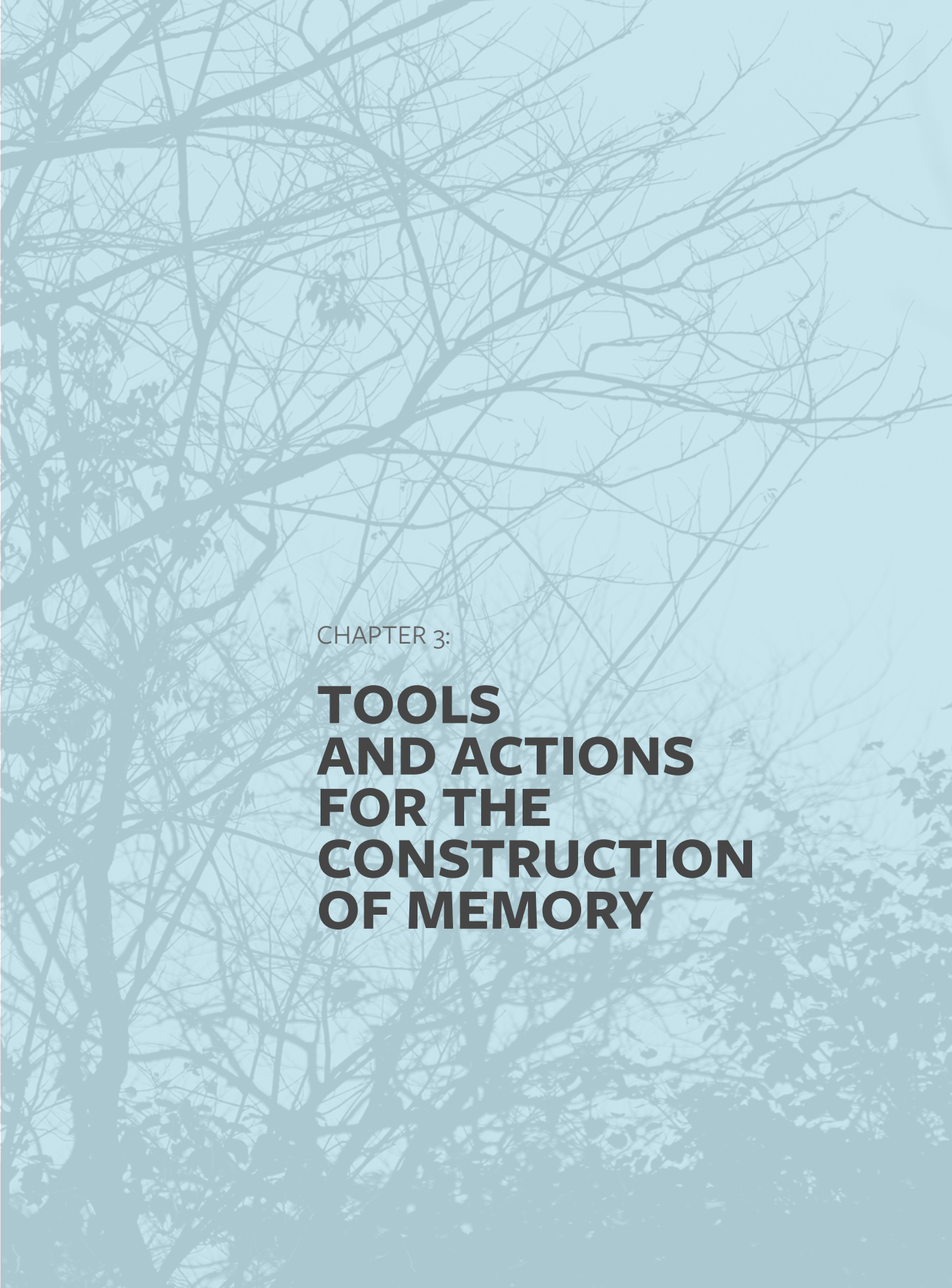

CHAPTER 3:

TOOLS AND ACTIONS FOR THE CONSTRUCTION OF MEMORY

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"PSYCHOSOCIAL IMPACT OF STATE CRIMES"

Adriana Sonia Taboada

Introduction

As an introduction to this paper, I will talk about two recent events with political relevance in Argentina (one specific and other in the process,) and will address them from a psychosocial approach.

On May 2, 2017, the Supreme Court of Justice of the Argentinian Republic, released a verdict for a genocide convicted for crimes against humanity, which granted the possibility of freedom based on the known "Law of 2x1", despite such law was not in force. According to this law, when the convicted had remained in pre-trial custody longer than stipulated by the current regulations, days would count double for his days in prison.

I will not spell out all the details for this regulation, as the important issue is the facts that arose from it. As, this ruling of the Court was in the context of regressive policies from the State regarding memory, truth, and justice after the change of government in December 2015. These policies are reinstating impunity.

On May 2, the Court presents its ruling, and on May 3, the human rights organizations called on a press conference to release a call for a social protest on May 10. The activity, known as "2X1 march" or "Handkerchiefs March", (la marcha de los pañuelos) was arranged in just one week, and it turned out to be one of the biggest human rights movement of our history: one million people took to the streets across the whole country.

Its name, "Handkerchiefs March," was because every citizen turned out with a white handkerchief, which is the symbol of Mothers of the Plaza de Mayo. By the end of the gathering, the speaker asked everyone to raise their handker-

...thousands and thousands of handkerchiefs, a symbol of history and the present of the fight for memory, truth, and justice, rejecting a ruling from the highest court of law.

chiefs. This image has traveled all around the world, and will remain in our hearts forever —thousands and thousands of handkerchiefs, a symbol of history and the present of the fight for memory, truth, and justice, rejecting a ruling from the highest court of law. Knowing the mere possibility that the genocides were free from prison generated a general movement of rejection that made everyone take the streets with all the horror and fear.

This Court ruling did not just generate this massive rejection, but also an unexpected and unique political situation: From that moment on, the children of the genocides made themselves present, they started to organize as a group under the name "Rebellious Stories" (historias desobedientes), they began to clarify that the genocides are not their parents and that they have chosen a different path for their lives.

A second group came later, "Former Children of Genocides" (los exhijos e hijas de genocidas). Some of them have requested to legally change their surnames to brake all bonds with their progenitors. Even if this is not the topic at hand, I would like to state that women drive both spaces ("Rebellious Stories," and "Former Children of Genocides"), who have legally changed their surnames, and that men barely approach to these organizations. The only male, son of an infamous genocide, is a lawyer, and he has presented a bill before the National Congress to modify two articles of the Code of Criminal Procedure of Argentina that prevents a person to denounce family members (parents, children, spouse) unless the crime is committed against the complainant. The amendment proposes that the restriction be canceled in cases where the information is linked to crimes against humanity.

In psychological terms, it is important to meditate that the first action this group took was to use the law as a tool to confront their parents, who abuse the rule of law. The fact that the only man publicly known is a lawyer, a profession linked to ideals of justice and ethics, is something remarkable. We will develop these topics. We feel that is important to share them because they are new and important.

Reopening of the judicial path

Given the development that the memory, truth, and justice process have reached in the country, is difficult to separate the State crimes from the State of Argentina. After two decades of impunity made legal by the National Congress, the annulment of the laws that prevented the judgment of the genocide was presented in 2003: 23.492 Endpoint Law, and 23.521 Due Obedience Law. In 2005, the laws were declared unconstitutional by the Supreme Court of Justice. State crimes were announced as crimes against humanity (hence, imprescriptible), and the judicial path was reopened.[1]

This 13 years of trials allow us to count 2971 defendants, 818 convicted (Public Prosecution Service, 2018), thousands of investigations in the whole country, new complaints about repressive actions, the identification of new concentration camps, acknowledgement of sex crimes with its own entity, among other advances in the knowledge of the functioning of the dictatorship system in Argentina. We know that trials for crimes against humanity are a very positive experience, although we, who are building it, could talk about the infinite number of issues, conflicts, and tensions of this path, which is real but not ideal.

Justice and the construction of collective memory

Through all these years, we deeply understand that —besides to dictate on justice, injustice, and its punishments— justice plays a main role in the construction of the collective memory and the narrative of the facts. The facts, its links, and the sense it obtains, are a plot developed on that stage. Those constructions are a substantial contribution to elaborate, or not, the genocide experience, individually and collectively. Mourning, trauma, silence, terror, guilt; all these

1 Law 23.492 of Final Point was promulgated on November 24, 1986. This law established the want of prosecution against the principal offenders criminally liable for the complex crime of forced disappearance of people during the military dictatorship and that hadn't been called to declare "before the seventy days as of the date of enactment of the present law." Law 23.521 of Due Obedience was promulgated on June 4, 1987. It established that no member of the Armed Forces below the rank of Colonel was punishable, except for cases of appropriation of babies.

links one to another, talk about themselves or modify their circle and repetitive movement to swirl into a spiral aiming to find a way to escape and move on. To reconstruct the genocide experience and to repair the victims are difficult psychological tasks. From the psychosocial approach, we consider them linked, amongst other things, to the possibility that the State acknowledges the committed crimes and their consequences. Trials are part of that acknowledgment.

Victims of crimes against humanity in our country are those who experienced persecution, concentration camps, dictatorship imprisonment, family disappearances, identity theft and annulment, psychic and physical torture. Collective and personal stories include losses of relatives, peers, homeland, projects, pertinence and reference groups, and labor terminations. All of them with the minimum, or null, possibility to be mourned. There were children, now adults, that lived in concentration camps, witnessed extreme violence situations, or were raised in homes damaged by fear and social isolation. Fear, distrust, and living under constant threat were the circumstances of their daily lives. Those were the feelings that ruled social exchanges. There was also social isolation, uprooting, helplessness, and silencing. These experiences have been deep attacks on the social bond, de-structuring from within, source of persistent pain, life projects and psychological damage generator, with traumatic effects that remain through time.

As Kaës would say (imitating Freud), "The individual has a double existence; as he is his end and means, member, server, a beneficiary, and heir of the same chain that holds him, if not against his will, at least not using it." (Kaës, 2007, p. 79)

This assertion put us on the space-time dimension where every person is a link amongst predecessors and followers, being that, by the moment the person inherits from the previous generation, they will also transfer that same legacy. So, the chapter is open. There is a psychological transfer, both inter[2] and trans-

2 We understand 'intergenerational transmission' as the direct transmission that happens between generations before and after in time.

generational[3], of the damage and the traumatic legacy (the effects upon those that were born after the genocides and those that will come).[4]

Permanent, universal and absolute: the psychological war

We need to stop at this point. Now we travel to a different time: post-World World II (WWII). At this moment, Americans were shaping their National Security Doctrine, and Frenchs were developing their Counter-Insurgency Doctrine, using the acquired knowledge from Indochina and Algeria. The most extreme cruelties were deployed in front of the need to dominate societies and spaces, criminal offenses such as forced disappearance and appropriation of babies became more defined and studied, and old war weapons, like the psychological war, gained a previously unknown relevance. That is the French side of the repression processes, unexplored and invisible, and yet anything would have been the same without them.

The war against Indochina was lost. Then it became clear that the problem wasn't just about friends versus enemies: The population entered into action as a significant third party.

While trying to keep Algeria under their thumbs, the Frenchmen deepened their knowledge in psychology, thanks to the scientific development in that subject, thus enabling a psychological war, previously unknown. Friends and en-

3 We understand 'transgenerational transmission' as the direct transmission that happens through generations, in which the traumatic legacy of the first generation can manifest on the third generation.

4 Proof of this transmission is the studies developed about the Armenian genocide and the Shoah, and other studies conducted in our country, as well as in other countries from the Southern Cone undergoing political repression and State crimes. These include: Kuyumciyan, R. (2009). El primer genocidio del siglo XX. Regreso de la memoria armenia. Ed. Planeta.; Piralian, H. (2000). Genocidio y transimisión. Ed. Fondo de Cultura Económica.; Gampel, Y. (2006). Esos padres que viven a través de mí, Paidós. ; Cintras, E., GTNM/RJ, EATIP, SERSOC. (2009). Daño transgeneracional: consecuencias de la represión política en el Cono Sur. Santiago. Available on http://www.cintras.org/textos/libros/librodanotrans.pdf; Lombardi Ernesto y Taboada Adriana, "Reparación simbólica y sentencia integral. Ampliando el sentido de justicia." In Derecho Penal y Criminología - AÑO VIII • Nº 07 • Agosto 2018. Buenos Aires. pp 99 to 111.

emies were no longer the only players, society became the target, and if the enemy was not defeated, the society would be controlled.

Psychological war, recognized as a "weapon", nourished by the psychological knowledge and the media —according to the French— was more effective than actual lethal force, as it could be used during war times, but also during peace, thus defined as "permanent". It does not know boarders; therefore, it is "universal". Finally, they define it as "absolute", as it could reach the actual human spirit.

The psychological war is clearly defined as permanent, universal, and absolute, and that is how it was transcribed in the first years of the '50s. Members of the Argentinian Army began their training in France in the early 50s, until 1958, when a French Army deployment was installed in Argentina for over 20 years. Our Armed Forces absorbed the French doctrine as their central education; education; including in the training everything related to the concept of psychological war. The design for its application in our lands started over time; years later, they transmitted all this knowledge throughout Latin America.

The Doctrine and its implementation

Dictator Alejandro Agustín Lanusse approved the paper known as Psychological Operations Manual (Manual de Operaciones Psicológicas [MOP]) in 1968, several years before the coup d'état in 1976. As evidence of what has been said in this section, the Argentinian General Acdel Vilas, with French education, installed the first clandestine detention center in the country in 1975, in a school of the Tucumana city Famaillá, thus starting the Argentinian genocide process.

A set of planned, systematic actions were part of the execution of the psychological war. These actions diversified according to their objectives. The methodology explicitly affected human predispositions and vulnerabilities in the interaction between emotions and intellect, in the combination of impelling, suggestive and persuasive elements, and seeking to create, affirm, or modify behaviors and attitudes.

Even though the doctrine pointed out that the impelling method had counterproductive effects, and thus it should only be applied on a few occasions,

the impelling method turned out to be essential to introduce fear into people, and it was used intensively in the early years of the dictatorship.

Its full function is to develop facts that will terrorize the population to activate people's survival instincts. That is why it is necessary to increase the danger sensation. Fear is a self-defense mechanism that promotes the usage of different strategies, for example, to run or to face a threatening situation. Tension increases if the conflict and the threat continues, and it is an outcome of anguish. Over time, distress turns out massive and transforms fear into terror. At this point, the danger is viewed as omnipresent and does not enable us to adopt protective measures. The direct outcome for this is a behavioral paralysis. The threat is everywhere, and you do not know what to do or where to go. Emotions invade your mind and override your ability to think clearly. The impelling method involves physic and material actions.

The threat is everywhere, and you do not know what to do or where to go. Emotions invade your mind and override your ability to think clearly.

