

IIHR

Inter-American Institute
of Human Rights

Contribution of Truth, Justice, and Reparation Policies to Latin American Democracies



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Contribution of Truth, Justice, and Reparation Policies to Latin American Democracies

Inter-American Institute of Human Rights

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Index

Foreword	7
Introduction	
Truth, Justice, and Reparation: Democracy and Human Rights in Latin America <i>Carlos Martín Beristain</i>	11
Argentina	
Past and Future: Central Issues of the Present in Argentina <i>Patricia Tappatá de Valdez</i>	47
Chile	
Truth, Reparation, and Justice: The Past Living in the Present <i>Elizabeth Lira</i>	81
Colombia	
Transitional Justice without Transition? The Colombian Experience in the Implementation of Transition Measures <i>Nelson Camilo Sánchez and Rodrigo Uprimny Yepes</i>	121
El Salvador	
Transitional Justice? Traditional Impunity? <i>Benjamín Cuéllar Martínez</i>	153
Guatemala	
Lights and Shadows on the Road to Truth, Justice, and Reparation <i>Mónica Leonardo</i>	181
Paraguay and Ecuador	
Shared Memories: The Truth Commissions of Paraguay and Ecuador <i>Alejandro Valencia Villa</i>	203
Peru	
The Case of Peru: Schedule and Difficulties of a Transitional Agenda <i>Rolando Amés Cobián and Félix Reátegui</i>	233

Foreword

In 2003, the study on the *Current Overview of Human Rights and Democracy* incorporated the IIHR institutional view on what was called “treatment of the past” for the registration of serious human rights violations in Latin America and the Caribbean in the following terms: “Old tensions of decades of authoritarianism and internal armed confrontation have not been completely resolved (...) Peace accords have not been fully effective in putting an end to internal confrontations, and efforts to establish truth commissions and adhere to recommendations are falling short. In some cases, remains of repressive structures and untreated structural causes are still standing.” Such overview echoes a recent past rooted in numerous political conflicts in the region, expressed through excessive power of repressive dictatorships and a large number of victims of human rights violations who have not been given acceptable answers or compensation in terms of truth, reparation, and justice.

In this context of suffering and hardships yet of democratic efforts from a mixed group of social and political stakeholders, the Inter-American Institute of Human Rights (IIHR) has developed –since its foundation more than thirty years ago– a wide variety of actions to train, support and provide technical assistance not only to human rights organizations assisting victims and seeking justice but also to institutions, especially commissions established in several countries that found their way to democracy starting in 1983.

With concern, the IIHR has kept track of human rights commitments by parties in the different peacemaking processes, especially those accounting for systematic violations, realized in the work of truth commissions in Argentina (1983), Chile (1988), El Salvador (1992) –with the participation of our honorary president and founder Thomas Buergenthal– Guatemala (1996), and Peru (2001). More recently, it has been familiarized with similar efforts in Colombia, Ecuador, and Paraguay. It has contributed significantly to documenting experiences from truth commissions in the continent by monitoring agreements and recommendations, investigation and publishing production. In different academic events, issues such as impunity and rights to truth and justice have been addressed, particularly at the Interdisciplinary Course on Human Rights in the last decade of the Twentieth Century.

An important trend in the work of the IIHR is focused on assisting victims of human rights violations both through indirect support to establishing or strengthening civil society entities that had filed cases before internal and Inter-American justice and through specific actions, including project *Comprehensive Attention to Victims of Torture*, in line with psycho-social support to individuals in criminal proceedings under the Inter-American system. This means facing the consequences of this historical period prevailing today as impunity in many countries in the region. Such project included preparation of methodological guidelines for psycho-social and legal monitoring actions, psychological support, publication of comparative studies, expert exchange activities, and trainings (courses, workshops, roundtables, seminars). Another project along the same line throughout 2006 was *Actions to Support Transparent and Effective Enforcement of the Law of Justice and Peace in Colombia*, where the IIHR partnered with the Colombian Commission of Jurists (2006). Such project arranged meetings between experts or victims across the continent and Colombian victims, opportunities to analyze support to victims from a psycho-social perspective, and the publication of the collection *Truth, Justice and Reparation*.

In terms of publishing production, aside from regular publication of articles by several authors in the IIHR Journal, numerous articles have been published on truth, justice, and reparation –main concerns of IIHR. Some of them included *Truth and Justice: In Search of Reconciliation in Suriname* (1999), *Truth and Justice: A Tribute to Emilio Mignone* (2001), *Dialogue on Reparation: Experience in the Inter-American System of Human Rights*; the collection *Truth, Justice and Reparation*, recently published for Colombia, including titles such as *Colombia before the Inter-American Court of Human Rights*, *Comprehensive*

Attention to Victims of Serious Human Rights Violations; Challenges to Democracy and Social Coexistence and their Instructional Guide; and Latin American Experience: Meeting of Victims Motivated by Hope; Meeting of Social Stakeholders. In addition, project *Comprehensive Attention to Victims of Torture* included publication of several books collecting experiences, opinions, and methodologies in their implementation and academic development. In terms of distribution, the digital library on the IIHR website offers a collection of texts on these topics aside from institutional publications.

This book set two precedents: first, in 2001, when the IIHR published *Truth and Justice: A Tribute to Emilio F. Mignone*, a systematic effort and dissemination of experiences of truth commissions in the continent; and second, in 2005, in cooperation with the International Institute for Democracy and Electoral Assistance (IDEA International) under the auspices of the Swedish International Development Cooperation Agency (SIDA). This precedent was the book *Truth, Justice and Reparation: Challenges to Democracy and Social Coexistence*, whose main hypothesis was to prove that successful reconciliation processes were essential to build sustainable democracy. The objective was to support consolidation of democracies and respect for human rights in Latin America by thinking over official truth finding processes recorded to date and promoting public debate to extend the concept of reconciliation and contribute to its inclusion in the democratization agenda.

With this new publication, the IIHR resumes the analysis and documentation of processes of truth, justice, and reparation in the region both in countries under study in 2005 (Argentina, Chile, El Salvador, Guatemala, and Peru) and in Colombia, Ecuador, and Paraguay to offer a comparative perspective on different experiences. Similarly, it highlights policies of truth, justice and reparation and their contribution to building sustainable, inclusive and effective democracies in Latin America. In so doing, the IIHR expects to increase knowledge on these initiatives and to disseminate lessons derived from these studies that might be useful and reproduced in other contexts.

Some of the recurring elements from the studies in this book confirmed that nearly every process under analysis started long before truth commission processes did. The latter initiated with resistance expressed through multiple actions such as supporting victims, fighting for human rights protection, facing fear and threats, and searching for the disappeared. These actions were taken by movements of brave women who spilled into the streets and became key figures in the political scene –the group of “mothers and relatives” of the victims who changed the history of the movement for human rights in the region.

As to truth related policies, most democratizing processes observed in the countries under study established truth commissions as the first step to unmask institutionalized lying, to map a general picture of the impact of human rights violations, to promote victim recognition, and to build collective memory. Such processes have been a starting point rather than an end in itself, given that experiences under analysis accounted for progress and setbacks in human rights protection and close relationship with democratic quality. Nevertheless, the democratic need to examine the past in terms of human rights, despite a strong and solid rule of law, was so urgent that, when this book was about to go to press, President Dilma Rousseff approved the establishment of a truth commission in Brazil in order to investigate human rights violations occurred under military dictatorships in this country between 1964 and 1985.

Now in terms of justice, contrary to sustained progress in some countries, some others give account of existing adverse conditions compulsively affecting cases in the past and conflicts in the present. As to reparations, the general picture shows achievements against obstacles faced by victims in the different countries under analysis, including the principle of subsidiarity applied to such reparations with respect to democratizing policies. There is also a need to clarify that reparation is meant not only to pay a debt to victims of massive human rights violations, resulting in State responsibility and its obligation to grant reparation, but also to contribute to building democracy and peace in the region.

TRUTH, JUSTICE AND REPARATION

Finally, while regional studies are analyzing policies on truth, justice and reparation pertaining to human rights violations in the recent past, the region is witnessing the emergence of other forms of violence and inequality, also violating the rights of people and of human collectivities. These situations suggest new challenges to developing and implementing a new human rights policy that –based on lessons learned from recent history– will articulate new ways to address social conflicts, rooted in respect for human rights promoted and protected by the inter-American System.

My sincere thanks to the authors of the different articles for their hard work, and whose contribution has made this new publication possible in our Latin America and the Caribbean. I also want to express my gratitude to the Swedish International Development Cooperation Agency (SIDA) for its sponsorship.

Roberto Cuéllar M.
Executive Director

Introduction

Truth, Justice, and Reparation: Democracy and Human Rights in Latin America

Carlos Martín Beristain

Introduction

This book offers a global perspective of truth, justice, and reparation processes in eight Latin American countries that have suffered gross violations of human rights in the last few decades. This notion of process is a key element that is used to analyze the case studies, and it is also a comparative perspective about the similarities and differences and the general trends in Latin America. Speaking of a process refers us to a set of actions related to each other and to different political contexts, actors, and social dynamics and their evolution over the years.

Most of the countries analyzed here have had truth commissions, with the exception of Colombia, and these commissions represented extrajudicial investigation mechanisms to address past violations of human rights, as well as open a social space for the victims, and provide an agenda of recommendations for the political transition processes (Hayner, 2009).

The first countries to start these processes were Argentina (1984) and Chile (1990), which suffered two military dictatorships for eight and sixteen years, respectively. Then, two countries that had undergone bloody armed conflicts created truth commissions after signing peace accords, first, El Salvador (1993) and then Guatemala (1999). In the following decade, in Peru, after the overthrow of Fujimori's authoritarian government, a Truth and Reconciliation Commission (CVR) was implemented between 2001 and 2003, which analyzed the violations of human rights during the armed conflict between 1980 and 2000. Recently, two other truth commissions were created and started working years after the most violent periods of violations. Paraguay had the longest dictatorship in Latin America with the totalitarian regime of General Stroessner (1959-1989), and in Ecuador, the Commission mainly focused on the authoritarian regime of Febres Cordero (1984-1988). The truth commissions of these last two countries submitted their reports in 2008 and 2010, respectively.

Finally, the book includes an analysis of Colombia, a formally democratic country that has been undergoing the longest armed conflict in Latin America, one which has lasted for more than four decades. Colombia has been included in this study as a special case because even though there has not been a change of regime or truth commission so far, some partial mechanisms for so-called transitional justice have been implemented in order to deal with the massive violations of human rights within a context where there is still an armed conflict.