Regarding the Argentinian genocide, the method included the violent kidnappings perpetrated against (often) unarmed victims, deploying lots of weapons and vehicles, yelling and being physically violent, taking people off of their beds in the middle of the night, of their workplaces, and even of the streets. Other impelling actions in place were the documentation and vehicle control at any time, in threatening situations, placing people against the wall, performing violent revisions, and using long-barreled weapons.

The scenario was logic: they needed to generate fear and keep civilians scared.

According to the genocide process and the need to brainwash people, every place where fear is present, we will find broken social ties, with the damaged groups and persons more susceptible to manipulation. Then other methods will be taking place, aimed to modify behaviors, strengthening more pathological psychological defense mechanisms.

We, who say that Argentina went through a genocide, see the annihilation in two ways: one, as the annihilation of direct (chose, not random) victims and

families (also victims); and two, not only to kill people but as the mean to socially indoctrinate the survivors. [5]

Conclusions:
Never again

From a psychosocial point of view, taking the past of fear that directed us to silence, the suppression, the distrust and the rupture of social ties and linking it to the present of the biggest street rally of our history, we feel confident to formulate a hypothesis: if the genocides were set free (which means the constant danger of having genocides out in the streets and in their houses), instead of the paralyzing fear, the fear that was generated developed strategies to face the threat. Instead of silence, NEVER AGAIN is held as the meaningful phrase; instead of isolating or breaking the social ties, the white handkerchiefs tied the bodies into one "us" to fight and empower.

What happened between the genocide and now, besides 40 years? What made possible for us to use our fear? What took genocides' children to present themselves and to break the legally imposed silence, assuming the emotional toll of their decision? I believe that one answer is the fight for justice and against impunity by the human rights organizations (local and international), along with the social movement and State policies based on memory, truth, and justice. Nevertheless, we believe that the existence of justice processes (which makes the difference in our process as compared to others in our region) have allowed taking steps to elaborative work and the compensation of the damage. Compensation that, given its characteristics, we classify as symbolic.

Then, maybe the relevant consideration in Argentina is not which is the psychosocial effect of the State crimes, but the process of the genocide trial, not only because of the concrete possibility for victims to find justice and compensation but because of the transformation of the entire society.

5 The only way it was possible to change the pattern of economic accumulation.

"The stages for a damaged society that needs to rebuild itself begins at the truth, then justice and compensation, which are the immediate outcome of the right application of the law, and finally the memory, which is the synthesis of the previous stages." Carlos Rozanski. Former Supreme Court Judge

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PERU: TENSIONS AND ADVANCES TO MEMORY BUILDING

Iris Jave

Introduction

The internal armed conflict that Peru went through between 1980 and 2000 marked an unfortunate and complex crisis in the history of the Peruvian people, during which terrorist groups such as the Shining Path (Sendero Luminoso) and the Revolutionary Movement Tupac Amaru (Movimiento Revolucionario Túpac Amaru) terrified the population in their pursuit of power. During this conflict, the most violent and extensive of Peru, the number of victims reached roughly 70,000 Peruvians (Reátegui, 2008: 17). There were gross human rights violations and crimes against humanity, extrajudicial executions, genocide, torture, forced disappearances, arbitrary detentions, sexual violence, and massive killings, which have not been investigated nor sanctioned to a significant extent.

The following text seeks to give an account of the role that victims organizations have been playing in Peru after the conflict, and how they have been building a path of participation, recognition, search and citizenship. For this purpose, we will briefly describe the context and present the information of the Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación [CVR]) created to investigate the period of violence, and we will also provide a brief account of the intense debate existing around it.

Likewise, we will take into consideration the role of memory as public policy or as a public issue, which also implies to approach it from the analytical view-

point of public policies. In order to illustrate this aspect, we will furnish two examples of the advances and challenges prevailing in Peru.

Contemporary debates

In 2000, after the demise of the authoritarian government of Alberto Fujimori, which culminated in his escape from the country and his resignation fax, the Congress appointed a transitional government for a period of eight months. The provisional government received three specific mandates: to organize elections, to guarantee a clean electoral process and to provide a roadmap for the strengthening of democracy ant the rule of law. It is relevant to note that the actors involved in the conflict, who had lost legitimacy, gained new strength with the emergence of democracy. At the same time, due to the existence of the CVR and its report about armed violence, a window of opportunity opened for the victims, which enabled them to start participating in the process of public debate about their demands and rights. In the public narrative it was established that the transition culminated with the transitional government.

However, Peru needed a more profound political transition that would make it possible to identify and give a response to the problems arising from terrorism, corruption, and drug trafficking. During that time, some reforms were urgent namely the reform justice administration and of security forces. Some of the incoming administrations tried to put these reforms in effect, while others weakened those efforts.

The Truth and Reconciliation Commission and their ruling

The CVR estimated that the internal armed conflict left more than 69,000 victims, of which at least 75% were indigenous (people whose mother tongue was Quechua, the second most important in Peru), lived in rural areas and in poverty. More than 17,000 testimonies and xxx public hearings were held across the country, especially in the regions most affected by the conflict.

The public hearings constituted a space designed to listen to the victims' testimonies and to make visible the facts that the whole country knew about but that had never been gathered, organized or systematized before, and that did not even were present in the public conscience. Also, they served as a space to giver recognition to the victims, a public space where the victims could address State representatives for the first time.

For the CVR, which operated from 2001 to 2003, it was critical to use its role as a state institution to make victims visible. Some of its most significant contributions were, in the first place, to provide a systematic explanation of the complexity of the violence by collecting all the existing information from the archives of human rights organizations, the previous work carried out by the Prosecutor's Office, and the investigation of different entities, including the academic field, which had already produced much knowledge about it.

"...victims-centered approach, which means placing the victims in the limelight to call attention to the damages produced and their lasting effects..."

Building upon this information, the CVR documented a context in which the terrorist group Shining Path waged war against the state killing policemen, local authorities, and also social and religious leaders, either Catholic or Evangelical, as well as representatives of other social groups and international NGO officers. It was a declaration of war against the entire state of Peru aiming to establish a new political regime in the country.

The second contribution emerged from the adoption of a victims-centered approach, which means placing the victims in the limelight to call attention to the damages produced and their lasting effects, and to demonstrate that the natives of the Andean and Amazonian regions were the most affected by the conflict. These victims of violence had been excluded from the advantages of the "official" Peruvian society despite being citizens in their own right.

Finally, the CVR stablished the basis for organizing a public policy for memorialization. For example, it designed a Comprehensive Reparations Plan, in coordination with human rights NGOs. Similarly, it prepared a pedagogical proposal to the Ministry of Education, to include the teaching of the history of the internal armed conflict. It must be said, however, that this proposal was not applied. Likewise, it established a National Anthropological-Forensic Plan, which determined that there were more than 4,000 clandestine burial sites, of individual

and collective graves; it also laid out 47 cases, all documented with testimonies and documents for prosecution.

Like any other transitional justice mechanism, CVR investigations were not necessarily binding. The CVR was created to produce to find the truth and to produce an authoritative account of the period of violence, and to make recommendations of institutional reforms, reparations, and reconciliation. In short, it did not have to implement its measures; only to recommend them.

The CVR finished its work in 2003 with the public presentation of its final report. At the same time, an intense debate was generated in the public sphere, creating a paradox: a process of truth and memory where the main political actors of the country had responsibilities regarding the past. It is important to consider that the last four presidents of Peru were involved with human rights violations in the past, but also with cases of corruption. This circumstance invites to consider how these variables intersect in terms of impunity, and how an institutionalization of a practice linking these facts advances.

As mentioned, the transition involves citizen participation through elections of executive authorities and representatives. However, due to a rather weak representation, political parties are powerless, and in each electoral process the electorate finds itself in the predicament of choosing between the lesser of two evils. Therefore, the transformation of the Peruvian political remains far from achieved.

The two faces of the memory and the truth

After the end of the conflict, different political actors regained political force and emphasized the role of the armed forces in the and in the defeat of subversion and misgovernment. This narrative is known as "memory of salvation" (memoria de salvación) (Degregori, 2003: 13) because it places Alberto Fujimori, backed by the armed forces, the single author of the strategic defeat of the Shining Path. Thus, the former ruler becomes a "savior" who successfully confronted terror, hatred, and unfettered violence unleashed among Peruvians by a "bloodthirsty" character like Abimael Guzman, leader of the Shining Path. That memory of salvation places former President Alberto Fujimori and his legacy as

a relevant contribution to the fight against violence; the consequence of this kind of memory is that it sanctions an authoritarian ruling (Barrantes and Peña, 2006: 19) and justifies human rights violations, which are portrayed as an affordable cost of war.

On the other hand, we have the "memory of reconciliation" (memoria de reconciliación) (also according to Degregori). This type of memory attempts to reflect the victims' demands, which have not been sufficiently present or visible due to the lack of spaces for dialogue and to the difficulty to process events in the media and in the school system. Examining the contents of the media, one could imagine that nothing happened in Peru, that there was no internal war and that there are no victims nor people looking for their missing relatives. The Ministry of Education has made some attempts to incorporate the study of the recent past in the schools, but these efforts have been hindered by debates between various political actors and the media. Discussions about the Shining Path or the Revolutionary Movement Tupac Amaru have become taboo, and even in public arguments victims are assimilated to terrorists. Anyone who speaks out on behalf of the victims can be stigmatized as a terrorist.

"...the "memory of reconciliation"... reflect the victims' demands, which have not been sufficiently present or visible due to the lack of spaces for dialogue and to the difficulty to process events in the media and in the school system."

In the public sphere, the discussion has gone from denial from those who refuse to accept a truthful account of the armed conflict[1], to post-truth discourses, which have given way to fake news. In 2018, the Con/Vida Popular Arts of the Americas Association was accused of promoting terrorism due to the donation of artwork pieces to the most important museum in the country, the Museum of Art of Lima.[2] The Counter Subversion Office (Dirección Contra el Terrorismo [DIRCOTE])[3] prevented the presentation of the collection based on a complaint

1 I'm talking about the narrative built by political groups linked to former President Alberto Fujimori, which tried to deny the responsibility of some sectors of the Armed Forces concerning the crimes and violations to human rights between 1980 and 2000, by prioritizing the responsibility if terrorist groups.

2 For more information, visit: https://diariocorreo.pe/politica/ministerio-publico-investigan-pinturas-usa-expuestas-mali-799199/

3 Body of the National Police of Peru.

by the Prosecutor's Office, then conducted an investigation to verify whether the drawings in these works were representing terrorism.

The collection called Piraq,[4] a Quechua word that means "Cause" (Who is the responsible?), is made up of a set of tables hand-painted and produced using ancestral methods by members of the indigenous community of Sarhua. The paintings represent how the Shining Path and law enforcement officers occupied the Sarhua community and how people lived in fear, despair and anguish through the 80s and 90s, the most intense years of the war.

Memory as a public policy

Raising the subject of memory as a public issue —and contributing to a period of learning on this subject in our countries— other channels of action emerged in addition to those from victims' organizations. These different channels invite, to look at how new strategies and the linkage between State and society actors works.

There is evidence of some learning on the side of the State, too. Officials have been incorporating memory and visibility into human rights policies. It constitutes a basic aspect as it allows to institutionalize some measures. For example, the promotion of human rights is not an isolated fight of victims' relatives and human rights organizations anymore, but as also an ingredient of State policies. In that sense, bridges between civil society members and state representatives started to be built. Now there is a degree of political intervention of the victims, as well as participation and debate about different policies.

It is useful to mention to noteworthy examples of this process. The first example is the case of the Sanctuary of La Hoyada, a land patch adjacent to the barracks Los Cabitos, in Ayacucho, where the CVR determined that more than 136 extra-judicial killings were perpetrated, with men, women, and children among the victims. (Final report of the CVR, 2003: 71). Besides, it is confirmed the existence of a crematory furnace, which leads to sustain that human remains were incinerated in these facilities. The CVR highlighted this case in 2003, which led

4 For more information, visit: http://www.mali.pe/not_detalle.php?id=576&p=ant&anio=2018

to the opening of a court proceeding in 2005 (Jave, 2017: 10-11). Today, even though there are not individuals identified as responsible nor convicted, an advocacy and recognition process in place for the burial site to become a memorialization site.

The Association of Families of Detained, Kidnapped and Disappeared Persons of Peru (Asociación Nacional de Familiares de Secuestrados, Detenidos y Desaparecidos del Perú [ANFASEP]), the oldest victims organization of the country, founded in the early 80s by Quechua-speaking women, started an advocacy process to declare the land beside the barracks, in Ayacucho, as Memory Sanctuary. In 2007, the land was declared an intangible zone. Judicial authorities ordered to conduct exhumations of the human remains. To this date, more than 3,300 excavations have been made to recover the remains of the persons allegedly located there. As a result of the excavations, 109 sets of human remains have been located, while only in five cases the investigation has produced individual identifications. (Jave, 2010: 10-11).

For the members of ANFASEP, the Sanctuary is a holy place because it may contain the remains of their relatives. The land is holy because they "lay in there." That inner conviction drives their advocacy process. As part of this process they hold negotiations with local and regional governments, and they have obtained from the national government a formal declaration destining these 17 acres (7 hectares) to a Memory Sanctuary to honor the missing persons.

The second example focuses on Law No. 30470, Search of Persons Disappeared during the Violence Period 1980-2000,[5] enacted in 2016 as a response to a problem invisible for over 30 years. Today we know that there are over 20,000 missing persons, according to the National Registry of Missing Persons and Burial Sites (Registro Nacional de Personas Desaparecidas y Sitios de Entierro [RENADE]), from the General Directorate of Search for Missing Persons (Dirección General de Búsqueda de Personas Desaparecidas [DGBPD]) by the Ministry of Justice. This law is the result of an advocacy process promoted by victims' organizations, government officers, and international cooperation agencies, with the International Committee of the Red Cross playing a significant role. The Search

5 For more information, visit: http://www.elperuano.com.pe/NormasElperuano/2016/06/22/1395654-1.html

Law has a humanitarian approach, seeking to have a soothing effect on the victims. Many of the victims are already dying as they are over 60 or 70 years old, and some of them have died without seeing justice. Therefore, this law aims to give responses to victims' relatives. It is considered a law with "humanitarian approach" because it seeks to give answers to victims respecting their right to the truth. To this effect the law permits to search and identify human remains without having to wait for a judicial warrant, but without impeding criminal processes. So, both search strategies are in force: judicial and humanitarian.

The political environment in Peru suffers from an institutional, national, and regional weakness that, sometimes, jeopardizes transitional justice mechanisms. For example, after the change of Ministry of Justice, the new Ministry ruled for pardon to former President Alberto Fujimori, thus generating a crisis during former President Pedro Pablo Kuczynski's term. Nevertheless, despite the political instability caused by the changes in the Presidency and the Ministries, the General Directorate of Search for Missing Persons continued working with more limited funds and basic equipment. As a consequence, its work plan was not approved until 2019. However, the approval of this plan is a step forward that allows for the relatives to be accompanied so they can participate in the searching strategies along with the corresponding state instance.