The cases under analysis have similarities and differences. The most significant differences are related to the level of impact and the magnitude of the violations of human rights, such as the number of dead and disappeared people, victims of torture and cases of massacres, the length of the dictatorship, authoritarian regime, or internal war (from eight years of dictatorship in Argentina to the four decades of internal war in Guatemala or Colombia); the comprehensive nature of violence in rural or urban sectors (mainly urban in Chile, Argentina, or Ecuador, while mainly rural in Peru, Guatemala, Colombia, and El Salvador, and in both sectors in Paraguay); the impact on the indigenous population (75% and 83% of the victims in Peru and Guatemala, respectively); the involvement of paramilitary groups and intra-community violence like Guatemala, Peru, and Colombia, a situation that worsens the local reconstruction and reconciliation processes because very often there is a coexistence of victims and perpetrators; the type of political transition, which includes the overthrow of military dictatorships (Chile, Argentina, Paraguay), the end of authoritarian regimes (Peru, Ecuador), the negotiations of peace accords, like El Salvador or Guatemala, or a negotiation with the paramilitary groups during an internal conflict (Colombia); and the time that has gone by since the beginning of the political transition: Argentina (1984), Chile (1989), Ecuador (1988), Paraguay (1989), El Salvador (1992), Guatemala (1996), and Peru (2000).

In addition to the previous degree of institutionalism, other factors such as the performance of the judicial system, the existence of political parties and the forms of participation of the civil society before the most violent periods also contribute to explaining and understanding the difficulties or the positive resources of the countries during the transition processes and, specifically, regarding truth, justice, and reparation policies. Such actions are seen as a key element in the contribution to democratization and not just as a debt with the victims. As pointed out by Barahona (2002), democratization in transitional societies depends on the process to create an effective citizenry, the elimination of authoritarian legacies, and a deep, forward-looking institutional reform.

The structural conditions of the different countries also contribute to explaining the difficulties of political transitions. In countries like Guatemala and El Salvador, the economic and political elites forged alliances with the Army and developed a exclusionary ruling class and a totally militaristic State model that led to dictatorships and internal armed conflicts. In the case of Peru, the Truth and Reconciliation Commission (CVR) pointed out in its analysis of the causes of political violence in the eighties, the historical discrimination of the Andean and Amazonian populations, and the existence of two Perus, as structural aspects affecting the current political transition.

Meanwhile, Chile and Argentina have been societies characterized by a higher level of institutionalism and social participation in spite of the impact of previous authoritarian regimes. Paraguay underwent two wars in the last century against its neighbors (the War of the Triple Alliance and the Chaco War) and then experienced a long totalitarian regime that led to a near total social isolation whose characteristics are still evident today. In the last decade, Ecuador had a series of short-lived governments due to the popular revolts caused by dissatisfaction with the ineffective government and corruption.¹ On the other hand, Colombia has a formal democracy and, at the same time, 25 years of states of siege and an armed conflict still in force, a strong centralization of the State structure, a widespread bipartisanship for a few decades, and regional differences that have characterized the history of this country.

These different characteristics partly explain the level of impact and the difficulties experienced by the truth, justice, and reparation policies in the different countries. As this study shows, despite its moral legitimacy and the progress the human rights culture has made in terms of legal and international recognition, the truth, justice, and reparation processes continue to be seen by States as an obstacle to their political priorities, as a thorn in their side that has to be removed somehow, or, alternately, as a possible source of political legitimacy, but not as a springboard to achieve social change or a broader and better democracy.

Transitional Justice or the Truth, Justice, and Reparation Agenda

During the periods of political transition, several truth, justice, and reparation steps have been taken to deal with the consequences of a traumatic past of violence against the population, promote reforms or institutional changes, meet the needs of the victims, and encourage the reconstruction of the social fabric. Such steps have been called *transitional justice* in the last few years, as a set of mechanisms and actions aimed at dealing with a recent past of massive human rights violations, within in a scenario of political regime change and the need to generate a new social consensus.

Yet, these political transitions are not simply formal processes of regime change. They also include ruptures and continuities related to the past that must be considered when assessing the implications and challenges of these processes. We must avoid the risk of considering these steps as a set of “technical” answers, since their impact or value cannot be analyzed without a deep political and psycho-social perspective.

1 Ecuador’s political crisis was evident in the overthrow of the three presidents elected in those years: Abdalá Bucaram (1996-1997), Jamil Mahuad (1998-2000), and Lucio Gutiérrez (2002-2005).

The chapters that describe the different countries contain cross-sectional analyses of processes that lasted several decades. This dimension of time and of the evolution of the political and social contexts underscores the need for a broader perspective to assess the challenges, achievements, and impacts of transitional justice processes, as well as to consider the problems still faced by these societies regarding massive violations of human rights.

The first necessary change of perspective is related to time. Transitions are long processes that do not respond to predominant approaches that conceive of them as periods lasting only a few years after a significant political change (overthrow of a dictatorship in some cases, or peace accords in others) and the concomitant actions aimed at political stabilization and recognition, investigation, or reparation of victims. The Latin American experience shows us that these processes are shaped by all kinds of political difficulties and conflicts of interest, and that what is at stake are the ways in which human rights violations will be faced as well as the future quality of democracy.

In some cases, the transition itself starts not just with the formal overthrow of a regime, such as the case of Argentina or Chile. These processes can be restarted whenever the continuity of the new status quo is interrupted during the so-called post-conflict processes.

For example, in the case of Paraguay, the Colorado Party wasn't weakened until almost twenty years after the overthrow of Stroessner, with the electoral victory of Lugo, which restarted a process to reform a clientelistic political situation that had persisted even after the fall of the military regime. Another case in point is El Salvador, where the FMLN's rise to power and the first acts of recognition for the victims caused a rupture in the status quo maintained by the ARENA Government since the war. In other cases, the transition processes have been turbulent, between short periods of delegitimized Governments, such as the case of Ecuador, where there were three uprisings against the presidents between 1996 and 2005. Or they entail fragmented transitions with a new beginning and new political parties that arise in presidential elections every four years, such as the case of Guatemala (Leonardo and Mack, 2011).

Almost all the countries analyzed here have had a truth commission. These commissions are charged with investigating massive human rights violations and developing an agenda of recommendations to prevent future violations, as well as lay the groundwork for judicial investigations and reparations for victims and communities. Yet such an agenda is far from being followed by the States. In general, the recommendations of the commissions are left to the political will of the Governments that rule during the different transitional periods, and both the Judiciary and the Legislative branch tend to see these agendas as something alien to them, thus contributing to their postponement and to new sources of frustration and re-victimization, and this also tends to delay the democratization agenda. The transitions are extended over time not only because this is the inevitable path to travel towards effective political change, but also because the dominant political, economic, or military powers have continued to block the agenda of transition.

In comparative terms, the most positive experiences in Latin America have taken place in countries where there was an initial consensus among different political parties. This promotes continuity in certain aspects of the truth, justice, and reparation agenda in different periods of government, such as the cases of Argentina or Chile. Even though this agenda was incomplete from the beginning, focusing only on certain transitional steps, such as human rights investigations and recognition and reparation for the victims, while leaving aside justice, this continuity has nonetheless permitted a consolidation of certain achievements. In Argentina, the transition started with the trial of the military officers of the Junta in 1984, but the subsequent military coup attempts dashed the hopes of human rights activists and sparked laws that enshrined impunity. On the other hand, in Chile, after the experience of Argentina, the agenda was initially focused on the human rights investigations and reparation. In the case of Paraguay, in 1989, there was a partial reparation, but without truth or justice.

In other countries, the agenda has been blocked since the beginning, such as the case of El Salvador, due to the lack of political will of those who ruled during the first sixteen years after the Peace Accords. In other cases, it has been conditioned by the political will of successive Governments, with certain advances and setbacks that have made such an agenda something marginal, or subject to political debate, and not part of a broad national reconstruction agreement, such as the cases of Guatemala or Peru.

On the other hand, in the case of Colombia, amidst a process of negotiation of the Uribe Vélez Administration with the paramilitary groups as of 2002, the State encouraged some partial steps to investigate historical memory and encourage perpetrators to exchange some information by promising only a weak application of justice and minimum sentences for the cases of gross atrocities. In Colombia there has been a strong debate about transitional justice measures, even without political change or the end of the armed conflict, yet even after the process of the so-called Justice and Peace Law, the reorganization of the paramilitary groups has continued, causing large numbers of deaths and the continuation of the armed conflict with the guerrillas of the FARC and the ELN.

All these differences show a relationship between truth, justice, and reparation measures within the specific social-political contexts that hinder or favor them, and foster or limit their relevancy both for the victims and society.

The periods under investigation by truth commissions have, in general, referred to those periods characterized by the largest numbers of human rights violations, such as dictatorships or internal armed conflicts. This is what gives truth commissions their character of a transitional step toward a democratic process. But in the case of Ecuador and Paraguay, the mandates of both commissions were extended for several reasons. Ecuador at first wanted to avoid the risk of a possible political use by the Government against still active opposition sectors. In Paraguay, the extension of the period of investigation to include not only the Stroessner dictatorship, but also the democratic period, was the result of a concession granted to the followers of General Lino Oviedo, who had previously threatened a coup d'état and then tried to achieve legitimacy by including the transitional period (in which he and his followers considered themselves victims) in the mandate of the Truth and Justice Commission. Nevertheless, in both cases the extension of the mandate toward more recent periods allowed the agenda of recommendations and reparations to be more connected with the present and not only with past violations (Valencia, 2011).

Socio-economic aspects have barely been taken into consideration in the analyses of the truth commissions. In most countries, the role of the neoliberal economic models in the processes that led to the human rights violations was recognized only years later. For example, in the case of Argentina, only in the past decade have there been analyses of the responsibility of different private sector companies in the repression, their relationship with the military Junta, or the attempts to control or destroy the union movement as part of an exclusionary economic project. Latin America's latest two commissions, however, have included an analysis of the economic model of authoritarianism (Ecuador), or the land seizure process that took place within the framework of the dictatorship in Paraguay (the so-called "illegally obtained lands").