Regarding information availability, we can say that the Ministry of Defense has not provided information for years, it does not declassify documents, neither identify the responsible for the committed crimes.

Despite it, in other justice sectors, it is possible to make progress with different policies and information to find the truth. During this process, victims have developed a series of resources for their communication with the State, enhancing their participation and visibility. This progress can be partially attributed to the academic access granted to the new generation. It has favored the development of transformation among the victims' organizations, encouraging new strategies and approaches.

Finally, through their organizations, victims develop an agency based upon their experience negotiating with state instances and social organizations, acquiring thus a series of resources that strengthen their demands and gives them legitimacy. Thanks to it, there is more space to manage rights and reinforce citizenship.

In the same way, new actors are emerging from the new political struggles over recognition. These new actors start making use of transitional justice mechanisms based on the work done by victims' organizations. It is important to highlight the work of the indigenous people, who are starting to work on subjects of political involvement and memory, especially the Amazonian indigenous communities and the LGBTI community, which has requested the creation of a Truth Commission to identify and investigate the crimes committed against them during the violence period, both by the State and terrorist groups.

Conclusion

The educational system still represents a critical space: social prejudices and taboos impede the creation of an environment for dialogue with the students and hinders the possibility to learn from the recent past. Even though there are norms designed for the teaching of memory in the school system, the State has not been able to implement an effective policy yet. The attacks from political actors, as well as a narrative that favors denial, have contributed to neglect this history.

On the other side, a new leadership is emerging among in victims' organizations and their relationship with the State and other social actors is transforming. At the local or community level, in the context of commemoration and acknowledging the facts and victims of the recent past, various sites for memory have been created, contributing to strengthening the experience of memory and victims' participation, and also fostering the search of missing people. The victims have made progress regarding their ability to exert their rights as citizens through greater participation in decision-making about public issues. The social and political process that led to the establishment of a national policy to search thousands of missing persons is an outstanding example of that.

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HOW TO REPRESENT SUFFERING IN VIOLENT CONFLICTS TO AVOID ITS REPETITION?[1]

Camila de Gamboa and Wilson Herrera Romero

Introduction

In Colombia, the universe of citizens who are victims of violence is very broad; the various groups that are directly affected by the crimes committed by the self-defense, paramilitary groups, guerrillas, and State actors, sometimes with the direct participation of the civil society, have different and legitimate expectations of the way Colombians will recognize their undeserved suffering, and how will we bring justice for them.

It is understood that one of the purposes of the implementation of these tools of transitional justice is to help victims to gain full and inclusive citizenship. Hence, it is vital to analyze the way our society represents the damage to the citizens that have been victims of political violence, after the introduction of these tools. In other words, we need to analyze if the application of the tools fully acknowledges the dimensions of their suffering.

As a response to the massive human rights violations which, unfortunately, have been increasing around the world since the end of the XX century, there is

1 The original article was published in Revista de Estudios Socio-Jurídicos *Violencia y Justicia*, 14, (January-June, 2012), 215-254, Universidad del Rosario. This is a short version of the original article, published with permission of the El Rosario publishing house.

an emergence of studies about how these damages should be represented and remembered, all from various theories and disciplines. Nevertheless, as Tzvetan Todorov (2000) makes us realize in his book "Hope and Memory. Lessons from the Twentieth Century," defend the past is not a monopoly of victims, because those who have the power often represent repressive regimes, and claim a dark past to justify their actions or to promote policies of " forgetfulnees". So, the act of representing and remembering is not neutral, and not every kind of appeal to the past serves to do justice to the victims.

Throughout this text, we will analyze the relationship that should exist between a full democracy after a transition, and how is represented the suffering of the groups that have undergone severe violations to their human rights. The violent events that diverse human groups have endured are represented into societies by various, means (both official and non-official), such as the investigations of historians, political scientists, philosophers, sociologists, and anthropologists in human and social sciences; the representations of the violent events made by the media, and through the theatre, visual arts, cinema, and literature, among other genres; as well as those produced through judicial processes and historic and truth commissions. All those ways to represent past speak to us not only about these violent events but their causes, actors, and responsibilities. Not all the narratives about the past represent or make justice to the human groups that have suffered such violence. As Walter Benjamin (1982) said in "Theses on the Philosophy of History (or 'On the Concept of History')", narratives about the past are usually told by the victors, thus the image we have about the past is defined by the lack of their voices, by their absences (Theses VI and VII).[2]

Because of that, is necessary for us to interpret the past, be able to recognize the voids and absences in history, to guarantee that those voices can be heard and that their dignity as human beings is fully acknowledged. It is very challenging when societies have political regimes that, historically, have excluded multiple social groups from full citizenship, hence contributing to the existence of a hierarchical and inequitable society, in which not all the citizens are considered equal, there is the belief that certain groups deserve more than others both politically and morally, and in given cases, violence against them is justified. That

2 *See* the magnificent analysis from Manuel Reyes Mate (2006).

said, not every representation of the victims is appropriate to evoke into the political community actions and attitudes to reject these behaviors, to acknowledge all the damages, and, at the same time, to transform the kind of relationships in both public and private spheres which allowed the passivity before the suffering, the complicity, or the direct participation in the severe human rights violations.

The objective of this article is to analyze which representations are appropriate to give an account of all the injustices committed against the victims, and which are inappropriate to grant justice to those groups which have suffered because of political violence. We will defend the central thesis: narratives and representations of the victims can contribute to building a democratic and inclusive society as long as they can generate an informed outrage and compassion in people.

To reach this goal, we will first analyze the relevance of politics of memory in a democratic transition, to recognize the injustice suffered by the victims in the past. Then, we will try to demonstrate that the idea of an informed outrage and compassion allows dealing with one of the more severe issues of politics of memory that privileges the victims: the risk of trivialization of the stories of the victims. Before we study this problem and based on the analysis of Peter Strawson (1982) about moral feelings, we will briefly develop what we understand as indignation. Next, we will explain some ways of trivialization to the victims, present in situations of political violence, and which have the potential to prevent an adequate response from society to victims' suffering. Finally, we will use the Harriet Jacobs real-life case, which includes the conditions to trigger compassion and outrage in a public audience.

Democracy and the politics of memory

Generally speaking, the issues related to the way a political community represent and tell their past is the objective of what is called politics of memory" According to Avishai Margalit (2011), this kind of politic arises when "memory, like any other form of knowledge, is power." (p. 275). Although Margalit (2011) is not explicit about how memory can be a source of power, neither the discussions

about the uses and abuses of memory in the political field, it is possible to say that collective memory is linked to power in two senses. In the first place, the stories about the past can be useful to political actors as a way to justify their decisions and actions in front of the citizens. Like Tzvetan Todorov (2000) finely shows, the citizens tend to identify with those who history has recognized as victims or victorious heroes who have left a legacy that today generations consider valuable. Thus, it can be politically advantageous for a person or group to be seen by the public opinion as a victim or as a hero; this gives certain legitimacy and authority to their speech.[3]

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In the second place, in the context of post-conflict societies that have adopted transitional justice measures generous to the victims, it may seem to certain social groups that the politics of memory are generating privileges, as the victims have access to some rights that other citizens do not have. The problem, in this case, is not that the victims benefit with these rights but the abuse that can be present when the policies are not well designed or executed. In short, the collective memory of a community is a source of power because it can become a kind of political legitimacy and, at the same time, create special rights for specific groups, like the survivors and their descendent, when there are beneficial reparation policies for them.[4]

It is common to point out that, as well as the individual memory is selective, collective memory is too. In other words, both societies and individuals cannot remember everything. Every effort to remember leave some facts out.

3 To *see* an enlightening analysis about the political uses of memory, *see* Tzvetan Todorov (200), specially Chater IV. The distinctions between the three uses of memory —therapeutical, moral, and political— made by Paul Ricoeur (2003), are also useful.

4 In countries that had had violent conflicts along with severe social injustices, there usually exists confusion between the obligation of the State of compensating the victims due to the damages made by the violence exercised against them, and other responsibilities, such as social policies and humanitarian attention, as pointed out by Rodrigo Uprimny and María Paula Saffon (2009). In many cases, the States make efforts to compensate which matches with the implementation of social, economic, and cultural rights, which historically should be a right for vulnerable groups. If the reparation policies are not well designed, and it is not explicit that they are aiming to reparation, maybe the victims do not feel fully compensated, and the other groups also may think that the State is giving privileges to victims over other people.

As Todorov (2000) says, in democratic societies, the politics of memory is not about the question between forget and remember, but about what and how it is remembered. In that sense, the problem of dealing with the past it is not which events a society must remember, there are other aspects that, depending on the circumstances, could be more or less relevant for the political community. Thus, for example, when there is a consensus about what events deserve to be remembered, the main idea would be how to do it, at the same time, questioning the following: How did the facts happen? Who were responsible? Who must we remember and how? How do those memories affect us today? What is their legacy?[5]

Due to the selective character of memory, and the conflict of interests within the political actors, the direction of the politics of memory may drive to unjustified exclusions to hide some groups and privilege others, especially those with enough power resources to impose their vision about the past. Dangers like these, which could affect a politics of memory, can be a significant obstacle to build a political and social democratic, inclusive order, regarding victims, both now and then. To avoid these dangers, Richard Jay Bernstein (2004) pointed out that the memory policy should not be separated from ethics; i. e., its goals and means should be at justice's service. In Benjaminian, acknowledging and repairing victims' dignity should be the guide for such a politics.

In most cases, political violence is linked with repressive or democratically weak regimes, as the extensive bibliography about transitional justice proves. Thus, mostly, the measures adopted in the transition to a democratic and inclusive political regime depend on the acknowledging of victims as citizens. (See De Greiff, 2006; Rubio, 2010). Contemporary democracies adopt some moral

5 For a full presentation of the questions a memory policy for the victims should answer, *see* the guidelines elaborated by the Grupo de Memoria Histórica for the Colombian case (2010). Several questions in our text come from this source, even though this kind of inquiries are easy to find in the available literature about the subject. The politics of memory is especially relevant in Colombia since in 2005 the State began to design regulatory rules of transitional justice to give an account of the past, primarily, since the approval of the Law 1448 —better known as Victims Act—, on June 10, 2011. Chapter IX of satisfaction measures specifically designs a general regulation to preserve the memory which is beginning to rule other codes. The design and implementation of this memory policy will be of further relevance to recognize the suffering of the victims, bring justice, and achieve a more democratic and inclusive society.

grounds, based on the general principle that all citizens have the right to develop their life plans and guarantee their moral and political equality. Political institutions, the judicial system, discussion and decision-making procedures have to reflect such values; these are the fundaments of the legitimacy of a democratic political system. If we consider transitional justice as a political, legal, and ethical toolbox to respond to a past of harassments and severe human rights violations, it is clear that the respect of all citizens' dignity should be the inspiration for the model to be successful. In other words, a transitional process is a democratic process itself; thus, a politics of memory during a transition must be able to evaluate the reasons why the institutions, the participation mechanisms, and their political traditions did not recognize or guarantee political or moral equality for all the citizens.[6]

Pablo de Greiff (2011) says that, even though it is often said that transitional justice measures seek to do justice, it is possible to assert that this idea of justice is reachable when the designed actions guarantee to recognize the victims. This acknowledgment comprises many aspects, such as recognize the victim status, accept the abuses they suffered, create public spaces for them to tell their stories and reverse the 'traditional' exclusion. De Greiff (2011) argues that it is even more essential "to recognize their status as rights holders, at last, as co-participants in a common public project, i. e. as citizens." (p. 29).

The collective memory which constitutes the 'us' that keep the political community together need to include the acknowledging of the victims as citizens as a part of that shared past, in other words, need to include a fair representation of their suffering. This demand comes from the fact that stories about the recent past are not expressed nor received neutrally by those who produce or listen to them. These stories create feelings in those who listen and those who tell them, and those feelings, either negatives or positives, directly affect our responses to other people's pain. It is possible to examine the uses and abuses of the various ways to narrate and represent political violence in the relationship between feelings and the representation of these harms. The question of

6 There is a tight relationship between transitional justice and human rights. Transitional justice began in the fight for human rights, and many of its tools developed and are included into international regulations and international and local jurisprudences. (De Greiff, 2011).

in which sense representation is fair or not is related mostly with the feelings it generates.

We are interested in analyzing which should be the kind of appropriate moral feelings that society have because of the stories and representations of the suffering of the various groups of victims. Generally, there are feelings more adequate than others to enable a democratic acknowledgment of the suffering of these groups; while, on the other hand, there are representations that, instead of recognizing the humanity of the victim, could produce moral feelings which perpetuate exclusion and justify beliefs of prejudices, hatred, and indifference. We will look at this problem in the next section.

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Indignation and vanality

In moral theory, human beings have moral sentiments learned and produced from the interaction between each other. Such feelings are human reactions to good or ill will, and the indifference of one to another in our actions, as Strawson (1982) states. Strawson (1982) denominates them as reactive attitudes, and they can be positive, such as gratitude and solidarity, or negative, like guilt, shame, resentment, and indignation. Resentment and indignation are crucial to understanding the responses we should usually have to unjustified damage. Resentment is the kind of moral feeling that is in the victim when the offender behaves in a way that produces intentional and unjustified harm. Indignation is the moral feeling of reprobation which we all have when we believe that someone is suffering unjustified damage, caused by the voluntary and ill-intended action of another agent.

Thereby, resentment is to the victim as a direct result of the offense, and indignation is to the audience, which feels affected by the offence. Even though resentment is a moral sentiment of the victim, a third party in a close relationship with the injured could also feel it. A literary example of this is The Brothers Karamazov, by Fyodor M. Dostoyevski (1977); in this piece, Ivan tells Alioscha this story: one day, a young eight years old servant took a pebble and hit the leg of the General's favorite greyhound while playing. The General ordered to capture

the little boy and his mother, and sent them to prison. The next day, the General gathered all his servants, called the boy from the prison, and ordered to undress him. Then, along with his pack of dogs, the General killed the little boy in front of his mother. When we hear this story, we could understand why the mother would feel a deep resentment towards the General, because of the damage to his little son.

After this, our main interest is focusing on indignation, because it is the kind of reaction a society should have in the face of severe human rights violations during conflicts. As implied before, indignation is a moral public feeling which expresses our shock because of the damage suffered by another human being. This sentiment is inclusive, as it recognizes the arbitrary damage caused to other people without exception. In this context, we should understand inclusion in a regulatory sense, like an obligation with no distinctions. This acknowledging is manifest when we use memory to vindicate the suffering of those who we consider part of the 'us', but it is less evident when we expand our memory obligation to any human being, even to a group which we do not feel near to us, or that we see as the enemy.

Todorov (2000) says that the French writer André Schwartz-Bart wrote a novel about the Jew genocide, named "The last of the just," and then devoted his life to fighting for black slaves. When someone interrogated him about why he had made that change, he told the next story: "Certain person asked a Rabbi why the stork is considered a cursed bird if its name in Hebrew is 'hassida,' which means "love" because it loves its kind. The Rabbi answered, 'That's exactly why: it only loves its kind'." (Grosser, 1989, in Todorov, 2000, p. 174).

We mention the Rabbi's story to show how indignation must be a feeling that allows us to expand the number of humans that matter to us. Besides its public and inclusive characteristics, when it is real, indignation is a sentiment that drives us to protect the offended and to reject the offender's actions. We do not merely feel sad about other people's pain but demands us to use the institutional mechanisms to seek for justice, change them when they are not adequate, or create them if they do not exist. Citizens should be sensitive to the stories and the claims of the victims, no matter how far their social circles are from the victims, for the indignation to be inclusive and effective. The memory policy should have this as a central objective.

Under the ruling of an inclusive democracy, this policy must privilege the victims' perspective. To this end, it is essential the consideration of the testimony of the victims, since a politics of memory aimed to recognize their dignity must create a space for them to be heard and understood. The fact that the testimony of the victims is fundamental in a politics of memory, it does not mean that it only should consider that vision of the past. The works of social scientists and the versions of other actors are also important, as they shed light on the context of the damages to the victims.

The trivialization of victims' suffering

According to morality theory, non-democratic societies or those who are democratically weak —like in Colombia, which historically has not recognized all its people as citizens and equally dignified— could cause some pathologies that prevent us from feeling compassion for other people. In other words, our attitudes as a response to the suffering are not adequate for us to be compassionate or to feel enough compassion in front of unfair hardship.

One of those pathologies is the trivialization of the suffering of the victims, and it can have different shapes. One of them is to be suspicious about the person or the group which endured the harm, based on prejudices because of their social status, their ethnicity, the color of their skin, their gender identity, or their political or religious position; as a consequence, to own or attribute some characteristics to a person or group, makes us doubt their moral integrity, so the reaction is to believe that they deserve the damage because of their condition. In his article, "Dignity, Revenge, and Promotion of Democracy" (Dignidad, venganza y fomento de la democracia), Jaime Malamud Goti (2005) shows how a large amount of Argentinians after the dictatorship began to accuse victims of their suffering during the military government, claiming that maybe was something bad they had done (p. 133). When someone doubts about the victim status

under these circumstances, instead of feeling compassion, we may end up excusing the actions of perpetrators.[7]

Another way of banality, frequent among the citizens of a violent society, it is to be indifferent to the suffering of the victims. Thomas (1993) suggests that in many liberal societies exist a way of morality that he calls "popular morality," in which "[a] stranger have a tightly limited right to ask for our help." (Pp. 45-46). Thus, in these societies, we can see a clear distinction between help and harm. While producing damage is seen as a morally reproachable action, not helping a person we consider a stranger is not wrong even if we could help them without risk (Thomas, 1993). For example, during the presentation of the final report of the Truth and Reconciliation Commission of Peru, President Salomón Lerner (2003) said that through the conflict, Peruvian society was inactive and indifferent to the human rights violations committed against vulnerable Peruvian groups. According to the report of the Commission, there was "a notable relationship between poverty/social exclusion and the probability of being a victim of violence," so, "75 per cent of the fatalities of the armed conflict had Quechua or other native languages as mother tongue." (Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú, 2008, also see Ames Cobián, 2005). The indifference of privileged social groups allowed to execute the violence without restrictions against marginalized social groups on the Peruvian mountains. It was until the violence spread to Lima when society was shocked.

Something similar happened in Colombia, where privileged social groups have remained indifferent in multiple cases to systematic human rights violations —caused by the various actors of the conflict— perpetrated to vulnerable social groups, and they only feel rejection and shock when actions affect them directly or the social groups they feel identified. In other words, these cases

7 The case of Unión Patriótica (UP) is one of the most prominent examples of stigmatization of a political group in Colombia. The UP arose as a political movement after peace negotiations provided by the government of President Belisario Betancur and the Fuerzas Armadas Revolucionarias de Colombia (FARC). To the movement were linked members of the Communist Party, former members of the FARC, local and national leftist leaders, intellectuals, and citizens from various social sectors. Since its constitution, the UP suffered harassments, attacks, and selective killings executed by far-right groups and State actors.

try to exemplify that we tend to be indifferent in front of the pain of those we consider strangers, even if they are citizens of our same political community.[89]

The third form of banality is that in which social groups support or exert violence directly against a determined group or person in the conflict's context. Accordingly with Todorov (2000), sometimes it is about situations that use memory as revenge. In these cases, a violent past justifies the reproachable actions in the present. The idea is to keep the memory alive, maintain the hatred active so we do not forget. Thus, the suffering of the victims now is justified by what they or their ancestors made, or it is believed they did.[10] Todorov (2000) references several examples of slaughterings perpetrated in the name of the past: in Rwanda, Hutus killed almost a million Tutsis as revenge for the humiliations decades before. The past massacres justified the ethnic wars in the former Yugoslavia. In some cases, members of the political community do not participate in violent acts, but they do endorse them; in others, they directly participate. In both situations, those who support or participate in the harmful actions consider themselves as victims, thereby trivializing the suffering of their victims, because they justify the pain with their or their ancestors' beliefs or actions in the past. This form of trivializing is a way of taking justice, and revenge, into their own hands. Almost always, it generates more violence, and it is not the appropriate

8 For example, in Colombia, urban society was indifferent to the conflict of many Colombians in regions far from the city during the political violence of the 80s and 90s. Urban society was concerned by the violence when they experienced it. It happened when the Cartel de Medellín, led by Pablo Escobar and other narco-groups called "Los Extraditables," (The Extraditionables) threatened the judges of the Supreme Court of Justice working on an unconstitutionality case against the extradition treaty with the United States, and made terrorist actions, which effects were the dead of judges, political leaders, and bombs in strategic places. (Melo and Bermudez, 1994).

9 Nevertheless, it is necessary to look at the context of the indifference, as it is immeasurable in front of the violations in an authoritarian political context of a democratic society. In an authoritarian context, it would be supposedly harder for the social groups to criticize the commission for human rights violations because they fear repression, don't know it is happening, or they have prejudices about the groups experiencing the violations. One would think that in a society with a stronger democratic culture, this kind of violations would be rejected by the majority. (We thank the proofreader of this article for his observation).

10 The use of the past is not neutral, and the power groups could manipulate and interpret it to justify their interests. For this reason, on various occasions, hatred from the past are based on inventions or manipulations of facts.

In many countries with violent conflicts, characterized by a weak political institutionality, the actors of the conflict benefit from these hard contexts to preserve or conquer political power, obtain money, control of territories, traffic weapons, people, or illicit drugs.

(nor fair) answer to the past.[11] In Colombia, some scholars of violence support the theory that the spiral of violence in the country has not stopped because we have never take responsibility for the past, i. e., the State, political groups, illegal armed groups, and many social sectors do not assume any liability for their actions during the conflict and frequently have remained silent. (See Sánchez, 2003).[12]

In other occasions, the groups trivialize the victims by supporting or directly participating in political violence, not because of memory but based on instrumental rationality, which allows them to keep or conquer their interests. In these situations, perpetrators take advantage of institutional weakness or lack of it to reach their despicable goals; in these scenarios, victims are simply used as means. In many countries with violent conflicts, characterized by a weak political institutionality, the actors of the conflict benefit from these hard contexts to preserve or conquer political power, obtain money, control of territories, traffic weapons, people, or illicit drugs.[13] In Colombia, due to the phenomenon called "parapolitics," political leaders made pacts with members of paramilitary groups to keep or access to political power, frequently committing atrocious crimes against those people or groups who in-

11 Revenge is a private response to an offense. Precisely, the criminal system is made up of impersonal laws for impartial judges to rule a punishment for the accused if he's found guilty, respecting both the defendant and the complainant rights. For a detailed analysis of the subject, see Hart (1990), and Crocker (2002). In this text, Crocker clearly differentiates revenge from retribution to establish the thesis of Desmond Tutu, to criminally judge the perpetrators of the Apartheid would have been some kind of revenge. About retribution, Jean Hampton (1984) defends a pedagogical concept for legal retribution, recognizing that the offender denied the victim's dignity with his actions.

12 These pacts, historically made by political parties and Colombian elites, are analyzed by Leal Buitrago (1989), Palacios (1995), Uribe de Hincapié (2001), Wilde (1982), and Dávila (2002).

13 In the Democratic Republic of Congo (DRC), one of the factors to continue the conflict is the participation of the rebel groups, which, in many cases, are supported by foreign governments interested in the mineral wealth of the nation. So, Rwanda and Uganda support the DRC rebel group to control the minerals of the East part. These countries, according to a 2003 report from the UN, were involved in the illegal traffic of minerals from the DRC, to sell them to west companies in the market. (De Gamboa & Chaparro, 2010).

terfered with their interests. (Duncan, 2006; Romero, 2007).[14] It is evident that the third form of trivialization —to support or directly participate in human rights violations— is easier when it matches with the other two kinds of trivialization; i. e., when the victims are blamed for the things that happened to them, or their suffering is ignored. Like we said before when social groups doubt of the moral integrity of the victim, they are excusing or supporting what perpetrators do, and the same happens when we believe that is not our obligation to help others because they are strangers.[15] Those kinds of trivialization of the suffering of the victim allow the perpetrators, or those who benefit from the violence, to continue with their reprehensible actions, without limits from institutional mechanisms, and social rejection.[16]

The question is, how to reach an adequate representation of the severe human rights violations to generate outrage and refusal in society for these actions? We would like to explore the idea of indignation as a way of informed compassion which could have characteristics that would make it adequate to be used in representations trying to change the identities of the historically excluded groups, which have suffered the political violence and the conflict. Compassion is the pain we feel when we see the undeserved suffering of others. This feeling can be valuable in a political transition but is essential to be careful to avoid some risks that it could cause. We will mention them now.

In the first place, compassion can degenerate in pity. That who feels pity for others, express a distance between he or she and who is in pain because it is the response to suffering when someone does not recognize victims as his or her pairs. Consequently, pity, instead of being an adequate feeling to recognize the

14 The Criminal Appellate Division of the Supreme Court of Justice has played an essential role to break up, judge, and reveal the actual dimensions of this phenomenon to society, due to its competence to investigate and judge congressmen and congresswomen and governors, and knowing the processes under Justice and Peace Act. (González & Bernal, 2010).

15 Karl Jaspers (1961) analyzes the types of responsibility of German people due to the severe human rights violations during the Nazi regimen. This book has become a classic for the analysis of political, moral and criminal responsibility in the transitional justice field. Also *see* May y Hoffman (1991), May (1992), and De Gamboa (2010).

16 The depicted trivializations don't pretend to be categorical or point out that they are the same in real-life cases; it is a conceptual analysis to have a better understanding of the reactions to the suffering of the victims.

victim's humanity it could reinforce discrimination, like when a wealthy person is touched by the poverty of another, without meditating that he or she could be in a similar situation if the social contingencies were different.[17] In the second place, who feels compassion for the victim could be doing it not to bring attention to the injustice but to have moral status and to show it. This form of compassion not only changes the attention from the suffering of the victim to who is not suffering, but it also could prevent taking actions to fight the injustice or makes impossible to hear the voice of the victim and the way to respond to her or his suffering. In the third place, who pity another could appropriate of the suffering of others to bring attention over his or her distress, thus trivializing the damage of the other group, or to hide her or his responsibility for the pain of that group, like when slavery women in the United States used to say that they were slaves of their husbands to fight against the sexual discrimination they were suffering; this representation of themselves prevented to see their participation and responsibility in the institution of slavery. (Spelman, 1997). Considering these risks, we will do a brief reflection on when compassion could be adequate to represent suffering or, even better, when indignation could be a desirable way of compassion in a democratic society.

Elizabeth Spelman (1997) proposes a concept of compassion that, for us, matches with the characteristics of a right indignation for a democratic context. She analyses Harriet Jacobs' (1861, 2001) autobiography, "Incidents in the life of a slave girl", under the pen name Linda Brendt. It is the testimony of a slave in the XIX century who escapes from the Southern United States to a Northern state; in New York, a white woman "buys" her liberty.

Let's briefly examine the characteristics of this narrative as an example of a testimony that tries to create informed compassion in the white audience of her time, and that could be the prototype of a moral witness which, as a social agent, changes the self-vision of the community.[18] Jacobs is conscious of the

17 John Rawls (1995, 2001)integrates to the second principle of justice the role of the social contingencies, chance or bad luck.

18 We use the term "white audience" to specify the audience of Jacobs, as Spelman (1997) does. We understand "race" as a social construction, and not as a scientific classification; nevertheless, it has historically dominated in many societies to exclude and severely violate the rights of multiple social groups. (Appelbaum, 2003).

moral and political risks that she is taking when she asked her audience to feel compassion for the suffering of her and other Afro-American women caused by slavery. To avoid these risks, Jacobs is quite careful to instruct her audience about how they should respond to her story; that is why Jacobs does not represent herself as a helpless victim, worthy of pity, but as a person with a social status and expertise about slavery.

In her biography, Jacobs refers to the sexual encounters she was forced to have with her master. She knows that this kind of information could produce a negative response in her audience, especially among white women who, even though they knew white men had sexual relationships with slaves and they rejected this behavior, they blamed slave women for it. Jacobs tells a dialogue she had with an abolitionist. She points out that, after she told the gentleman about these forced sexual relationships, he says: "I appreciate your sincerity, my advice for you is don't speak openly about this with everyone; there are heartless people who could use it as a pretext to treat you with contempt." (Jacobs, 1861, quoted by Spelman, 1997, p. 160).

With this example, Jacobs instructs her audience about the kind of response she expects from a person who is not going to consider the sexual abuse of her master as an immoral behavior of her, but considers her a victim of a perverse social system like slavery. In that sense, Jacobs presents to her audience that, in an oppressive social system as slavery, the capability of action of the slaves is quite different from that of the people in "free" systems, so her decisions cannot be judged under those moral grounds. Repeatedly, for example, we Colombians make value judgments about the moral and political decisions the victims make during the conflict and what we would do in their situation, without realizing our place is not the same. Patricia Lara (2000) in *Las mujeres en la guerra* (Women at War) and Juanita León (2005) in *País de plomo* (Lead Country) analyze this subject in detail.

Regarding Jacobs biography, it is significant to add that when she tells details about her or other women lives, she tries to create what we have described as indignation; i.e. the kind of feeling which does not get tired, invites to action, to confront, and, in this case, to eliminate a perverse social institution. That is why, when Jacobs is talking about the suffering of a mother who sees how someone is chaining her little son, she says that if anyone could have the opportunity to

see and feel like this mother, he or she would exclaim, "Slavery is condemnable"! (Jacobs, 1861, quoted by Spelman, 1997, p. 79).