The follow-up to the work of these commissions has been quite different in terms of the degree to which the States, and particularly the human rights movement or the victim organizations, have promoted the process. For example, in Paraguay and Ecuador, the commissions came about because of demands by the victims' movements, but within a context of weakness and weariness on the part of the human rights and victim organizations. The commissions' moral framework to deal with the violations (rather than political pressures or a crisis situation, as was the case in the rest of the countries analyzed here) was a determinant in those cases. But, this also shows the difficulties of the subsequent process and the tepid reactions of the

political ruling bloc to the recommendations in both cases (despite the development of recommendations and the internal discussions within the State, initiated by the truth commission itself, including a bill for the victims in the case of Ecuador).

In the case of El Salvador, within the context of successive electoral confrontations, the fear of the war's return and the political control exerted by the dominant party, were two factors that helped keep control of the transition in the hands of ARENA. In its first two years, however, the new Government has implemented a hesitant policy for the human rights agenda in the country (Cuéllar, 2011). The responses of the current Government to the advances claimed by victims have been tepid and contradictory, and its resistance to the pressures of the former perpetrators has been very limited. In the last few years, political problems and the risk of a coup d'état (as in Honduras in 2009), have had an impact, especially in Central America, by raising internal tensions in countries such as El Salvador or Guatemala regarding the risk of backsliding, within a context of pressure being exerted by former members of the Army organized in associations, which have sent threatening messages particularly about the activation of justice.

In other instances, the post-commission social context has been framed less by people's attitudes toward these commissions, and more by subsequent social conflict. For example, in Ecuador, the agenda of the Truth Commission was limited by the attempted police revolts against the Government in the last two years, as well as by the worsening political climate with regards to the indigenous and social movement (due to water and environmental conflicts after the new Constitution was promulgated). Previously, at the end of the truth commission's work, the Government (with the consent of the affected parties) required it to investigate the facts related to the murder of an indigenous man during a confrontation of Amazon communities with police forces. This was the result of the lack of confidence of the communities in the investigation of the public prosecutor's office and the importance of the existence of an independent mechanism, even though such an investigation exceeded the mandate of the truth commission and the period of investigation.

In short, with perspective we can see that the truth commissions' disclosures and the truth, justice, and reparation agendas have maintained legitimacy over the years even though their political impact has been varied, due to the attempts at closing down the political space needed to advance these agendas. At the same time, however, there is evidence of a political cost in some countries when the Governments have tried to push this agenda aside in deference to conservative trends that have a more negative attitude toward such an agenda, such as the cases of Guatemala, Peru, or Chile.

Factors of Crisis and Paradoxes

These transition processes are not linear because they have multiple advances and setbacks, as well as paradoxical effects. In the case of Peru, the Government that received the report of the CVR had a tepid response to the disclosures that implicated the Armed Forces and the Police in the human rights violations (in addition to the general accusation of Sendero Luminoso's culpability). And the next Administration of Alan García tried to limit the impact of the commission's report by dismissing the memory initiatives sponsored by human rights or academic organizations, or by praising the role of the Armed Forces.

In Guatemala, the response of the Arzú Administration was initially negative by rejecting the revelations of the report of the Commission for Historical Clarification (CEH), which showed that there had been cases of genocide in different regions of the country. This happened soon after the assassination of Bishop Juan José Gerardi in 1998, the bishop leading the Reconstruction of Historical Memory project and the Never Again Guatemala Report, and towards which the Government had a negative response in spite of the impact of the assassination and its consequences of closing the space for political transition in Guatemala.

In Chile, the 1991 report of the CVR was rejected by the Armed Forces, which considered it a biased version of history and denied the violations documented in the report, even though the report was recognized by the Government of Patricio Alwyn. These negative reactions reveal that there is often reluctance to accepting the information revealed by the commissions, and that there is a limit to the incipient processes in the wake of these commissions. The commissions are more a departure point for the transitions than a destination.

In some cases, crisis situations have had a positive effect in advancing democracy. Such crises can be positive in the sense that they break with lingering authoritarian trends, such as the case of the detention of Pinochet in London, or the revelations by the perpetrators of the State apparatus in Argentina (such as Captain Scilingo); both of these cases are key events that broke with some of the continuities of the past in the new and fragile democracies.

The detention of Pinochet had healthy effects for Chilean democracy and entailed a first step toward recognition by the military of the existence of the disappeared and of the possibility of providing information about their whereabouts. At that time, Chile implemented a national dialogue to provide information related to the fate of the disappeared. This process did not result in concrete revelations (partly because some of the information provided was false, and also because many of the remains had previously been moved from the original burial sites), but it was the first recognition of State culpability 25 years after the incidents, albeit an admission couched in caveats relating to the confrontational climate of the era (Lira, 2011).

In the case of Argentina, Scilingo's revelations about his participation in the "death flights," in which many disappeared people were thrown alive into Mar de la Plata, generated new forms of recognition, such as the 1995 public admission by the army chief, Lieutenant Colonel Balza, that abhorrent acts against human dignity had been perpetrated by the Armed Forces. Such initial recognition took place ten years after the report published by CONADEP.

Nevertheless, the crises have not always been positive. There have also been setbacks in terms of delegitimizing some measures that had already been socially accepted or that were part of government transition programs. In the case of Peru, such problems started shortly before the publication of the truth commission's report with a campaign against the CVR, in an attempt to neutralize the impact of its investigation regarding the accountability of State agents or political leaders. That initial response was later reproduced in the new Government of Alan García, which was initially ambivalent and later negative toward the work of the CVR and toward the judicial investigation of emblematic cases promoted by the commission.

In El Salvador, the impact of the Truth Commission and the proposed agenda for the transition were swept away by the amnesty decreed by the ARENA Government ARENA five days after the publication of the Commission's report in 1993, and its recommendations were mostly ignored. Thus, the Truth Commission brought about only small changes within a context of conservative political control. (ARENA's founder, Roberto D'Abuisson, was also the founder of the death squads).² This incident not only shows how difficult it is to reveal certain truths in the immediate aftermath of Peace Accords; it also shows how this kind of early negative attitude toward human rights can be a negative indicator for the future. In El Salvador, this early tendency to deny became a permanent policy. For example, in 2006 President Saca inaugurated a monument to honor D'Abuisson, and ARENA subsequently tried to get the Legislative Assembly to pass an official recognition of D'Abuisson as an "illustrious personality," a move that was only halted by a national backlash.

² He was also accused by the Truth Commission of giving the order to murder Archbishop Oscar Romero in 1980.

We should also consider the paradoxical effects. Sometimes measures that have not been established to aid victims, but rather for the benefit of the perpetrators, can have unforeseen effects. The manipulated information that Chilean military officers provided to the national dialogue revealed that some mass graves had been unearthed and the remains hidden again, as a case of double disappearance. That is, it revealed an impunity strategy designed to prevent evidence from being disclosed, thus making this a continuous crime (the so-called aggravated abduction), which was the prelude to a broader discussion about forced disappearance as a permanent crime.

In the case of Colombia, the victims were an uncomfortable guest at the public hearings held within the framework of the Justice and Peace Law passed in 2005, during the so-called “free versions” in which paramilitary groups testified before the judge regarding cases in which they admitted participation. Among those victims who attended the hearings, some faced new threats and insecurity, murders, and forced relocation. On some occasions, they had to watch the paramilitaries be exalted by their acolytes, and they faced a secondary victimization because of their treatment during these hearings. Even so, the debates over the Justice and Peace Law and its lack of connection to international standards on truth, justice, and reparation generated a strong mobilization and organization on the part of victims, who sought information about the disappeared, and attempted to defend their rights or make demands for reparation.

Limitations of the Truth, Justice, and Reparation Agenda

The truth, justice, and reparation agenda is commonly seen from a very limited perspective, considering only the publication of reports or the reparation of victims, especially regarding monetary compensation. That is, the immediate transitional agenda is set apart from other actions aimed at a broader and more comprehensive reparation (De Greiff, 2006), one which might be congruent with the impacts of the violence and the tenets of international law regarding the rights of victims.³ In other words, the transitional justice agenda is often seen as separate from the democratization agenda. Moreover, even though all the commissions included actions aimed at guaranteeing the non-repetition of the violence in their recommendations, this aspect is usually minimized.

Chile, for example, developed from the beginning a broad reparation plan that considered different programs and actions in terms of the different types of human rights violations (whether the victim was dismissed from their place of employment, exiled, executed, or disappeared) and which included various kinds of recognition, indemnification, and health and psycho-social care. Within the framework of the Latin American experiences this was a positive effort to respond to the needs of reparation, but it excluded justice. But, for example, in Paraguay, Guatemala, or Peru, the individual reparation approaches have focused on indemnification, which is generally smaller the larger the number of victims, such as the cases of the last two countries, amounting to just US\$3,000 and US\$4,000.

The transitional agenda is blocked (El Salvador), limited (Peru), or left without relevance years later (Guatemala), as new social problems are no longer analyzed in view of the past, and exclusionary mechanisms of impunity are maintained, which are a legacy of the past and an obstacle for democracy in many countries. Instead, these legacies appear as new and decontextualized phenomena, for example, the situation of social violence and organized crime phenomena.

In the case of Colombia, the truth, justice, and reparation agenda deals with the prevalence of the internal armed conflict, which endangers the possibility of a more organized process that will follow the

³ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147 approved by the UN General Assembly, December 16, 2005.

lessons or international standards generated in other countries. It also questions the model of negotiation with the paramilitary groups, which have not followed effective disarmament standards and the dismantling of organizations and mechanisms that fueled the horror, given the subsequent rearmament.

The peculiarity about Colombia, among other things, is that even though it is a formal democratic regime, it has over 4,500,000 internally displaced people, something that nevertheless not caused a political crisis, even though it is a true situation of national emergency. In addition, as pointed out by Uprimmy and Sánchez (2011), Colombia has one of the highest rates of inequality in the world. While the work of the Constitutional Court or the Supreme Court of Justice has played a key role defending the rights of victims and investigating the so-called “parapolitics,”⁴ in many regions of the country, access to justice is non-existent and the war has worsened.

A key aspect of the Colombian case is the capacity to represent reality. During the latter part of the Uribe Administration, extrajudicial executions perpetrated by members of the Army increased, but they were called “false positives” (i.e. made to look like guerrillas killed in combat). In addition, the Government demanded that the war not be called an internal armed conflict, but terrorism. And the new paramilitary groups, partly led by mid-level leaders of the supposed demilitarized sectors, are called “emerging groups,” in other words, represented as completely new criminal groups. In the meantime, the new Parliament passed a victim law promoted by the Santos Administration that includes numerous references to International Human Rights Law within a framework more favorable for the rights of victims and that entailed a significant national debate process. Nevertheless, the subsequent trend towards the institutional development of the law runs the risk of limiting its meaning, in addition to how difficult it is to enforce in a context of violence and insecurity. Protecting people’s lives is still a basic condition in any process, yet over 26 peasant leaders demanding their land have been murdered in the last two years.