Besides, Jacobs presents herself not as a different being from her withe audience, but as someone who belongs to the same moral community, who shares the same human condition, and who should be considered as a citizen in equal conditions. Here, Jacobs is obviously acting as a moral witness who questions her community regarding the suffering of the slaves at the hands of a system created and supported by white people. For this reason, she appeals to de adjectives white people use to describe themselves as "civilized," expressing the contradiction of using that term and at the same time defending an oppressive and exclusive institution like slavery. Likewise, Jacobs shows how this practice affects to slave people and negatively influence on white people character, claiming, "[Slavery] turns white fathers into cruel and lascivious persons; their children become violent and permissive; corrupt their daughters, and makes their mothers petty." (Jacobs, 1861, quoted by Spelman, 1997, p. 52).

Jacobs' work, which had a great impact on white people from the North and that is still studied, is a good example of the representation of an oppressive system, such as slavery in the United States, in which the only purpose was to create outrage for another human being's pain that was not recognize as a pair, and at the same time, to invite the political sphere to fight against this social institution. It is needed to observe that, in Jacobs' testimony, there are two elements that not always are present in statements (as she is capable to analyze slavery and the negative consequences this institution brings to her political community). Not every testimony have these two elements. It would be perverse to demand to the victims who want to share their experience that, besides their testimony, they should present them into the social, political, legal, and moral contexts that produced them, aiming to move us, and to makes us fight in the public sphere to change the situation.[19]

A good model of transitional justice must allow a politics of memory that gives citizens of plural and diverse societies the capability to respond with out-

19 Some extracts of his unpublished work appeared in the New York Tribune. To Jacobs it was really dfficult to publish her book. Thanks to her, in the United States took place the first open discussion about the sexual side of slavery. Visit http://www.lkwdpl.org/wihohio/jaco-har.htm consulted on October 3, 2011.<>

rage in front of the severe human rights violations against historically excluded social groups. So this knowledge of the past allows at the same time to recognize their dignity as human beings and to criticize the social, cultural, and political institutions which have to produce them, as well as demand the creation and participation of social and legal institutions. Outrage by itself could not reach its goal without a society with decent and fair institutions which fulfil their role, and in which the State commits with the victims to create official and social channels to disclose and discuss this information. This is an essential condition to fight against the diverse types of trivialization we discussed. Nevertheless, as Martha Nussbaum (2003) pointed out, even if the institutions were perfect, it is needed compassionate people to apply rules in a compassionate way. Then it would seem that the ideal is to create a virtuous circle of compassionate people who create compassionate institutions, and of institutions which make possible compassionate behaviors.

A good model of transitional justice must allow a politics of memory that gives citizens of plural and diverse societies the capability to respond with outrage in front of the severe human rights violations against historically excluded social groups.

Conclusions

The analysis about politics of memory and the role of testimony and speeches from and about victims points out that, within an inclusive democracy, the process to construct a shared memory should not be seen as one activity out of the many which transitional justice demands. We stablish that, with this process, it must be seek a reconfiguration of the political activity itself. Based on a theory defended by Hannah Arendt (1958) in "The Human Condition," which says that "the organization of the polis [...] is an organization of the memory." (p. 198), we support that the different ways in which political agents and citizens deal with their past are inherent to political activity.

To understand the scope of Arendt's theory, it is convenient to consider how she perceives "politics." In her analysis about the concept of "action" —a central aspect of her political theory— Arendt (1958) claims that the polis, i.e. politics, "is an organization of people which arise from their actions and speaking together; it is the true space between people who live together." (p. 198). Contrary to the modern liberal concept of the political sphere as an instrument ready to serve the interests and needs of the citizens, to Arendt, restoring the Aristotelic concept, is an essential activity to develop a successful life. Politics is the space for carrying out the action, together, with "telos" as the search and completion of what is common to citizens, and transcends the sphere of their needs.

The citizens who participate in political action are life stories which overlap on the effort to develop something in common. It is fundamental for the construction of a shared past because citizens may respond to who they are and who they want to be. From an Arendtian point of view, politics demands guarantees of the civilian and political freedom of its participants —without them, they would not be able to act— and to satisfy their material needs. In the normative horizon of an inclusive democracy, the role of a politics of memory is to try to ensure that the construction of that shared past takes into account the victims, both present and past. In Benjaminian, this means that the political action that tries to be fair, not only looks into the future but keeps the memory, not for the victorious heroes but the victims, particularly, their demands of building a social and political order which would not allow repetitions.

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FORCED DISAPPEARANCE, INDIGENOUS PEOPLE, AND TRANSITIONAL JUSTICE: AN ANALYSIS BEYOND VIOLENCE[1]

Rosely Aparecida Stefanes Pacheco

Introduction

> *The past becomes memory when we can act on it looking at the future.*
>
> (*Sánchez Gómez, Gonzalo, 2006, p.23*).

The violence against indigenous people is one of the most severe issues contemporary society must face. It doesn't respect frontiers, principles or laws. In Brazil, it is manifest through threatens, invasion of traditional territories, torture, and various aggressions that reflect the conditions these communities are systematically submitted. Additionally, executed by the Brazilian government through centuries, these kinds of practices show the consequences of an indigenist policy that doesn't consider the indigenous population.

The killing of the indigenous people reveals violence that could be silent. By stigmatizing them as "savages," many of them are assassinated, abused, haunt-

1 The coordinators thank Lígia de Aquino Barbosa Magalhães and Monstserrat Martínez for their support to translate this chapter from Portugues to Spanish.

ed, and victims of forced disappearance. These kinds of facts are assaults that hide the prejudice of a country which doesn't embrace its diversity and doesn't accept that people can live with various customs and cultures inside one space. In that sense, it is impossible to not know the processes used to exterminate those societies. Also, during these process of violence, it is notable that its "naturalization" can be associated to the concept of "trivialization of evil," introduced by the German philosopher and sociologist Hannah Arendt (1999).

Concerning the Guaraní Kaiowá people, which will be mentioned in this paper, it is observed that the atrocities aren't isolated acts but are part of a policy until its final consequences by a State intending to repress the indigenous rights; especially, the right of access to traditional territories.

To corroborate this scenario is relevant to know the "subject's notion," constructed through the historical process for these people. Eremites de Oliveira (2012) clarifies that in Mato Grosso do Sul, indigenous people are constantly seen as "different" by the non-indigenous population. There is the prejudice of the indigenous being an "obsolete" person who hinders "progress." According to the author, that could explain why they are called "bugres."[2] De Oliveira (2012) says that it is a racist name, highly ethnocentric, diminishing, and discriminatory, as it doesn't recognize the humanity or ethnic identity of indigenous people, and don't appreciate their customs and traditions.

Some try to justify the violence against the indigenous people like there is an excuse for it. For example, some of the power groups relegate and judge them as part of lesser categories, as sub-human and stigmatized communities, and, this way, they reduce their status to the refuse of the world.[3]

This mechanism is fundamental for power, as it allows to continue naturalizing violence and the expropriation of traditional people. The indigenous people are deprived of their status of citizens, thus being "denationalized," and deemed as

2 "Bugre" is the name for various Brazil indigenous groups, as the people with European descent consider those groups as "sodomites." The word comes from the French "bougre", according to the Houaiss Dictionary, it dates from 1172 and means "heretical," which comes from the Medieval Latin (VI century) "bulgàrus." As members of the Greek Orthodox Church, the bulgàrus were considered heretical, so the use of the term is to highlight the fact that the indigenous person is "uncultured, savage, and non-Christian," a very derogatory vision. (Eremites de Oliveira, 2012).

3 Selected words because of their use in conversations with inhabitants of some regions in Brazil.

"sub-citizens." From this moment on, people are no longer protected by belonging to a Rule of Law —being citizens as part of a body that constitutes the nation, part of a people in a territory—, thus becoming susceptible targets to eliminate.[4]

Based on the theoretical-methodologic procedures used to elaborate this paper, it was a construction among multiple bibliographic sources from various knowledge fields —like Law, History, and Anthropology— aiming to strengthen the theoretical frame.

Likewise, oral sources were used as a research method through listening to the families of the missing indigenous victims, trying to customize those incidents that ended up being part of the rates of occurrence. Through the testimony, there was a process of reconstruction of the historical memory of the violence against the indigenous people.

On the other hand, the revision of the court proceedings was useful for the analysis of the criminal actions. Although, is essential to consider the objections against using these types of sources —including the nature of the source, as the criminal proceedings have inconsistencies and contradictions—, and it is understood that using them is necessary. As Grinberg (2015) says, criminal proceedings are sources with precise data about the victims, the accused, and the witnesses, issue that makes possible to exam the profile of the involved persons. Besides, this kind of exercise allows evaluating the justice system, the work of the judges, prosecutors, secretaries, lawyers, and other law enforcement agents.

It is relevant to note that the court proceeding it is not only useful for questions of law and justice, just as archives are not only valuable to guarantee the right to the truth and memory. On the contrary, as Osmo and Santos (2016) say,

> the judicial power can play an essential role in the guarantee of the right to the memory and the truth, from the clarifying processes, the acknowledging of the violations, and the recollection of testimony; from the right to economic, moral, and symbolic restitution; and the right to institutional reforms, through the identification of the responsible of the violations, and the dismissal of those agents from their public positions (Osmo and Santos, 2016, p. 11).

4 Referring to the expression used by Agamben, G., Homo Sacer. UFMG, 2010.

At first, violence was easy to identify, it was explicit; later, silence frequently covered it up in a country determined to ignore its cultural differences, thus exacerbating cruelty and devastation, becoming a part of the daily reality of the society.

The indigenous people and the State of Brazil

Brazil is multicultural and has deep roots inside the cultures of other people who inhabit the country. However, many of those people, including the indigenous, have been systematically victims of violence. At first, violence was easy to identify, it was explicit; later, silence frequently covered it up in a country determined to ignore its cultural differences, thus exacerbating cruelty and devastation, becoming a part of the daily reality of the society. (Stefanes Pacheco, 2009).

During the "development" of the process of occupation and colonization of the Nation-State, the indigenous people were forgotten. The creation and execution of policies for them were in the sense of nullification of the whole cultural, political, and legal system already in place. (Souza Filho, 1999; Stefanes Pacheco, 2004). Over time, the policies continued to be following an external logic, whose effects are still visible on the post-colonial period. The existence of social groups with their own identities and cultures was forbidden. Nothing particular was allowed; everyone had to assimilate and live within a unique generic identity, integrated into the national "community," as if all ethnic and cultural difference should be eliminated and transformed into a homogenized culture.

Information about the Guaraní and the Kaiowá

In Brazil, until the mid-70s (the dictatorship), it was believed that the disappearance of the indigenous people was unavoidable. Nevertheless, in the 80s, there was a trend in reverse in the demographic curve; since then, the indigenous people in the country have constantly grown, thus indicating a demographic recovery, even though some groups have less population, and others are in risk of disappearance.

According to data from the last census in 2010 by the Brazilian Institute of Geography and Statistics, Brazil has an indigenous population of approximately 896,917 people. It is relevant to note that it says "approximately" due to the

undeniable existence of isolated people, which makes difficult to know the exact number. The National Indigenous Foundation (FUNAI) works with the hypothesis of about 69 indigenous groups that haven't been contacted. Out of the total of self-determined indigenous, 324,834 live in the cities, while 572,083 live in rural zones, mostly in 695 areas recognized as indigenous land. However, several ethnicities still demand their lands. That is the case with the Guaraní and the Kaiowá, which never had their lands unmarked, so they continue to live in camps along the roads, deep into the estates, waiting for the official demarcation process, which could happen or not, and in some cases will take decades.[5]

These people, the ones in the cities, in unmarked areas, or those waiting for the demarcation processes, have a shared history of economic, social, and cultural exploitation.

Mato Grosso do Sul has a significant indigenous population of about 71,000 people. It includes the indigenous people of: Terena, Ofayé, Kadiwéu, Guató, Guaraní, Guaraní Ñandeva, Kaiowá, Kinikinau, Chamacoco, and the Kamba. The Kaiowá and the Guaraní, and the Terena represent the largest part of this population, being around 68,000 people, making them the two most significant communities in the country. (Fundação Nacional de Saúde [FUNASA], 2010).

The Guaraní and the Kaiowá are facing a situation of violence as the consequence of a set of factors, some more immediate than others. The main issue is the dispute for the property rights over the "traditional" territories.

For a better understanding of the process of land expropriation and the violence against these people, is significant to note that, in Mato Grosso do Sul, the supervisory body for the indigenous population, the Indigenous Protection Service, created in 1910, had as a policy to control the indigenous and their lands through a village creation system since the beginning of the XX century. There was a demarcation of eight areas intended for all the indigenous population. That way, the presence of the indigenous was not accepted outside the unmarked villages. Everyone, one way or another, had to submit to the mandatory relocation regime, using violence to get the things done for the handling body (Brand 1998; Pacheco, 2004).

5 Notably, the IBGE is just one of the sources of data about the indigenous population. It is an official source.

The investigation of the violence against indigenous people in Brazil identified that it is about long-time processes which come from the colonial period until today.

Agents of those agencies, Indigenous Protection Service and National Indigenous Foundation (established in 1967) were responsible for enforcing order over chaos; i. e., rule the social relationships in the called "borders of the country."

Since 1915, when the eight indigenous reservations were established, until the 80s, with an emphasis on the 70s, Guaraní Kaiowá territories were expropriated for private property. The indigenous lands were considered "unoccupied lands," or "lands of nobody," turning the old territories a "legal" object to trade from the State.

Without a doubt, the process of mandatory relocation started at the beginning of the XX century, the process of occupation of the territories of the Guaraní Kaiowá, and the freeing of the indigenous lands for the expansion fronts were the main responsible of the land expropriation. From these actions, the State justified the private property of the traditional indigenous territories.

The violence against the indigenous people and the Figueiredo Report

The investigation of the violence against indigenous people in Brazil identified that it is about long-time processes which come from the colonial period until today. However, the 60s were particularly significant for the history of the rights of these people.

First, due to the complaints and the corroboration of the acts of violence that this population suffered from the Indigenous Protection Service, the responsible body for their rights. The report of the Commission of Investigation of the Ministry of the Interior has the registry of the complaints, known as Figueiredo Report, presented in 1968. The Report revealed the SPI crisis, and the abuses committed against the indigenous people from the agents of this body since the First Parliamentary Committee of Inquiry of the Indigenous Protection Service in 1962 and 1963 became evident.

The Figueiredo Report is a collection of the documents produced, mainly from the investigations of the Commission of Administrative Investigation of

the Ministry of the Interior, presided by the Attorney General Jáder de Figueiredo Correia. The recollected documentation had many repercussions in 1968; nevertheless, they were considered lost evidence due to a fire in 1967 in the Ministry of Agriculture, the ruling body for the Indigenous Protection Service.[6]

At that time, the fire incident was suspicious. Many assumed the "fire" was a strategy to "burn archives," since it occurred where they kept the administrative files, videos, photographs, and other artefacts containing the processes and could be used as evidence against the officials of the Indigenous Protection Service, which were investigated by the Commission of Investigation led by Figueiredo. (Freire, 2011, p. 11).