The periods immediately following the work of truth commissions are, in general, historical moments when the problems of the past are analyzed, or when attempts are made to generate new social consensus. For Hannah Arendt, “There are historical events, rare intermediate periods in which time is determined both by things that no longer exist and by things that are yet to exist.” The interval between the past and future where truth commissions operate, represents a point of fracture in which victims and a new national vision fight to get their own place. In this way, the memory of a long hidden violent past can turn into a tangible and politically relevant reality in the present (Ignatieff, 1999). Nevertheless, years later, the preeminence of the transitional agenda, as stated in the recommendations of the commissions, can lose relevance in the face of current problems; as in the case of Guatemala, for example, where the Peace Accords that marked the way for the political transition in the post-war period are no longer a reference point for subsequent Governments.

In other cases, there are difficulties in managing such an agenda, and there are different political interests that tend to become more evident later. For example, Lira (2011) shows in her study how Chile had an initial truth and reparations agenda, but not a justice agenda, and there were successive attempts to end the process fast during the first years of transition. At the same time, this process has dealt with certain problems and human rights violations that were not initially addressed (torture) or that have a long-term impact (forced disappearance). Lira also shows how the process, especially after the revelations of the systematization of torture in over 1,000 centers of clandestine detention, has questioned the old model associating *social peace* with impunity, by pointing out that while torture and disappearance are justified in the dominant model as a way to “save” the nation, this admission does not create the minimum conditions for reconciliation. The *Concertación* (social pact) Government had to assume that the past was indelible and the necessary policy on human rights and victim reparation was not a short-run policy.

4 “Parapolitics” is a term that refers to the participation of politicians and institutions in the emergence, financing, or support for the paramilitary groups, which has even led to the prosecution of members of the Colombian Congress and Senate.

Assimilation of Truth, Changes, and Fight for Memory

The investigation of truth is not limited to what the truth commissions did at a given time. The revelations and assessments by the commissions have become a historical reference point in different countries, but at the same time, they are not a sacred text that can't be analyzed or expanded *a posteriori*; in many places there have been important subsequent investigations and revelations. On the other hand, the process to assimilate such memory does not depend on the passage of time, but on the ways in which these reports translate into public policy and motivate social participation in order to go from a memory of events to a moral truth that can become part of collective memory.

While in different countries there are programs to disseminate the scope of the investigation of truth and include it in school curricula, such experiences have not been thoroughly assessed. A curriculum on historical memory must not be just another course for students to memorize; rather, it must be related to a process of critical reflection on values and life experiences.

In some countries, the investigation of human rights violations has continued in the face of facts or situations that were relegated at the beginning of the transition. In Chile, the victims of human rights violations that were excluded from the agenda in the report by the CVR in 1992, which was focused only on the cases of extrajudicial executions and enforced disappearances, fought to find their space and time, with the investigation by the Valech Commission on political prisons and torture. This is an example of how the attempts to close processes hastily, without addressing the massive impacts on society, are not useful if they result in the exclusion of victims or a collective memory that doesn't include punishment for the perpetrators and actions aimed at creating a culture of prevention. Nonetheless, these processes do not just take place because time passes, but they depend on the existence of a social agent, in this case the victims' movements that encourage States to answer the pending issues.

On the other hand, some rights violations were not thoroughly investigated by the truth commissions because of social stigma or a lack of specific efforts to overcome difficulties. The first truth commissions did not explicitly investigate sexual violence, for instance, until the Guatemala experience demonstrated this systematic violence against women (and not only against women) in the context of arbitrary detentions and torture, and also in massive acts such as massacres, or when women searched for their disappeared loved ones in military headquarters or detention centers. While most women who were victims of arbitrary detention or torture also suffered different forms of sexual violence, at least 10% suffered rape, and there have been several cases of torture during pregnancy, in which 10% of the women suffered an abortion (Lira, 2011), as pointed out in the latest investigations in Argentina, Chile, or Ecuador⁵.

But this memory assimilation process also entails new processes, not only of dissemination in society, but of a society's restructuring in terms of the evolution of the context. In this sense, the discussion about memory in different countries has had a different pace and impacts with regard to the vindicated identity of the victims. While for many years, memory has focused on the victim status of many political militants as a way of emphasizing the violations and the illegitimacy of the regimes that made the opposition victims of dehumanization and disdain (people to murder or disappear without any guarantee of their life), gradually and at different times during the transitions, there has been a more flexible and more open discourse and memory, by recognizing or vindicating the political status of different sorts of victims, particularly members of political parties, opposition groups, unions, or guerrilla movements.

5 See the chapter on gender in the Report of the Truth Commission of Ecuador "*Ni silencio ni impunidad*" (2010), which provides similar figures.

This change has come as a result of an improved social climate in some cases, and this have made it possible to speak more openly about identity without fear for new aggressions or stigmas as in the past, but it has been also generated by the intervention of new groups with a new perspective, for example, organizations such as HIJOS (referring to the sons and daughters of the disappeared), which have vindicated the memory of resistance regarding their relatives in different countries, such as Argentina, Chile, or Paraguay and, to a smaller extent, in Guatemala.

In Paraguay, the victims of the dictatorship, particularly in urban areas, are openly remembered with their political profil, but in other countries those processes are still very limited, such as El Salvador, Ecuador, or Colombia, where it is still dangerous to vindicate the political identity of many victims. Nevertheless, in some emblematic cases, some victims have continued vindicating their political identity around organizations of the families of the disappeared or victims of systematic persecution, such as the case of the *Unión Patriótica* in Colombia. In the recent case of Ecuador, the victims who were former members of the Alfavo Vive movement found in the work of the commission, which they encouraged, a space for the recognition of the victims, but their process to recover a broader and new collective identity still faces the challenge of overcoming social stigmas, after years of ostracism and the construction of a new political culture.

Contextual changes can facilitate these processes, but only through an active form of processing such collective history by the former members of such organizations. These processes entail changes in the development of a collective memory that on many occasions improve the initial work of the truth commission with a vindication of a more complex memory, with more elements related to the political background of victims and with more recognition of ambivalence and contradictions. Just like in the individual grieving process, where recovery is linked to the ability to recover such ambivalence and the complexities of a lost loved one, in collective terms, a more complex vision of the past can help generate a more critical and open memory that can generate lessons for the present and for the new generations.

An especially negative factor in many countries related to the right to truth has been the poor participation of the mass media in the dissemination of the truth commission findings or in following up on the struggles in favor of memory and the defense of human rights. The concentration of media power in a few hands and the political orientation of the media in many cases has meant a weak commitment to the dissemination of the work of the commissions, or even the promotion of an agenda contrary to transitions in countries such as Peru (Ames and Reátegui, 2011). In such contexts, the victims, in general, are not present in the media agendas, or they are seen suspiciously, like in Colombia y Peru, or they are frequently accused of collaborating or sympathizing with subversive groups. This lack of a clear human rights informational policy is a pending issue with regards to the large-scale media.

Another aspect to consider, regarding this evolution and struggle for memory, is that in various countries there have been attempts to rewrite history following the work of the commissions, such as in Guatemala, Ecuador, and Peru. In these cases, publications ave surfaced after official reports, prodced by institutions linked to the Army, or members of the security forces, including some directly involved in human rights violations. This fight for memory and the general correlation of forces within the political transitions also shows the frailty of these achievements in some countries, while others advance towards the consolidation of truth policies and democracy itself. These difficulties have been faced by countries where the Government has changed its position, like the case of Alan García in Peru (Ames and Reátegui, 2011), but they have also increased during electoral periods, with new risks of access to power by parties related to the perpetrators, like the case of Guatemala in the recent elections where former General Otto Pérez Molina won the presidency, or the case of Peru with regard to the party led by Fujimori's daughter, involving attempts to vindicate a previous official memory opposed to the work of the commissions.

Nonetheless, these movements have also been taking place in countries with a more advanced policy, like the case of Argentina, where the most conservative sectors that supported the policy of human rights violations have tried in the last few years to wield memory as an instrument against the former armed movements, as a way of “balancing” history, comparing the crimes perpetrated by the guerrilla to the extermination of political opposition, which was systematic and planned by the State (Tappatá, 2011).

Indigenous Peoples

In general, the conditions and human rights violations of indigenous peoples have not had a strong presence in the truth, justice, and reparation agendas. Even though in countries like Guatemala and Peru, most of the victims were indigenous (Mayas, Quechuas, and others respectively), the conditions of violence experienced collectively and the rights of indigenous peoples have not been taken into account thoroughly. In the case of Guatemala, the economic compensation has been considered individually, without taking into account the collective dimension of the damage or the specificities of indigenous culture, while in the case of Peru, collective reparation has not had a cultural perspective, even within a context where the reflection of the Andean peoples about their own identity has been partly encouraged by the work of the CVR and the spaces of collective discussion among victims and affected communities.

In the case of Chile, the CVR investigated the cases of the Mapuche victims of the dictatorship from an individual perspective, along with the rest of the cases. Later, however, a specific commission was created to investigate and give recommendations about the situation of the Mapuches, i.e., the Historic Truth and New Deal Commission, which investigated the different mechanisms of social exclusion and the need to establish new relationships between the State and the indigenous communities. But the consequences of this second commission were just general recommendations that have not had an impact on State policy because it meant rethinking the topic of access to land in Chile. Moreover, the policy regarding social conflicts and the opposition to megaprojects in indigenous territories involved the application of old stigmas, such as the antiterrorist law against the Mapuches.

On the other hand, the Paraguay commission analyzed only the case of the Aché peoples, who were victims of violence by State agents and large landowners as part of a broad context of racism and violence that considered indigenous peoples as animals that could be hunted, and indigenous hunting was documented in this case. In the case of Ecuador, only one case of the Kichwa population could be included in the report by the Truth Commission. This was a result of the increased violence of the Febres Cordero period against the groups of political or armed opposition, and also commission’s lack of connection to indigenous groups and the lack of public debate about the violations against indigenous communities in subsequent years, including the relationships between these violations and land ownership and territorial protection.

Gender Approaches and Investigation of Human Rights Violations

One aspect that has become increasingly relevant is the gender approach to human rights investigation, and how the specific needs of women in these contexts have been investigated. In these contexts, sexual violence or the effects of violence against women was often made invisible.

The first reports that included a specific, though partial, analysis of the impact of violence against women were the REMHI project and the CEH in Guatemala, and then the CVR in Peru, which had some small work teams that tried to give a comprehensive assessment from the perspective of the impact and the resistance of women. Then, both the CVJ of Paraguay and the CV of Ecuador relied upon teams from the feminist movement, which contributed their vision to the analysis of the findings of the commissions. Even though these findings did not have a more comprehensive impact, they were considered important within the contexts of each country.

These last two commissions also included, in a partial and limited manner, an analysis of some cases of human rights violations against people on the basis of their sexual orientation or condition, like the case of the homosexuals who were repressed by the dictatorship of Paraguay, the documentation of sexual slavery of girls by members of the military apparatus of the Stroessner dictatorship, and the human rights violations of members of LGTBI groups in Ecuador, as part of the “social cleansing” policies in the city of Guayaquil, especially (Valencia, 2011).

From Truth to Recognition

Part of the right to truth has to do with acts of recognition. Truth cannot be understood only as the publication of reports, but as their dissemination and inclusion in a society’s collective memory. But assimilation is not possible without recognizing the facts and the dignity of the victims as part of a State policy.

In the cases under analysis, there is still a lack of a recognition policy in countries like Peru, Guatemala, and El Salvador, while there has been recognition in Chile and Argentina, even though the political changes in Chile show the risk that this attitude might change (Lira, 2011). In the case of Peru, paying tribute to the victims is still seen, from a perspective of the counterinsurgent fight, as an affront to the Armed Forces, and not as an opportunity for those involved in human rights violations to be free from their past. Recognition of the victims has been paired with tributes to the Armed Forces.

In other countries, the culpability of the Armed Forces has been ignored; for example, in Guatemala and El Salvador, where the Armed Forces have not assumed their responsibility for human rights violations. In other cases, there has been a growing and positive evolution. For example, in Chile the attitude of the Armed Forces has been changing, from the rejection of the report of the Truth Commission at the beginning of the transition, to a partial acceptance of accountability for the events detailed in the National Dialogue, but also limiting the recognition fifteen years later to a partial “fog of war” admission, without opening up to a deeper moral critique of the human rights violations. or the moral criticism by the Army chief against human rights violations, after the revelations of systematic torture set forth in the publication of the Valech Report in 2004.

In Argentina, this resistance of the Armed Forces to assuming their responsibility and to calling things by their name was pointed out even by General Martín Balza, who made the first recognition of guilt ten years after the report of the CONADEP: *“Insofar as chicanery continues, turning things around to delay or say no, but it wasn’t that much, in essence, we have to find out how it started ... this takes us nowhere. It was cruel and it has to be told with the most sincerity. Despicable actions were perpetrated: enforced disappearance, systematic torture, baby abductions, property theft, illegitimate deprivation of liberty, and reduction to servitude. That was State terrorism.”* (Martín Beristain, 2010, page 115).

Another negative response to the right to truth in many of the countries under analysis has been the response of the supreme courts of justice, which did not conduct an investigation of human rights violations, thus helping them to become a State policy, such as in the cases of Chile, Peru, El Salvador, and Guatemala. In some of these countries, said courts rejected the revelations included in the reports of the Truth Commissions that pointed out their responsibility at different times.

The acts of recognition of responsibility have been symbolic measures to satisfy the victims and, at the same time, they are measures with a high social content, in order to show a break from the authoritarian past and a will to consolidate democracy. In most countries, different presidents have carried out some of the acts of recognition, although, in general, in a limited manner; for example, the sentences by the Inter-American

Court of Human Rights, or the acts aimed at recognizing the dignity of the victims, but without a critical content of social punishment for the perpetrators.

There is a difference between generic requests of pardon and a coherent public policy. While in most countries, new leaders have engaged in acts of recognition regarding responsibility for past human rights violations, some of these events have taken place after submitting the reports of the Truth Commissions, in an isolated manner, and they have not had continuity in subsequent policies. Others have grown over the years or have sent a message of continuity with a social function, an internal teaching role for the security entities of the State and for the society and a political will towards the victims. In the case of Argentina, President Kirchner was the only one who made a strong official and public recognition of human rights violations (Tappatá, 2011). These were symbolic steps to establish the difference between an authoritarian past and a democratic regime, and in this case they were accompanied by a policy aimed at dealing with human rights violations by the dictatorship.

The requests for forgiveness by the perpetrators from the Armed Forces or the security entities of the State involved in the violations have been limited in the region. For example, in El Salvador, Peru, and Guatemala, with hundreds of massacred communities, the Armed Forces have not conducted any act of recognition of responsibility or a rapprochement with the victims. As pointed out above, in other countries like Chile and Argentina, these acts of recognition have been progressive; in general they have been conducted after the public awareness of atrocious actions and when the social response was repudiation and indignation though, with some exceptions, pointing out that the causes were external factors such as social polarization or blaming the circumstances.

In this sense, a key factor has also been the social conscience about the violations. As pointed out by a mother, Alicia, from El Salvador (García, 2003), founder of *Comadres*, during a debate about the value of the truth commissions: *we know, they know* [referring to the perpetrators], *what we want is for society to know*. This broader social duty of the commissions and of the policy on the recognition of the truth, as well as the role of the victim's organizations and human rights groups, has been critical in Latin America and has been more or less successful in terms of the relationship between forces in the different transitions.

In general, the impact of the recognition of the truth can be assessed in terms of three factors that have been quite different in the countries under analysis: a) *capacity of consensus*: the initial consensus over the years regarding the acceptance of the past and of the need for a policy to reconstruct the social fabric, b) *moral punishment*: the social response to human rights violations and the criticism of the perpetrators as part of a collective conscience, c) *social activation of memory*: the ability to forge alliances between different social sectors or significant members of the world of culture, the mass media, the Judiciary, or the political parties.

Archives and the Right to Truth

The declassification of military or judicial archives has been a demand made by the truth commissions and human rights and victims organizations, and it is a crucial element of the right to truth. The only truth commission that had access to official files to conduct its investigation was the CVJ of Paraguay, since part of the police records of Stroessner, known as the Archive of Terror, was discovered in 1993. Except for the case of Ecuador, where the government facilitated the declassification of some files or provided a partial access to other Army files, or as in the case of the Ministry of Foreign Affairs of Paraguay, in most of the cases the State authorities did not provide direct information to the commissions or systematically denied the existence of the files.

Years later, however, almost every country has found files containing valuable information about human rights violations, the victims, or the *modus operandi* of the perpetrators. The denial of the existence of the files has been, in every case, an impunity strategy. In Guatemala, the CEH specifically asked for information from the Ministry of the Interior about different cases, but the Government always denied the existence of those files. Sometime later, the eventual discovery of the National Police archives, containing 8,000,000 documents after thorough clean-up and systematization (Historical Archive of the National Police, 2010) revealed the long-standing lie and the importance of such archives for the victims and the families, as well as the for investigation of human rights cases and collective memory. A review of some of these cases in 2009 revealed that the information existed and that the person in charge of the archive did a good job by gathering the information and systematizing it in a folder, which also included the answer by the minister to the president of the CEH Christian Tomuschat in 1998, denying its existence. There have been initiatives to review and search for the archives in every country, and Governments should provide this information, overruling the confidentiality and secrecy clauses they use to avoid disclosing such information and which limit the right to information and access to justice. In the same case, the Colom Administration stated that the military files would be disclosed, but the Ministry of Defense refused to even submit the military campaign plans, such as the so-called “Plan Sofía,” in defiance of a presidential order, alleging that it was missing. This plan was later disclosed by the Washington-based National Security Archive.

On the other hand, the archives of the truth commissions are also part of the collective heritage. In the case of Peru, the Ombudsman’s Office is the repository of these archives as a consultation mechanism for the victims and investigators. The same situation applies to Argentina; based particularly on the work done by organizations such as Open Memory (*Memoria Abierta*), the systematization and opening up of files has been encouraged, including that of the CONADEP, several police records and testimonies collected by human rights organizations.

Nevertheless, in other countries, the limits set by the conditions of negotiation of the peace accords continue to restrict access to such information, as in the cases of Guatemala and El Salvador, where the archives of the truth commissions are protected by a secrecy clause for several decades at the headquarters of the United Nations in New York, even though they constitute a collective heritage of society. This has prevented access by both victims and State agencies to the information, thus hindering the gathering of valuable information. For example, the reparation program of Guatemala had to start a new recording system, without taking into account all the experiences of the CEH. The political negotiation between the parties in conflict should never limit the right of the victims and the country to access to the information gathered, including their own testimonies. In the case of Chile, in spite of the progress of the Valech Report in 2004, the names of the perpetrators accused by the victims are protected by the secrecy clause for 50 years, thus unfairly limiting the right to truth.

In Argentina, after years of denials of the existence and opening of files, a presidential decree in 2007 required a review of the files, as well as secrecy and confidentiality of the information contained within, which is the argument used by the Armies from different countries. Even in 2010, the Ministry of Defense required the review of the documentary repositories of the archives of the Armed Forces, so that they can be opened and used in judicial investigations (Tappatá, 2011). This fact reveals an openness to democracy, at least with regard to the review of the past of the Army institutions, which other countries are far from accepting.

Symbolic Measures and Places of Memory

The debates on the collective memory of human rights violations are still important even after such a long work by the truth commissions. Numerous and powerful memory initiatives toward the truth, justice

and reparation agenda have been undertaken in the countries with the most progress. The most positive experiences have combined the symbolic expressions of recognition for victims with a breaking with the past, as well as a continuity of actions as part of State policy.

Some very relevant events have been the visit to the Navy Mechanics School (ESMA) in Argentina by President Kirchner with survivors of that extermination camp, where over 5,000 people went missing, or the ceremony of dignity where in 2004 during the anniversary of the coup d'état, the Chief of the Army at that time, Lieutenant General Roberto Bendini, in the presence of the President and the entire Cabinet, removed the portraits of the dictators and de-facto presidents Jorge Rafael Videla and Reynaldo Benito Bignone. Also, in Chile, two visits were arranged to the prison of Dawson in Punta Arenas, a true concentration camp where nearly 600 people were detained in 1973. During the visit, the survivors were able to visit the facilities and go back to the place of horror, as an act of recognition and solidarity, also attended by officers from the Navy and the Ministry of Defense.