Fortunately, the Report wasn't lost, and nearly 50 years later, in 2012, that collection of documents was found by the investigator Marcelo Zelic, from the Tortura Nunca Más Group, at the Indigenous Museum, in Rio de Janeiro. That "discovery" matches with a context of demand from the indigenous groups because of the documentation related to the human rights violations committed by the State of Brazil during the civic-military dictatorship, as well as the task force recently created by the National Commission on the Truth (CNV) to specifically address the issues about the countryside and indigenous people.

Some works take as reference the documentation from the Figueiredo Report. The most notorious is the Report from the National Commission on the Truth. The text, worked by Maria Rita Kehl (CNV, 2014: 203-265) —in collaboration with the Task Force of the National Commission on the Truth about Serious Violations of Human Rights in the Rural Area or Against Indigenous People— is part of Volume II of the collection of documents delivered by the Commission, and it makes a recollection of the relationships between the civil-military dictatorial regime and the indigenous people.

The Report of the National Commission on the Truth refers to the discovery of the Figueiredo Report and explains that, due to the limit of time for the function of the Commission and the extent of the documentation in the Figueiredo Report, its text couldn't be properly analyzed, thus the Report of the CNV would only use the synthesis presented by Jader Figueiredo Correia, former President of the Investigation Commission, to the Minister of the Interior.

6 Introduced by the Minister of the Interior, General Albuquerque Lima.

Another relevant work —and Master's Dissertation— is from Elena Guimarães, Report Figueiredo: between times, narratives, and memories, published in 2015. On her studies, Guimarães (2015) conducted a profound analysis of the two most significant moments during the period contained into the Figueiredo Report, 1) the divulgation of the investigation in 1968; and 2) the re-discovery of the documentation on 2012.

The work of the journalist Rubens Valente is also significant, Os Fuzis e As Flechas — História de sangue e resistência indígena na ditadura (The rifles and the arrows, a history of indigenous blood and resistance during the dictatorship), published in 2017. Valente (2017) uses the Figueiredo Report as a source in several parts of this text.

On the other hand, Valente's work talks about a historical period and a more extended region than the one in the Figueiredo Report, showing the path and the conflicts of diverse indigenous people during the period of the civic-military dictatorship.

It must not be forgotten that there is a recent production of articles, presented during various events and seminars about the topic that also use the Figueiredo Report as a source for research.

Concerning the violence cases perpetrated against the indigenous people registered in the Figueiredo Report, Guimarães (2015) points out the existence of endless violence cases; for example, sending children to work at the neighboring farms around the established settlements, against parental consent, as a way of punishment. Moreover, there are stories of beatings, torture with an instrument called "log," sexual abuses, and the killing of entire groups of persons through poisoning and viruses in contaminated clothes. Finally, equally severe, the Report reveals the dispossession of lands thanks to the fraudulent leasing contracts and the invasion of territories.

There are also military investigations to study the illegal sale of the indigenous lands, accusing public officials. Other evidence about the illegitimate appropriation of the indigenous territories is present in copies of the Justice Daily, attached to the Figueiredo Report, which even reveals some of the names of the criminals.

The violence against the Southern indigenous people in Mato Grosso and the Figueiredo Report

Regarding the violent acts committed against the indigenous people in the Southern part of Mato Grosso, Moraes (2015) says that, at the end of the decade of 1920, Protestant missionaries living in that region made a registry about the exploitation of the indigenous people without the proper intervention of the Indigenous Protection Service to avoid it. According to the narration of Gonçalves (2011), as quoted in Moraes (2015), "[the] civilized men have no mercy, they despise them, they treat them as savage and irrational animals. The inhabitants of the jungle don't have the protection they should, and they live being battered and despised by everyone." (Moraes, 2015, p.17).

The author adds that almost 40 years after the complaints of the missionaries, Jader Figueiredo Correia emphasized that:

> The indigenous individual, as part of the SPI, became a victim of real criminals, as they imposed a slavery regime, and denied the minimum life conditions compatible with the concept of human dignity [...] The SPI lived this "non-restrictions" regime for many years. There was abundant cruelty, as their history registered even crucifixions, and the physical punishments were considered natural acts in the indigenous settlements that created them. The beatings, no matter the age or gender, were part of the daily life, and only brought the attention when they were exaggerated, for example, when the person died or became disabled. (Figueiredo Report, 1968: 4912-4913, in Moraes, 2015: 12).

The author of the Figueiredo Report denounces the reality of total disrespect to Brazilian indigenous people's rights. In a certain passage, he emphasizes, "the indigenous went from being robbed to be enslaved; from slaves to free men, comforted by the catechesis, but without the conditions for their survival; from free and catechized men to a protected in our time." (Figueiredo Report, 1968: 6, in Moraes, 2015: 12).

Also, according to the writer of the Commission of Inquiry of 1967:

> [...] generally, the indigenous were not respected as human beings, serving both men and women, like pack animals, whose work was to serve the public officer. For women, it is even more outrageous, as the conditions were more inhuman. [...] Slavery wasn't the only form of exploitation. It was also common that the product of their jobs was usurped. [...]. As we constantly say, as if the native was an irrational being, rated far below the pack animals, which are attended as long it is related to their productivity, giving them certain cares and plenty of food. (Figueiredo Report, 1968:4913-4914, in Moraes, 2015: 13).

According to Moraes (2015), besides the results reached by the Commissions of Inquiry, the recollected registries contribute to a better understanding of the situation of the indigenous people living in Southern Mato Grosso. Likewise, they help to understand why the indigenous people of that Brazilian region have sought, consciously or not, to reinterpret, readapt, and give a new meaning to their lives in such unfavorable contexts.

About the significance of the Figueiredo Report for the National Commission on the Truth

For Resende (2015:495), the Figueiredo Report constituted a very relevant document about what happened to the indigenous people of Brazil before and during the civic-military dictatorship (1964-1985). According to the author, there is a hope that the Report may fill many of the history gaps, not only about the "physic and moral" violations but what is related to the loss and/or expropriation of their lands.

The author argues that the installation of the National Commission on the Truth favored the moment to bring back the painful memories of the crimes suffered, even those perpetrated during the period in the Figueiredo Report.[7]

7 The National Commission on the Truth was introduced on May 16, 2012, by the President of the Federative Republic of Brazil, Dilma Rousseff. It had two years to investigate the violations of human rights occurred between 1946 and 1988, which includes the dictatorship (1964-1985).

Maria Rita Kehl, one of the members of the Commission, says that due to the minimum systematization about this type of violations against the natives in Brazil, said Commission had to talk about the issue, highlighting for the non-indigenous society that Brazilian indigenous people were also beaten by State violence. According to her words, "this investigation needs continuity for the people to participate and being benefited by the transitional justice process currently developing in Brazil." (CNV, 2014: 203-265).

For Resende (2015: 511), indigenous people were finally included in the official discussions about the transitional justice processes, thanks to the final report presented by the National Commission on the Truth in December 2014, and as of it:

> The State responsibility for these historical violations begin to be determined, and some of them are already recognized by the courts, as the case of Paraná natives, who won in trial the reparations from the Unión, as well as from FUNAI, due to the mandatory relocations of the 70s and the contact made without the needed health care, which decimated more than half of the population. And the Aikewara, who received an official apology after the trial that recognized the acts of repression and the exception made by the State against the indigenous population as a whole. (Resende, 2015: 511).

"...indigenous people were finally included in the official discussions about the transitional justice processes, thanks to the final report presented by the National Commission on the Truth..."

According to Lima (2017), the Report of the National Commission on the Truth, published at the end of 2014, is an initial step for the State of Brazil to acknowledge the practice of a policy of extermination against indigenous people. The conclusions of the Report of the Commission show the natives as "victims" in the official narrative about the last dictatorship in Brazil. This represents a historical progress, as it recognizes the ideal of "integration" promoted by the State of Brazil as one of the forms of political persecution. Likewise, it approaches the collective dimension of the violations, establishing a frame to build a transitional justice for the indigenous people, considered individually. (Lima, 2017: 2).

In an interview with Elena Guimarães (2015), held by the Humanitas Unisinos Institute about the relevance of the Figueiredo Report, she notes, both from

the historical memory of the indigenous people approach and the action of the State related to these people:

> All the crimes of severe violations of the human rights pointed out in the Report were already known by society. The printed press of the time disclosed many of them, others, remain in the memory of the oldest, both indigenous and indigenists. Nevertheless, nothing was done to change those relationships. The Report leaves its mark because it is a recollection of documentation that identifies and recognizes the violence committed against the indigenous since the decade of 1950, in which the State of Brazil appears both as the direct author of the crimes through its agents; and the indirect author, because of the silence during the attacks of the landlords, the usurpers of lands ("grileiros"), the loggers, the collectors of rubber ("seringalistas"), as well as through the complot of them with politicians and powerful local people.[89]

The same author adds:

> The worse is the conclusion that such crimes are not "concrete." It is necessary a Commission for the Indigenous Truth that profoundly investigates the resistance history of these people, since the 1500s until today. Until this day, we can see the violence against the natives, the killing of many of them in several states, like the Guaraní Kaiowá in Mato Grosso do Sul; the Tupinambá, in the South of Bahía; the Tenharim in the Amazon; or many others who live with the prejudice and discrimination, helped, in part, by the prominent media. On one side, from 2012 to 2014, the CNV investigated the human rights violations against the natives; on the other hand, during the same period, the violence against those communities increased, as well as the attacks of the ruralist in the Congress, trying to

8 The people who forged documents to facilitate the dispossession of the lands from their original owners were called "grileiros."

9 The people who hired other people to work with the trees to extract the natural rubber were called "seringalistas."

> pass the bill of a constitutional amendment, and also the actions from the Legislative power, through the ruling of the Federal Supreme Court (STF) of determining as temporary frame for demarking of lands the territories that had being occupied since 1988.

Guimarães concludes with a question and a warning:

> Until when will we continue to be witnesses of the usurpation issues and the battle for the land, and the violence against the indigenous that increases day by day? When will the State of Brazil officially recognize these lands, according to the provisions of articles 231 and 232 of the Federal Constitution of 1988? As long as there is not a public recognition from the State, and there are not effective reparation measures in place, we will revive the practices of the past into the present.

The ongoing violence

At least since two decades ago, the tragedy of the Guaraní Kaiowá people have been exposed from the intellectuals and non-governmental organizations, among other sectors. The projections of a large population in a demographic explosion, inhabiting tiny portions of land, lay the path for a silent genocide. Relocated and submitted to a system that imposes itself violently repressing any form of organization, the Guaraní Kaiowá face a series of misfortunes that have been systematically denounced by diverse support bodies and agencies for the indigenous cause.

Amnesty International highlights this violence in its reports. Recent data shows:

> There is not a single month in which Amnesty International does not get new complaints of violations against the Guaraní Kaiowá communities in Mato Grosso do Sul. Through the last decade, our organization have registered murders, death threats against indigenous leaders, slavery, malnutrition, violent evictions, and the destruction of plantations and other properties. With the stalled court proceedings, more than a thousand families live

> next to the roads. They have been threatened by security guards, hired to prevent them from occupying their lands; also, they have health issues due to their life in temporary shelters, without health care. Besides, many died or were injured in traffic accidents (Amnesty International, 2017)

And they add:

> The situation of the Guaraní Kaiowá in Mato Grosso do Sul is emphasized as one of the most appalling violations of rights protected by national and international laws. Likewise, in the past, representatives of the Brazilian Government assured Amnesty International that is possible a solution for the situation in Mato Grosso do Sul. The longer the authorities continue postponing it, more lives will be lost.

Recently, the Report of Amnesty International 2016/2017 informed that the UN Special Rapporteur on the rights for indigenous people, in the observations made during his visit in 2016, denounced the inability of Brazil to demarcate indigenous territories and the weakness of the state institutions who are responsible for protecting the rights of these people.

In this same sense, the Brief Report on the violations of the Human Rights of the indigenous Kaiowá Guarani peoples in Mato Grosso do Sul — Brazil, produced by the Consejo Indigenista Misionero (CIMI) —in which one of the objectives was to inform to the international community about the reality of violence for these people— when quoting data from the Ministry of Health, highlights that between 2000 and 2013 more than 660 indigenous persons killed themselves in Mato Grosso do Sul, with an average of one each 7.7 days. It also emphasizes that in the last 12 years, there was a murder every 12 days, a total of 361 people. The registry of these facts was in an environment of 150 identified conflicts of territorial disputes. It warns that at least 16 Guaraní Kaiowá leaders were murdered in the last decade, by the farmers or their employees, under the scope of the State.[10]

10 Please note that this report is only one of the indicators of the violence process in Mato Grosso do Sul.

Anthropologist and indigenous leader Tonico Benites (2015), in an article published in a newspaper, denounced the violence against the Guaraní Kaiowá in Mato Grosso do Sul, mentions that some *Tekoha* were attacked, and list the names of the leaders killed in the last decade; murders perpetrated by agents of criminal organizations since the 2000s, according to the author. Benites (2015) says that "the actions repeat in the last years, without being punished by Federal Justice, which is the competent authority to judge and punish this type of crimes."[11]

Amongst the cases mentioned by Benites (2015), the ones of violence and forced disappearance of two indigenous from the Guaraní Kaiowá ethnicities are the most notable: the one of the Professor Rolindo Vera, in the Ypo'i Tekoha; and leader Nísio Gomes, in the Guaiviry Tekoha.

In both crimes, until today, their bodies are missing, which shows the omission of the State, as well as the violence it practices. Also, these cases were useful to demonstrate they are not isolated, but they are part of a State policy taken to the extreme, whose goal is to repress the rights of the indigenous and the territorial mobilizations through the deliberate use of violence.

Brief considerations about the crimes committed against the indigenous Rolindo Vera y Nísio Gomes

The acts of violence recently mentioned occurred in the context of the mobilizations of the Guaraní Kaiowá since the 80s, when, facing the extreme adversity, they proceeded to create movements to fight for the possession and demarcation of their territories, as the borders of the country expanded.

Tired of waiting for the painfully slow bureaucracy, they decided to re-conquer their space, their Tekoha. To this end, they reoccupied their diverse traditional areas, a current process.

11 Tekoha means the place where is possible to copy the Guaraní Kaiowá way of life. The prefix Teko represents a set of rules and customs, and the suffix 'Ha' means "place." Thus, if the Tekoha is the place where is possible to copy the Guaraní Kaiowá way of life, without Teko, the Tekoha is not possible; also, without Tekoha, the Teko is not possible. (Pereira y Mota, 2012).

Tonico Benites (2015) emphasizes that the reoccupation of the lands is, historically, a way to pressure the Federal Government to accelerate the acknowledging processes of the Guaraní Kaiowá territories at the South of the state, "the decision of the reoccupation of these territories is made because the communities are no longer willing to wait for the official recognition of their lands. That way, in front of the negligence of government institutions, this strategy have been used by other people through all the country." (Harari I. & Klein T., 2015).

However, from the second the reoccupation of lands became more intense, the rural landlords began to plan retaliation strategies, structuring their armies to repel reoccupations, with strict surveillance of the natives. (Moreira Silva, 2002, in Stefanes Pacheco, 2004).