The most interesting initiatives have included the involvement of the victims, in both the discussion and design of the sites of memory. We have to remember that the participation of the victims is a criterion of the effectiveness of these measures and their meaning to society. Reparation has less to do with the existence of symbolic actions, such as sites of memory or monuments, and more to do with the extent to which victims feel identified with them, and if they activate participatory processes that allow expressions of shared memory. As pointed out by Brandom Hamber (2011), reparation does not take place due to the existence of the object or measure, but due to the process related to the object. An emphasis on such processes is still necessary for the countries that have undertaken many fragmented memory actions, such as occasional expressions of recognition, but where these have not translated into a broader policy; or in countries where there has been a slight recognition, and memory actions still depend more on the initiatives of civil society than on the express will of the branches of Government.

On the other hand, these measures should be accompanied by events of commemoration and activities linked to the defense of human rights that make sense beyond a specific period of time. These symbolic actions should express the social repudiation of the criminal policies that were implemented in many countries, since this ideological repudiation of repression is critical for a culture of prevention (Lira, 2011).

The demands for preserving emblematic sites that operated as clandestine detention centers, or places where atrocious acts were perpetrated, are still present even after such a long time, thus becoming symbolic places of remembrance and grieving or memory sites, with the purpose of using them to teach human rights lessons so that these acts are not repeated in the future (Jelin and Langland, 2003). Occasionally, these initiatives have a local dimension; for example, the monuments as a tribute to the victims of the massacre of El Mozote in El Salvador, or the massacre of Plan de Sánchez in Guatemala, or the Museum of Memory in Ayacucho, Peru. Even amidst the conflict, in Colombia numerous initiatives are being undertaken, especially by the affected communities, such as the community monument as a tribute for the hundreds of victims in the years of resistance to the war of the community of San José Apartadó, or the monument in memory of the victims of Trujillo.

In other cases, the initiatives have had a broader impact across the country and have given new meaning to emblematic places of repression as places of memory and resistance to forgetting, such as the Navy Mechanics School (ESMA) in Argentina, or Villa Grimaldi in Chile. Several countries have started a cadastral survey of such emblematic places (Open Memory, “*Memoria Abierta*”, 2009), while in others this is a demand of victim organization to prevent that memory from being deleted from the recent history, like the case of El Salvador.

Currently, the ESMA is a site where there are several centers for human rights activities, where the *Casino de Oficiales*, the place that operated as a clandestine detention center, became a place of memory and offers guided tours open to the public, as a clear message for those who participated in illegal activities and did not respect the basic rules of coexistence. These initiatives have been undertaken in different places in Chile and Argentina, as well as Paraguay, with the transformation of La Técnica, a well-known torture center, into a memory museum. They represent places of remembrance and conscience, or museums that give a perspective on the human rights violations perpetrated during the dictatorships, as part of a public policy, while in other places, like Peru, such initiatives have only had the support of civil society organizations, but not the State. In the case of Peru, the initiative for the creation of a memory museum was even initially rejected by the Alan García Administration, although he later tried to promote it with the participation of different personalities, who refused to participate when the Government tried to pass a decree that limited the access of victims to justice (Ames and Reátegui, 2011).

The sites of memory also represent social frameworks for victims, who take them as the recognition of their experiences and also as powerful tools to transmit a critical memory of the atrocities. Currently, these initiatives face the challenge of how to consolidate and maintain their advances and their consideration as a collective heritage of the nation or as sites protected by UNESCO, so that they are not only places vindicated for the victims, but also part of a governmental policy of preservation and dissemination. They are also part of the struggle for memory where, as pointed out by Darío Fo who criticized the ways of understanding the fossilized memory of the past: *the greatest success has been to transform history into an old closet full of dust in which nobody is interested.*

The most valuable Latin American experiences regarding these places of memory have tried to energize public discussion and participation on the part of victims in the process of thinking about what place, what kind of space, and for what uses, and to link those places to political categories of reparation, so that this memory does not become too detached from the conditions that caused them. A risk is to see these actions in an isolated manner or just as symbols of the past not anchored to the current reality, in which case countries might be full of monuments that eventually might become meaningless. Therefore, the discussion of these memory measures entails a dialogue, an explanation, a new meaning for the places of repression, a convening of activities that have a remembrance dimension but also vindicate the defense of human rights in the present.

The Disappeared: An Ongoing Search

The search for the disappeared remains a key aspect in every country with regard to the right to truth, even many years after the work of the commissions. This shows both the importance of the task and the obstacles faced in a context of impunity, and its impact has remained for many years regardless of the investigations of the truth commissions or the reparation measures. The search for the disappeared is a pending issue almost in every country and has become a key crisis factor in many transitions, underscoring that we cannot leave our past behind because it is still our present.

These search processes have to be seen as four complementary processes with different requirements that have to be considered in a collective and interdependent manner: a juridical dimension of the investigation of the facts and the final destination of the disappeared person; an anthropological-forensic and technical investigation, with the exhumation of clandestine cemeteries or graves, together with the identification of the remains based on anthropological-forensic and genetic studies; an historical dimension since the exhumation also reveals truths that were hidden; as well as the psycho-social dimension, which emphasizes the return of the remains to the families, the inhumation processes, the grieving processes, and the rituals characteristic of each culture.

Almost all the truth commissions undertook some of these search processes, but this was just the beginning of a long process. Even in the countries where the number of disappeared people has not been very significant in comparative terms, like Paraguay, and to a lesser extent Ecuador, the processes to search for the disappeared have been emblematic during the work of the commissions. Like the case of the Restrepo Brothers in Ecuador, or the disappeared of FULNA or the OPM, among others, in Paraguay.

In the last two decades, independent teams of forensic anthropologists, especially in Argentina, Guatemala, and Peru, have done an outstanding job, and there has been an exchange of experiences and professionals between different countries. Other countries, however, do not have teams of forensic anthropologists experienced in the investigation of human rights violations (Paraguay or El Salvador). There, these search and exhumation processes have been under the responsibility of civil society organizations. Over the years, these processes have entailed, in every transition, the need to establish commissions or search programs, the creation of independent teams of forensic anthropology and legal medical professionals from the Government, or the creation of DNA banks aimed at identifying possible remains.

Nevertheless, in countries with a significant need to undertake these processes, like Peru, El Salvador, or Guatemala, where violence had a massive dimension against entire communities, ten or twenty years after the creation of the commissions, no national search or exhumation program exists to facilitate the legal formalities, the investigation of facts, or the incorporation of independent specialists.

In Colombia, in spite of the existence of better-qualified forensic teams and the limited possibilities of participation of independent teams as observers, the way in which the public prosecutor's office conducted the exhumations, after the revelations of the paramilitary groups at the end of the decade of 2000, did not have the participation of the victims. It was limited to a strategy to recover the remains but unrelated to the investigation of the *modus operandi* or the inclusion of *antemortem* stories of the families. This limits the future processes of investigation and identification, as well as the grieving processes. In spite of the existence of a commission to search for the disappeared in Colombia, created more than a decade ago, this commission has barely been able to identify a few cases.

A negative example of these poor identification processes and their impact on the families was Chile in the case of *Patio 29*. Some of the involved sectors had warned for years about the lack of training, unreliable identification procedures, and the speed of the processes due to the political lobbying to obtain results in the Legal Medicine services. Even so, the revelation that in the case of *Patio 29*, the delivery of the remains of incorrectly identified people to the families was a big blow for all the families who had already conducted their inhumation, remembrance, and grieving processes, and it called into question all the work done, the respect for the families, and confidence in the institutions. In this case, a human rights program in the Legal Medicine services was implemented as a response to malpractice in the identification of remains. This right to identification is part of the right to truth and grieving. But, the example of Chile shows that regardless of progress in other areas, this can be neglected amidst pressures and a lack of consideration of the need for experienced professionals and teams.

Due to the importance for the families and their need to know the final whereabouts of their loved ones, and the relevance of the right to truth for society, the topic of truth has been a key factor in every country, even when the doors of justice were closed. In Argentina, they implemented the Trials for Truth for the investigation of the disappeared and which were aimed at investigating the facts and the final whereabouts of disappeared persons. Several perpetrators were summoned as witnesses during these trials, and if they gave false testimonies or refused to provide information, they could be prosecuted. On the other hand, such rights have been part of treaties such as the Convention on Enforced Disappearances enshrined in the UN declaration of the Day for the Right to the Truth on March 30, on the anniversary of the death of Archbishop Romero in El Salvador.

As part of the investigation of these cases, the investigation of disappeared children has had a significant impact on various countries such as Argentina and Chile, but also El Salvador and Guatemala, thanks to the investigations conducted by the human rights organizations and organizations of families. The most widely known case is the case of the Grandmothers of Plaza de Mayo in Argentina, who started searching for their grandchildren and demanding justice, opening a crack in the wall of impunity established by the laws on Due Obedience and Full Stop because those cases were not covered by such laws. The same happened in Chile, where the amnesty did not cover crimes such as infanticide or abduction of minors.

Also in El Salvador, within the context of an amnesty that has hindered the investigation of all the cases, the *Pro-Búsqueda* Association began working in the wake of the Peace Accords to search for disappeared children. This work became a key benchmark of the defense of human rights in the country at a time when the impunity of the ARENA government and the lack of commitment by the FMLN opposition made for a difficult and exclusionary process for the victims. The first of these cases to be filed with the Inter-American Court in 2005 was the case of the disappeared girls Ernestina and Erlinda Serrano Cruz, leading to the sentence of the Salvadoran State even though El Salvador had signed an exception of the jurisdiction of the Court to avoid cases in times of war. A similar case filed with the Inter-American Court was the disappearance of the child Marco Antonio Molina Theissen in Guatemala. These examples show persistence and creativity of the victim and family organizations and how the search for disappeared children became in several countries a turning point to question impunity and also kept this issue at the forefront of the transitional agendas.

Reparation

The awareness of the irreparability of human rights violations is part of the collective experience of the victims. Nevertheless and precisely due to this, the development of the right to reparation has been a key factor of both the judicial cases filed with the Inter-American System and the general measures that are part of the needed commitment of the State towards the processes to reconstruct the relationships fractured by violence, to deal with the worsening living conditions of the victims, partly compensate the damages, promote their recognition, and promote their reintegration, as well as prevent violations in the future. In this sense, the aforementioned aspects, i.e., truth, symbolic measures, or the search for the disappeared are part of these reparation measures.