About the Rolindo Vera's case, it is known that on October 29, 2009, a group of approximately 25 members of the Guaraní Kaiowá communities re-occupied their traditional territories near to the Paranhos municipality, in Mato Grosso do Sul. The next day, they were surprised by dozens of armed men, and they had to run to one of the nearest forests.

Members of the community say they saw Professor Genivaldo Vera being taken away with violence by the "gunmen," while his cousin Rolindo Vera, also a professor, managed to escape to the forest.[12]

The body of Genivaldo Vera was discovered a week later, on November 7, 2009, at the river Ypo'i, near to the site of the conflict. According to the police investigation, sustained by the expert evidence, "he died because of a shot in his back, which came out through the chest, causing fatal bleeding." The photographs of the Civil Police show that his head was shaved and his body had countless injuries.

Despite the constant searches for the body of Rolindo Vera —by the Federal Police, with support of the Army and the Fire Department—, he still hasn't been found.

After his disappearance, the community feared that he would have been abducted and taken to Paraguay, due to their proximity to that country. However, after many years, his family lost their hope to find him alive.

In this case, six people were accused by the Federal Public Ministry (MPF) because of their participation in the attack to the Ypo'i indigenous community

12 These data are in the criminal process followed by the Federal Court of Justice of Punta Porã/MS.

and the assassination of the indigenous professors Genivaldo and Rolindo Vera. Amongst them, politicians and landlords of the region were accused of first degree murder —the victim couldn't defend himself—, the concealment of the bodies, use of firearm and injuries against adults, according to the MPF (2011).

Some of the defendants and other unidentified people arrived at the scene in trucks and vans, shooting with at least seven firearms of various calibers (12, 32, 36, 9 mm Luger, 30, and 38), and attacked the group of 50 natives. Mario Vera, 89 years old, was beaten with a club in back, shoulders and legs. During the persecution, the landlords and politicians of the region received the support of the municipality with one official vehicle.

On the other hand, concerning the case of violence against the chief Nísio Gomes, it happened after an attempt to re-occupy the Guaiviry camp, inside an area in a native forest that today is a rural property, located at the border of the MS-386 road, between Ponta Porã and Aral Moreira, in the Southern part of Mato Grosso do Sul.[13][14]

The investigations show that, after the occupation of the area by the indigenous community, on November 1, 2011, a group led by landlords began a series of actions intended to promote the violent withdrawal of the indigenous. The group of landlords had several meetings, phone calls, and meetings.

On the early morning of November 18, 2011, the action began. The purpose was to expel the indigenous through violent means. When they arrived at the occupied area, walking through a trial —a way into the camp—, the armed group approached Nísio Gomes, and according to the official registries, there

13 Criminal action no. 000197-86.2012.403.6005, held before the 1st Federal Court of Justice in Punta Porã/MS, promoted by the MPF versus 19 defendants, among which were the executors or those who ordered the murder of the indigenous Nísio Gomes, on November 18, 2011. The criminal action comprised 15 volumes, with approximately 300 pages each one. It is in the instruction phase due to the crimes of criminal organization (art. 288) —Crimes against public peace— Criminal procedural law with the person under protection, according to disposition No. 155/2013, art. 1ª. Available at: http://www.jfsp.jus.br/foruns-federais/ (consulta el 15 de enero de 2018).

14 The Guaraní Kaiowá claimed the Guaiviry indigenous area since 2004. According to the leaders, the area was demarcated as indigenous since the XIX century, but in the decade of 1910, with the creation of the Amambaí Indigenous Land by the Indigenous Protection Service (SPI), the Guaiviry population was transferred there, then the formerly occupied area was considered as "returned" [to the State].

was a confrontation. The body of the indigenous leader hasn't been found until today, not even through the searches, which included Paraguay.

In this case, the Federal Public Ministry of Mato Grosso do Sul accused 19 people. The complaint states that amongst the participants in the disappearance of the chief there are some landlords, lawyers, public officers, thugs, and the owner of a private security company, which is classified as an armed militia by the Federal Public Ministry because of its similar performance in other indigenous communities.

Out of the 19 defendants, three were accused of first-degree murder, bodily injuries, corpse concealment, holding illegal firearms, and bribing witnesses; other four were presented for first-degree murder, bodily injuries, corpse concealment, and holding illegal firearms; finally, 12 were charged for first-degree murder, bodily injuries, criminal organization, and holding illegal firearms.

Tonico Benites (2015), about the various attacks against the Guaraní Kaiowá during the lasts years, highlights:

> In the historical context of the dispute between the natives and rural landlords in Mato Grosso do Sul about the possession of the lands, mentors and authors of the violent attacks on the indigenous communities are stockbreeders, politicians, rural landlords, who are also educated and highly specialized in stopping the demarcation process for the indigenous lands. Above all, they are specialists in practicing extreme violence, attacking, massacring, and expelling the indigenous from their lands.

In relation to the attacks against the indigenous leaders, the issue was published by Campo Grande News, on September 2, 2015, with the header "Since the death of Marçal, 31 years ago, 12 indigenous leaders have been murdered;" the information said, "Not being enough the deaths by suicide, malnutrition, and internal violence generated by the process of mandatory relocation that put the indigenous within little areas, the Guaraní Kaiowá and Terena communities suffered the murder of, at least, 12 leaders in the last 32 years." (Maldonado, 2015).

The act of "disappearing"

The analysis of diverse cases of violence against indigenous leaders in confrontations during the territories claims exhibited a "new" practice of violence, the act of "disappearing" members of the indigenous society as a strategy to destabilize the communities.

The practice of this type of violence is characterized as "forced disappearance." According to Vargas (2016, p. 23):

> "Forced disappearance reveals the bordering status of the inhuman condition in a practice exerted by both civilian and military groups, who in behalf of the State or with its permission leaves the individual in a situation of deprivation of liberty through the abduction or illegal detention, preventing him to exercise his rights and the access to his guarantees during or after the criminal offence."

The author adds:

> "The forced disappearance of people is a particularly severe and complex violation of multiple human rights, even those non-abolishable, like the fundamental right to life, protected by treaties and conventions, from both human rights and humanitarian international law. Besides, it is a continued or permanent violation until the location or status of the disappeared victim is determined. (Prefácio Cançado Trindade In Jardim, 1999, p. 12 apud Vargas, 2016, p. 33).

According to her:

> In Latin America, this practice is rooted amongst various political, ethnic and racial groups, as well as women and men of diverse age groups; the forced disappearance of kids is one of the most obscure variants of this type of crime, because the children may not end being killed but losing their original identity. (Vargas, 2016, p. 16).

Following the report elaborated by the Latin American Transitional Justice Network, forced disappearance must be classified as a crime that generates a state of social terror. This condition is evident thanks to the high number of victims and the impunity this represents. (Vargas, 2016, p.13).

The principal documents of international law define forced disappearance when it applies systematically and generally, and it is the product of the actions of state agents or individuals with government's consent, or any other kind of connivance from the State.

To mark it as crime, the author argues it is necessary, "at least, to have three conditions," a) deprivation of liberty; b) participation of state agents or groups or individuals with State acquiescence; and c) denial to recognize the detention and to reveal the status or location of the person submitted to such condition." (2016, p.64).

Matching the cases here presented, especially the ones of the Guaraní Kaiowá, Rolindo Vera, and Nísio Gomes, the question is, from what point these practices of "forced disappearance" constitute a practice of violence perpetrated against the indigenous people through history, only updated, and remains as an abuse habit committed with State of Brazil's consent?

It is because of this violence is practiced in the XX century, under the consent of a democratic State, that these crimes are not exclusive to dictatorships, but they continue happening in democratic regimes. Besides, the families of the victims —who are also victims— have a narrative of fear, pain, and suffering, especially because they don't know where their relatives are. It is relevant to highlight that these families, besides the psychological trauma, they haven't received help from the State.

It is clear that, from the "forced disappearance" and the absence of the bodies, there is a relationship based on grief and the search for justice between the families who are victims of this violence. Thus, to live in grief translates as a claim for justice, because the lost originated in an action classified as unfair, therefore subject to reparation.

About the protection of human rights

Human rights are the fundamental base of the democratic State, and they are part of the public political agendas in several countries. It is, then, a complicated task to think in a society alienated from the protection mechanisms for human rights.

The notion of human rights, summarizing, is characterized by being related to the established inherent rights for a human being, which have to protect the physic and psychological integrity before his/her peers and the State. They are rights that the political society should respect and guarantee. Deep down, it is about guarding the core values of the human condition.

From the perspective of the protection of these values, the International Convention for the Protection of All Persons from Enforced Disappearance, like every UN treaty, establishes the need to fight against impunity in this type of cases, reinforcing the victim's right of access to justice, to a reparation, and to know the truth of the circumstances that surrounded the facts, as well as the freedom to search, receive, and disseminate information related to the crime. In its Art. 2, it defines that forced disappearance occurs when:

> [T]he arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The International Convention for the Protection of All Persons from Enforced Disappearance is a legally binding international instrument for internal order. In its Art. 1 stipulates that no one shall be subjected to forced disappearance because it is a violation by itself. (Vargas, 2016, p. 53).[15]

15 With the Decree no. 8767 on March 11, 2016, the International Convention for the Protection of All Persons from Enforced Disappearance is part of the Brazilian law (Brazil, 2016).

Conclusions

The debate about transitional justice has increased over the last years in the whole world. Multiple countries that lived civilian and military dictatorships, authoritarian and discriminatory regimes, are now facing the question of how to deal with such a violent legacy.

So, through the cases presented in this paper, it is highlighted that violence has a face and a name, and it is fundamental to identify it that way. Transitional justice is a set of legal and political procedures whose objective is to assist in that transition, revealing the committed crimes, particularly by the State, repairing the victims, and generating the conditions for a new social pact. (Araújo, 2012, p. 145).

The elements that support transitional justice are truth and memory, justice, integral reparation, and no-repetition warranties. It indicates that the cases of violence against indigenous people deserve special attention.

As Osmo and Santos emphasize (2016, p. 9):

> Transitional justice is a study field and a practice shaped in the last decades of the XX century, surrounding the question of how to deal with severe crimes perpetrated in the past and their consequences, within the transition periods from an authoritarian and repressive regime to a democratic one, or during peace processes after civil conflicts, always considering the objectives of determinate responsibilities, repay the victims, strengthen the democracy, and avoid the repetition of such crimes.

Mendez, (1999) and Osmo and Santos (2016, p. 10), clarify that:

> Judicial and extrajudicial mechanisms of transitional justice are often organized in four categories or axes —(I) justice, (II) truth and memory, (III) reparation to the victims, and (IV) institutional reforms— related to the entitlement rights of the victims and the affected society to (1) see justice, especially, concerning the individualization of responsibility and sanction for the authors of the crimes; (2) to know the truth about the violations, and the preservation of the historical memory; (3) to receive

financial and symbolic reparation; and (4) to have institutions reorganized and susceptible to accountability.

Also,

> the transitional process has four essential dimensions, reparation, truth and memory, justice and reestablishing equality before the law, and, finally, the reform of the democratic institutions. (Abrão; Torelly, 2011).

Transitional justice establishes a relationship between past, present, and future. Thanks to it, history is discovered, memory remembered, and truth "revealed." In that sense, as Demétrio Alexandre and Kozicki (2015:12) say, "the right to memory, truth, and justice arises as a possibility to comfort the victims and contribute to a more democratic society."

Transitional justice establishes a relationship between past, present, and future. Thanks to it, history is discovered, memory remembered, and truth "revealed."

About the forms of transitional justice, on Abrão and Torelly (2011) point of view, it is composed of four pillars, reparation; construction of the memory by offering the truth; justice; and the reform of the institutions responsible of human rights violations. These are the essential premises to reach the apex of transitional justice.

The UN Secretary-General, Kofi Annan, defines transitional justice in his report of 2004:

> [T]he full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals or a combination thereof.

The crimes committed against indigenous people through the historical process, either by action or omission of the State, indicate that this violence has

faces and names, and we can understand the relevance of identifying it; that is its significance for the transitional justice's processes.

Thus, even knowing the critics of some scholars around transitional justice, it must not be rejected or discredited at the first approach but improved.

For example, we propose that the historical progress the CNV represents must be accepted, at the same time, it is necessary to insist on the details of the issue because, by recognizing the collective dimension of the human rights violations perpetrated against the indigenous people, it is impossible to dissociate the ethnic condition of such violations. (Calheiros, 2015).

When deciding to work to achieve a transitional justice for the indigenous people, it must be accompanied by the restitution of the territories that were recently expropriated, like the Guaraní Kaiowá case, besides the effective reparation of the damages, without leaving aside the need of more efficiency in the judiciary's works, which shall thoroughly consider the rights of the indigenous

Said works could be, in the first place, on the legal sphere, taking actions directed to determine the criminal responsibility of the authors of severe violations to the indigenous people's rights; and, in the second place, as emphasized by Olmos and Santos (2016), on the various non-legal actions related to other public measures or policies of transitional justice, including the restitution of the territories as fundamental parameters for an effective justice in these cases.