While in some countries the reparation policies started shortly after the publication of the commission reports, for example, Argentina and Chile, or even before the work of the commission, partially, in the case of Paraguay, in Peru and Guatemala these policies have been delayed almost ten years after the reports and their recommendations. This has called into question the value of reparations and the political will of the governments to implement them, which is a key factor because reparation should show, first of all, a change in the relationship between the State and the victims: from being based on human rights violations to being based on their dignity and a relationship that respects their rights as individuals and citizens.

In El Salvador, twenty years after the signing of the Peace Accords, the country has not implemented a reparation policy. Even though reparation was envisioned in the accords, its implementation is still demanded by the victim's organizations. In Colombia, on the other hand, the passing of a decree regarding administrative reparation in 2008, during the last part of the Uribe Administration, without considering a broader framework of reparations or the rights of victims, was seen as a response that tended more to legitimize the State rather than create a constructive reparation framework. That broader framework was deferred until the passing of a new law in 2011 and the subsequent legislative developments, which are still pending. Moreover, the court-ordered reparation in the cases of the paramilitary groups pursuant to the Justice and Peace Law has just produced a sentence six years later, and the development of related reparations is still pending.

For its part, the National Commission of Reparation and Reconciliation (CNRR) published a framework of collective reparations inspired by the Peruvian experience, (whose development is still pending). Yet, the commission must consider that such actions should be based on community-organized projects so that they don't have a negative effect on the social fabric. Moreover, in these cases, the collective reparations must not be confused with the more general policies to fight poverty, nor should they be a substitute for individual reparation. On the other hand, while these collective measures should contribute to the development of the communities, they should also have a sense of reparation and recognition of the damages.

The collective measures often influence structural problems such as basic infrastructure of poor communities, so they bear the risk of substituting general measures of public policy. But, collective reparation should entail an additional benefit.

In the case of Peru, reparation efforts drew upon a previous census conducted during the internal armed conflict for the displaced communities (expanded with the registration of victims), but in countries such as El Salvador, Guatemala, or Colombia, the registration of affected communities is still pending. It is important that these mechanisms not become part of a system of political clientelism, but remain a right of communities to reparation in terms of damages. For example, according to the investigation conducted in Peru, only 25% of the people knew that the actions that were taken were part of the reparation (APRODEH, 2008).

Several countries have implemented two different forms of reparations. One is the registration of victims and the other is the definition of reparation. That model in the case of Peru has generated a double structure, with different criteria or conditions and little coordination in the first years, which generated a lot of confusion and a lack of definition of the victims. Moreover, in the Reparations Council, that is, the entity in charge of developing the Single Registry of Victims, the Government appointed three members of the security forces (the Army, the Navy, and the Police), a businessman, and three members of the civil society, in a clear attempt to control the registration based on counterinsurgent criteria.

In other countries, such actions have been based on specific programs that developed other measures for the affected victims, while they started to implement the register of victims, as in the case of Chile. The new accreditation processes in different countries that have been characterized by massive violence have led to a delay in the implementation of the measures and to a practice of implementing the registration of victims without having clear criteria to determine the rights of victims. Furthermore, the delay for eight to ten years of the reparation policies ended up depriving such measures of their meaning and isolating them from other measures to recognize truth and justice.

These measures generate greater challenges in the case of some specific human rights violations. For example, in the case of forced displacement, in which the number of victims is usually high, the definition of policies is precarious or inaccurate, or they have lacked logical reparations as a humanitarian response. This is the case of Colombia in the last decade.

The mechanisms and forms of access for the victims of sexual violence also generate specific challenges because gender stereotypes tend to be used when granting reparations. For example, in some cases, there are suspicions in the case of women reporting rape who ask for access to reparation; the burden of proof on women to prove that they were raped may end up re-victimizing these women, without taking into consideration the corresponding victimization mechanisms. This might lead to few women accessing such records, in comparison to the reality of the situation. In the case of Peru, in 2011, only 224 victims of sexual violation were registered.

The Chilean experience shows the importance of a registry open to the victims and for States to not use restrictive criteria that limit access to the reparation measures. In Chile, the registration of cases of disappeared and murdered victims of the CVR was later expanded and given follow-up with the National Reparation Commission. Then, the Valech Report recognized the victims twelve years later. Recently, in 2011, a new assessment commission admitted new cases of torture, but also of disappeared victims who met the established criteria (Lira, 2011).

This process is an example showing that many victims were not recognized for years, due to the impact of fear, accessibility problems, or the ways in which victims assimilated the trauma and the changes that might be made regarding reparation. This is also an example of the social changes that can motivate certain victims who were not confident in participating or felt unrecognized. The case of Argentina is a good example of this dynamic because the activation of the judicial investigation and the repeal of the laws on Due Obedience and Full Stop changed the attitude towards the economic reparation on the part of several victims who had been reluctant or ambivalent about the indemnifications. This dimension of interdependence, taking into account hierarchical criteria for the measures that are more important, gives meaning to the reparation.

In the case of El Salvador, the least developed in the region regarding reparation policies, the conditions of complicity of successive Governments continue to be the key factor for the lack of reparation for the victims and the absence of justice. Currently, the reparation agenda and the changes needed to seek justice are still a pending issue for the FMLN Government (Cuéllar, 2011).

In particular, the relationship of the indemnifications or collective reparations and the policies on poverty and social exclusion and historical inequalities shows the importance of the synergies of these actions, but reparation mechanisms should not be burdened with the solution of historical inequalities, which need broader policies.

An example of this dynamic is the case of Paraguay and Colombia. In Paraguay, the CVJ investigated illegally obtained lands in the hands of the dictatorship, figureheads, landowners, or new owners, and which should be returned or compensated equally. Such an issue is added to the demands by the peasant movement today, the social mobility based on the demands for land, or the large agro-industrial projects on soybeans and other products.

In Colombia's recent law on victims, almost half of the articles are related to land restitution. Such restitution is related to the consequences of the armed conflict and the dispossession suffered by the displaced population, and with a broader issue of agrarian reform. The land problem is evident in the interaction of the reparation measures and the structural reforms regarding land ownership, with the new challenges of extractive policies or agro-industrial projects and the role of transnational companies. The risk of this situation is the prevalence of the economic policies designed without taking into consideration the affected population, based on neoliberal models where the rights of the victims of human rights violations and of the affected communities, such as the case of the indigenous peoples, might be marginalized again.

Justice

The first country that tried to establish a relationship between truth and justice was Argentina. Then, after the report of the CONADEP, there was a lawsuit against the Argentinean military officers that ended with a sentence of the military leaders, and then there were several coup attempts and new laws on Due Obedience and Full Stop, in addition to the subsequent pardon for the members of the Military Junta by the Menem Administration in 1990. Then, the Chilean transition began with a formula of truth and reparation, without taking into consideration justice, considering the Argentinean experience and the coercive power

of Pinochet and the Army vis-a-vis the young Chilean democracy. Based on the first transitions, it seemed that impunity was the only possible recipe, within a context of a limited relationship of forces, or in which there was still a great coercive ability of the former perpetrators toward the democratic system, while these measures relied upon a discourse of national reconciliation.

In recent years, the Government of El Salvador decreed a five-day amnesty after the submission of the report by the Truth Commission, *From Madness to Hope*, in 1993. In the case of Guatemala, with several previous amnesties decreed by the military officers years before the signing of the Peace Accords, the government passed a National Reconciliation Law that was aimed at facilitating the social reinsertion of those who had rebelled against the *status quo*, but which was later used to stop the investigation of the cases of gross human rights violations.

Nevertheless, the activation of complaints and the judicial investigation started in Latin America after the complaints against the military officers in Chile and Argentina during the National Hearing of Spain that led to the detention of Pinochet in London. The judicial complaints, which were long promoted by the victims and human rights organizations of those countries, found in universal jurisdiction a key tool to promote the proceedings outside their countries. From then on, other proceedings were activated in France and Italy. Those events also had positive effects across Latin America, thus bringing new possibilities in the transitional processes with regard to justice.

The next truth commission to be created was that of Peru in 2001, which included a mandate to prosecute the cases to be investigated and for which it could collect evidence of criminal liability against the perpetrators. The next two commissions to be created were those of Paraguay y Ecuador, which included the possibility of prosecution in their mandate, as an example of an advance in the political culture and of the value attributed to justice in these proceedings even though the possibilities to seek justice have faced several difficulties.

The value of justice in each country's proceedings has been different. While such activation in all the countries has been the result of the persistence and creativity of the human rights and victims' organizations, it has also depended on the possibility of new alliances and more general social changes. In Argentina, a combination of factors, such as a progressive stance by the Supreme Court of Justice in the interpretation of the international laws that forbid amnesty for cases of gross violations of human rights and crimes against humanity, together with the political will of the Kirchner Administration and a social trend in favor of the repudiation of such violations, dismantled the foundation of impunity that was built on the basis of the laws on Due Obedience and Final Stop to be repealed and helped activate the demands for justice. In Chile, the arrest of Pinochet emboldened the judicial system, and the attitude of certain judges and the promotion of the human rights movement opened the transition door to the demands for justice (Garretón, 2000).

In Peru, after the beginning of proceedings that were filed with the Public Prosecutor's Office by the truth commission at the end of its mandate, and that progressed amidst several difficulties, there was an extradition process in Chile and then a trial against Fujimori, who was convicted in 2009 for the massacres of La Cantuta and Barrios Altos. Nevertheless, the changes in attitude of particular judges caused some cases to deadlock or led to a re-criminalization of the victims (Ames and Reátegui, 2011), and there were attempts by the Alan García Administration to pass laws that were aimed at blocking the lawsuits.

This scenario of closed-off justice and an attempt at control on the part of higher courts has been an effective mechanism in various countries to align the judicial criteria to the political interests of some Governments. Such processes to control judicial appointments, their number or characteristics, by the supreme courts or constitutional courts were undertaken in Guatemala during the FRG Government, the

party of Ríos Montt, and in El Salvador throughout the transitional period until today. In Argentina, during the Menem Administration in 1990 there was control over the appointments of the Supreme Court of Justice to guarantee the State privatization and reform projects (Tappatá, 2011), so that the decree to pardon the military officers could not be hindered. In the case of Colombia, during the Uribe Administration, the Supreme Court of Justice and the Constitutional Court were called into question by the Government and some justices were spied on by the Security Administrative Department (DAS) when they conducted the investigation referred to as “parapolitics,” related to the involvement of some members of political parties close to the Government with paramilitary groups.

In other words, the independent supreme and constitutional courts attribute a lot of importance to the political transitions to keep the independence and guarantees of justice, as can be seen in these examples of attempts to control them if they do not defend the interests of Governments.