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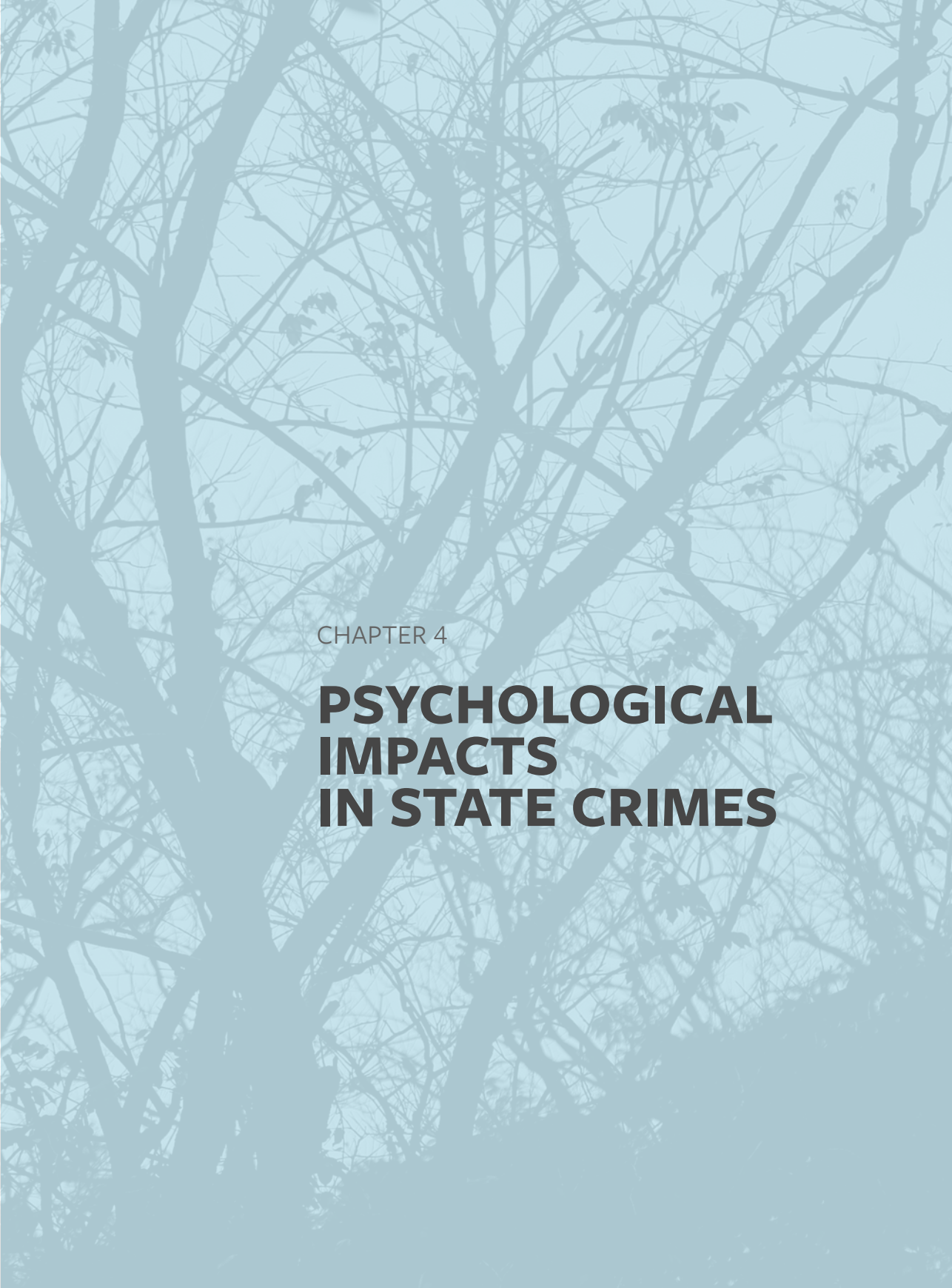

CHAPTER 4

PSYCHOLOGICAL IMPACTS IN STATE CRIMES

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IMPORTANCE OF THE RIGHT TO THE TRUTH FROM A PSYCHOSOCIAL POINT OF VIEW

Norma García Flores and Valeria Moscoso Urzúa

Introduction

At what moment did truth begin to form as a right, and what does that mean?

In context, the concept —a right to the truth— born from the diverse transition processes after dictatorships and armed conflicts in Latin America, meaning, specifically, the need to know the causes of said regimens and the circumstances of the numerous human rights violations during these periods.

Nevertheless, the notion of truth was born way before due to the horrors of the Holocaust, the big wars, around the world, or even from the various independence battles in the XIX and XX centuries.

In that sense, beyond the judicial formalization of this idea through the different treaties developed during the last decades, and acknowledging the significance of the legal work done to obtain judicial truths in the diverse human rights violations scenarios, it is vital to identify and reflect about the multiple dimensions and environments in which the truth is built, shaped, and energized. Likewise, it is necessary to question ourselves about the implications of truth in people's lives, especially regarding the psychological structure of the individual, both individually and socially.

From this last point, and from those less flexible definitions that could set certain conceptual limits, the objective of this text is to blur those limits, thus

allowing us to understand the movements of back and forth between the public and private, objective and subjective, and the individual and social aspects of the notion of truth.

Our conceptualization of the truth as a right

In the 60s, when the practice of forced disappearances began in Latin America, the concept of a right to the truth increasingly became the object of the attention of international and local human rights bodies, as well as the headlines of special procedures mandates.

Particularly, the ad hoc Working Group of the United Nations —in charge of studying the situation of human rights during the civil—military dictatorship in Chile (1973-1990)—, along with the Working Group on Enforced or Involuntary Disappearances, and the Inter-American Commission on Human Rights developed a significant doctrine about this right in relation to the forced disappearance criminal offence.[1]

First, these mechanisms established that the legal basis for the right to the truth was on articles 32 and 33 of the Protocol I to the Geneva Conventions of August 12, 1949, which talk about missing persons during war conflicts, as well as the rights these people have in terms of search, identification, and recovery. This international drive helped to formally establish the obligation for the States in conflict to search for missing people of both sides of the armed conflict.[2]

Both from the legal and political points of view, the basis to establish the right to the truth was found on two dimensions that captured the attention of the international human rights bodies. One of these dimensions is linked to an individual context, which claims the right of the people to be searched and restituted to life itself, as well as the right of the relatives to know the luck, destiny and/or location of the victims; to know the facts and actions committed against them;

1 The Right to the Truth.. Report of the UN High Commissioner for Human Rights.

2 In that sense, the International Committee of the Red Cross and the Red Crescent Societies have highlighted that the obligations for the participants in conflicts apply both to international and regional conflicts.

and, whenever it applies, the dignified restitution of the remains. Under this perspective, the first steps to build the right to the truth were related to a right to mourn and to dignity for the relatives.

The other side, which transcends the sphere of privacy, establish the right to know what happened for the community. Being this possible by highlighting the necessity, both individual and collective, to know the causes that lead to the oppressor and/or authoritarian regimes, the circumstances in which the innumerable violations to human rights happened during those periods, the truth about horrendous state-sponsored crimes, as well as who were responsible for these and their motives, which, in theory, allows society to generate coping mechanisms to avoid these facts to keep happening.[3]

On this basis, the right to the truth has been recognized explicitly in diverse international treaties and, more recently, regarding not only the context of the forced disappearances but moving on to other human rights violations, like extrajudicial executions and torture. In this way, the goal is to work so the victims know the truth about the actions and who is responsible for each one of them (ONUDH, 1966), thus aiming to continue whit other aspects, like the fight against impunity and the right to total compensation. [4]

...what most of the laws really protect is freedom to access information, which entails the right to ask for and receive information, under the assumption that it constitutes the legal basis for the right to the truth.

At an internal level, even though in some countries the right to the truth is constitutionally protected, what most of the laws really protect is freedom to access information, which entails the right to ask for and receive information, under the assumption that it constitutes the legal basis for the right to the truth.

In Mexico, specifically, the General Law for Victims (for the missing people cases) establishes the right to the truth explicitly and for the first time in a regulatory document. However, the articles have limitations, framed by the Transparency and Access to Public Information Act, along with the assumptions that it would possibly affect homeland security and the reasons for confidentiality

3 Study on the right to the truth. Report of the UN High Commissioner for Human Right.

4 For example, basic principles and guidelines about the rights of victims of violations of the human rights international laws and humanitarian international law establish that satisfaction includes "verification of the facts and full and public disclosure of the truth," acknowledging that every people "has the inalienable right to know the truth about past events."

for files in a not completed process. (Cantú, 2016). This can be seen as merely illustrative, and no more than empty words for victims in their reality.

Although the recent passing of the National Guard makes our country to go backwards regarding general freedom and rights for the people, the same is true regarding the scope of the right to the truth. While the intervention of the armed forces in public security matters is being legalized, the access to the information and investigations of their acts is limited through the mentioned Act.

Validation of the own reality and its articulator function in psychological life

As human beings, our sense of reality, as well as our place in society, is related to a series of identifications and symbols that we begin to establish since we are born and, unconsciously, in our daily interaction with people around us.

Through these series, we get a sense of belonging needed to learn and internalize concepts, ideas, rules, guidelines, or norms that organize both individual psychological life and social interaction, thus giving us the ability to understand how to act; for example, when we relate actions to consequences, and when we link them to given figures.

Even before our language ability is fully mature, when we use that logic and apply it, we receive the approval of people around us, and their recognition of our actions; so, people around us acknowledge us as part of that logic and, therefore, as part of a given group or social space.

This dynamic helps us to perceive and build ourselves as an individual being part of a collective; i.e, the acknowledgment from other people allows us to recognize, to structure, and to maintain all we develop, including our sense of reality.

Now, all this process is limited to family relationships and involve figureheads and wider spaces, which, in turn, react to a certain social order.

We, progressively, learn to regulate our acts, widen our development spaces, we acquire a sense of the reality; at the same time, we build different notions of what is the basis for that reality, like the authority, through the development

of the relationships with our parents or caregivers, teachers, doctors, idols, rulers, etc.

This way, when we are no longer kids, we already have a defined idea of the functions of the social dynamics, which entails all the experiences and knowledge we have. Authority is established as a regulatory agent for our lives and actions (represented by the government, law enforcement officials and the concept of State). We understand that State agents have to protect us; that obeying rules are for our benefit; that actions have consequences; and that we will not be hurt if we do not hurt other people.

Taking this scenario as a basis, what happens when the State —the main regulatory body and the one appointed to protect us— not only have its "normal" function compromised, but acts as opposed to the principles that constitute it, by denying recognition to its citizens? How does the right to the truth operate to validate reality, and in the psychological structure of the individuals?

When the State does not sanction or even participates in acts of violence or human rights violations, it breaks these rules and society's trust.

The role of the State and the right to the truth in contexts of violence and human rights violations

In the rule of law, the legality of rules of civil coexistence protects people and limits the State, which has an impact over both the individual psychology and the collective subjectivity, working as the basis for the psychological need of security and the fundamental beliefs of a fair, kind, and predictable world. To break these rules has a destructive effect which generates consequences both individually and in society as a whole. (Gómez, 2009).

When the State does not sanction or even participates in acts of violence or human rights violations, it breaks these rules and society's trust, conveying —both to people and perpetrators— that it approves, or at least tolerates, these acts by no recognizing behaviors that violate the rights, or by showing that these behaviors will not be punished, thus preventing to record them in history and society's mind.

...the truth is significant to people that have suffered violence because "an important part of the elaboration process for these events has to do with the legitimization and social recognition that the traumatic fact actually happened."

In these contexts, besides losing confidence in secure social interactions under the State's guard, the development of a sense of belonging and social cohesion is hindered, affecting the social fabric, limiting possibilities to acknowledge each other, and even denying reality for these people, thus affecting the structures that supports the psychological life of individuals and groups.

According to Bettelheim (1979:28)

> "To see that the belief system of an integration, which supposedly protects it against its anguish at death, not only stop fulfilling its purpose but, even worse, tries to destroy the person psychologically and physically, could be shattering to his integration. Then you feel that there is nothing left to offer you protection. Besides, we can no longer be sure that we will know again what we can trust and against what we should defend... Things change when we prove to ourselves that the trust we put on men and society is merely a false illusion."

By accepting impunity for violence, the State stops protecting people, telling them that it is ignoring their suffering and taking away the possibility to resignify the facts, to give them a sense into their lives —both individually and socially—, to repair (even symbolically), and blurs the limits between what is allowed and what is forbidden, even between what we consider real or not.

Hence, it is fundamental to understand that the truth is significant to people that have suffered violence because "an important part of the elaboration process for these events has to do with the legitimization and social recognition that the traumatic fact actually happened." (Bekerman, 2002:169). On the other hand, it is fundamental to understand that the notion of truth is directly linked to the recognition of what each person considers as reality, but also others —the State and its institutions, as well as society— give an account of what we tell, by acknowledging us, hearing the story of our experience, and seeing it as the truth. If the possibility of expressing that experience is denied arbitrarily (by

ignoring it, hiding it, or seeing it as false), then deep feelings of anguish and conflict are generated.

For those that have been victims of violence and violations to their rights, the minimization, denial, or the lack of audience for their stories means that what happened is not being recognized, nor them as individuals. Consequently, this lack of truth is not only the denial of a story, a fact, or a given narrative but, in the end, it is a denial of other's reality and their existence.

The word, the experience, the suffering, people's lives, when in doubt by their peers and who are supposed to protect their integrity and security, makes individual and groups live an inconsistent and contradictory experience that is highly traumatic, as their acquired knowledge through their development and social involvement is void of meaning.

Even when violent actions stop, the lack of recognition and integration of that truth in history excludes the existence by being always in doubt, making the victims and the society as a whole to move through that double existence where is virtually impossible to retrieve the secure things in life and the world.

...this lack of truth is not only the denial of a story, a fact, or a given narrative but, in the end, it is a denial of other's reality and their existence.

In this way, the State uses the official history as control and exclusion method when it continues to deny the truth of the victims when it talks about the past and transmits it to society and new generations. These voids or silences conduct both individuals and society to build their memories in a blurry way, (maybe) recognizing violence and human rights violations, but without clarity about their causes, actors, and consequences, creating a social fabric of forgetfulness and with the prevalence of omissions.

Thus, the lack of truth denies the victims the possibility to build their history, and, at the same time, society can not acknowledge its own history, either.

Challenges facing the fight for the right to the truth from a psychosocial point of view

The psychological and social effects of violence and State crimes are directly related to a loss of sense and security about life. Within this, the denial and concealment of the truth constitute an essential element that seeks and derives in the submission and deterrence of the demand for rights, to ensure to groups in power the transmission of fear and uncertainty to the next generations.

While the institutional system hinders, both individual and social psyche, to recognize their reality, generating a deep void, it is the same affected people, the victims, the groups, the ones that have driven the restructuring tasks, fighting to find the truth and for it to be recognized over the attempts to silence it.

Although the current global scenarios are not encouraging, the experience acquired by our countries leaves us numerous lessons as a basis for the future, from both a legal-institutional and alternatives points of view. In this context, one of the main challenges from a psychosocial perspective is the strengthening of the search mechanisms and the acknowledging of these truths, from hearing the victims to reconstruct the social bond from new approaches.

"To fight against impunity, it is essential to heal the wounds from each person, but also society as a whole. It implies to show the facts that have been buried by the official lies, and this is only possible if the search for justice, recovery, truth, historical memory, and total compensation as part of a social, politic, and legal strategy that helps to create a politic culture based on justice, dignity, and the appropriate conditions to no-repeat" (Correa, 2015: 12).

The creation and appropriation of new channels for the victims' truth are one of the many challenges to face. It is essential to make efforts to know and share the censored realities from the organizations, collectives, and society itself, by documenting and systematizing those realities, thus disproving and 'delegimitating' all the lies that the governing powers have built, at the same time, generating spaces for the victims and their communities to cross the official history barriers, so we can practice and make effective that that is called the "right to the truth."

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EXPERIENCES

ON JUSTICE, TRUTH, AND MEMORY

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First edition, January, 2020.
Made in Mexico.

In March last year took place the seminar "Impunity now and then, experiences from the global South of justice, truth and memory when facing crimes committed by the state" in Mexico City. The texts contained in this work are the outcome of the contributions made by the experts from the various countries that are members of the RLAJT.

The presentations shared during the seminar were compiled in this book following an academic format, and contain experiences from Argentina, Brazil, Chile, Colombia, El Salvador, Guatemala, Mexico, Peru, and Uruguay, regarding how these societies addressed the atrocious crimes committed during military dictatorships, internal armed conflicts, and/or authoritarian democracies through policies on justice, truth, and memory.

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REDE LATINO-AMERICANA DE
Justiça de Transição

30 años
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ARTICLE 19