As pointed out above, in every country the cases of enforced disappearance have been critical for a follow-up on the truth investigations. Enforced disappearance is *per se* a mechanism of impunity since it conceals the final whereabouts of victims and forms a cloud of silence around the facts, thus having a deep and traumatic impact, described by the families as a wound that is always open and which also sends a strong message of terror to society. But it has also become a permanent crime that is not subject to criteria such as statutes of limitation. In Chile, Argentina, or El Salvador, the cases of disappeared children were the first cases to cross the border of impunity since most of the amnesty laws did not include laws on the abduction of children or infanticide.

An Agenda for the Promotion of Justice

Some key factors for the activation of cases of human rights violations in Latin America have been:

- 1) Favorable political context: crisis factors that open the space of transitional policies, attitude of Governments showing greater political will.
- 2) Judges establish the International Law on Human Rights: repeal of laws that are not compatible with international treaties, inclusion of criteria of International Law on Human Rights in the decisions of the supreme courts.
- 3) Active role of NGOs: they adjust the focus of the litigation and arguments to the international laws on human rights; inclusion of information and evidence in the ongoing cases.
- 4) Appointment of judges and prosecutors with full-time commitment: they are totally devoted to the cases of human rights violations, extension of the type of judicial investigation to guarantee the right to truth; implementation of specific mechanisms with new criminal investigation teams.

A very positive example in various countries is the creation of specialized subsystems of justice for human rights cases. The existence of judges, with a full-time commitment and the training and specialization of prosecutors and judges, and police collaboration in specific investigation units, have been key factors for the activation of investigations in countries such as Chile or Argentina, with specialized units and coordination among them. In other cases, the creation of such subsystems has been significant, but it depends on the extension of the type of crimes to investigate, as in Peru, thus reducing their specificity and creating a volume of cases that limit their effectiveness. But, besides the creation of specific units, there is a need for training and promotion by the authorities, such as the Prosecutor General’s Office or the Supreme Court.

The investigation of violations has shown the importance of prosecuting the direct perpetrators, who on many occasions have been low-hierarchy perpetrators, intellectuals, and those who gave the order of perpetrating the violations or allowed their existence, without taking any preventative actions.

The most serious obstacles to justice have been the prevalence of statutes of limitation, internal laws poorly adapted to the international standards or openly opposed to them, the lack of investigation of the chain of command, or the limitation on the use of evidence in such a context in order to define high-level accountability. For example, in Peru, even though such evidence was used in the case of Abimael Guzmán, the leader of *Sendero Luminoso*, it has not been used in several cases involving the Armed Forces. Moreover, the lack of legal assistance for the victims, even though there were paid lawyers to defend the State agents accused of being the perpetrators, or the openly hostile litigation against the victims, either because they were able to nurture fear as well as the accusations and the phenomenon of inversion of guilt towards those who filed a complaint, have continued in several countries in the region (Ames and Reategui, 2011).

As stated above, the investigation and the social impact of the truth does not end with the commissions. These continue over the years in new revelations that are part of the collective memory. In this sense, the truth that is revealed within the framework of judicial investigations, though limited in some cases, is very valuable, especially when it reveals a more generalized pattern of action. Moreover, when there is a lack of justice, truth becomes just another version of history and is easily denied (Ignatieff, 1999). In Chile, ten years after the CVR, the activation of judicial investigations helped untangle a web of lies, complicity, and silence that is woven by impunity, thus generating a debate on the facts and a questioning of the idea that impunity was the corollary of social peace (Lira, 2011).

At the same time, the activation of justice has generated movements in all the countries in order to put an end to the trials, either because Governments were pressured by the military officers or by the political position of the ruling parties. Nevertheless, the experiences teach us that many things cannot be closed down so easily. In the case of Chile, the investigations involved new revelations by former members of the Army, making truth also a key crisis factor in the face of pacts of silence, when the social response is to support it.

Finally, the role of institutions, as guarantors within the States themselves, has been varied. While institutions such as the Ombudsman's Office in countries like Peru, have played a major role in the follow-up to the reparation policies, in other cases like El Salvador the role of the Office of the Ombudsman for Human Rights, created after the Peace Accords, has been much more limited, with little scope of action in practice and mostly depending on the person filling that position.

Persistent Obstacles to Justice

Argentina is one of the countries where there are more advances in justice to confront the human rights violations by the dictatorship. Nevertheless, in spite of this and even given the improved social climate, it does not mean that there has been a reduction of threats. While countries where the security situation is more difficult, like Guatemala, Colombia, or Peru, all this has been more evident for many years; in the Argentinean case of the disappearance of Julio López, a witness in the case against Etchecolatz, former chief of the Police of Buenos Aires, we see a latent threat and also that the need for psycho-social accompaniment and security measures for the victims and witnesses is still a key factor.

In Guatemala, only a few legal cases have advanced, and there has not been a final decision in most of these cases. Of the 47 cases filed in Peru, only nine had a decision while the others were in process amidst military pressures and maneuvers to prolong the investigation. In the case of Ecuador, the Truth Commission made accusations in 80% of the cases under investigation, whose progress is still to be determined. In the case of Chile, no amnesty has been applied but there was a gradual judicial approach to reduce the sentences. Of the 230 sentences in 2011, just in one third of the cases, the convicted perpetrators were in jail and there were discrepancies among the judges regarding the uses of these legal concepts. In the case of Colombia in 2010, the investigation of cases in civil courts led, 25 years after the events, to the sentence of retired Colonel Plazas Vega, for the enforced disappearance of eleven people in the case of the Palace of

Justice, which had been occupied by a commando of the M-19. Subsequently, however, with the new Santos Administration, there were movements outside the Army in an attempt to readjust the criminal proceedings that might involve military officers, with the resulting risk of limiting justice.

On the other hand, the fight to build an institutionalism coherent with the Rule of Law and the investigation of violence within the context of a weakened State structure penetrated by collaborators of the organized crime, led to the creation of a United Nations sponsored International Commission against Impunity in Guatemala (CICIG), to investigate the contemporary criminal structures and clandestine groups. The CICIG made significant progress in the investigation of certain cases, but little progress in the strengthening of the State investigative capacity. In 2010, a challenge by the State and the dominant sectors in the country against the CICIG led to the dismissal of its director, Spanish prosecutor Carlos Castresana. Such a challenge was characterized, in the last stage, by key appointments inside the structure of justice and particularly the appointment of the General Prosecutor of the State, for which the Government tried to appoint a prosecutor completely opposed to the defense of legality and human rights, but this appointment was finally reversed. This is an example of the importance not only of the strong and accessible institutionalism, but also of the political will of important Government officials for the activation of justice, which is still a pending issue in several countries under analysis.

In the case of Argentina, which is a positive example, there are also obstacles to the performance of justice and the role of officials, particularly in the provinces, which can only be overcome by the hard work of the organizations that filed the lawsuits (Tappatá, 2011). This negative trend to limit the judicial investigation in the cases of human rights violations not only helps consolidate the changes, but it also conspires against democracy almost in every country, even when it takes place within a context of other favorable actions by the State.

Nonetheless, just as there has been progress in the administration of justice in several countries and as cases have been accumulating; there have been voices against the trials alleging that they should not continue over the long term. On the other hand, the difficulties regarding training, commitment, and proper structures to conduct these proceedings evidence the risk of closing the cases before justice is done.

The application of unsuitable criminal statutes for human rights violations, which hinders their investigation, has continued in different countries. For example, the first case against a well-known member of the Stroessner police, a case that the Truth and Justice Commission of Paraguay tried to prosecute, was defined by the prosecutor as a crime of injuries and not torture, thus leading to a statute of limitation and forcing the victims and the Commission itself to file new complaints and formalities with the authorities.

In Central America, the resistance to collaborating with the investigation of universal jurisdiction cases in El Salvador, because of the assassination of the Jesuits and two women who lived with them in 1989, is a thermometer of the independence of the Judiciary and of the quality of democracy, as well as the governmental commitment. While the Executive Branch, in the hands of the FMLN, pointed out that in those cases the judges were responsible for deciding about a response to the detention warrants or collaboration requests, it had a negative attitude towards the tactics to limit the scope of the decisions by the Supreme Court to make justice effective (Cuéllar, 2011), while the most conservative sectors tried to limit the right of victims to justice, and the internal investigations were not activated and this is part of the sense of universal jurisdiction.

In all the countries, the human rights organizations and the victims are leading the complaints and lawsuits so that there can be a real activation of the judicial investigation of the cases. In Guatemala, the scant progress achieved in the investigation of human rights violations during the armed conflict has been achieved amidst huge difficulties and threats. As of 2010, there has been some encouragement of the

investigation of some emblematic cases, such as the investigation of the genocide case in the Ixil area, some progress in the investigation of some cases of disappearances, detention warrants against some senior officers of the military dictatorships, such as that of former General Mejía Vítores, Minister of Defense during the dictatorship of Ríos Montt and a dictator between 1983 and 1986.

However, the fight for justice in isolated cases might not be strong enough to urge perpetrators to break the pact of silence, as it happened in Chile with the arrest of Pinochet. For example, in Guatemala the widows from the Choatalum village wanted to file their complaint against military Commissioner Noriega, perpetrator of the disappearance of their husbands, after trying in many ways to make him provide information about their relatives, find about their whereabouts, recover the remains, and perform Mayan rituals. The judicial proceeding meant a huge victory for them within a general context of impunity, including the first sentence for a case of enforced disappearance in the country, but the former commissioner continued to refuse to provide information after the sentence, while trying to re-stigmatize them, this commissioner continued having much influence locally.

The Role of the Inter-American System

In all the countries, the role of the Inter-American Human Rights System has been very significant to carry out justice that was not achieved internally, and to improve the response of the State to international supervision. In terms of the guarantees of non-repetition, the judgment of the case of Barrios Altos by the Inter-American Court, and the confirmation of this jurisprudence regarding the illegality of amnesties in the cases of crimes against humanity in many other subsequent cases, has been an important benchmark in the region. In countries where no steps have been taken in judicial investigations, such as El Salvador, several cases have been submitted to the Inter-American System, and there have been some convictions for the refusal of justice, which have been critical to open up the political transition. In the case of Argentina, the report by the Inter-American Commission on Human Rights (IACHR) played a key role at the beginning of the transition for the development of a reparation policy. Moreover, in Colombia the relationship between the military officers and the paramilitary groups, widely denied by the State, was recognized by the Court and led to several sentences in cases of massacres and collective disappearances, such as the cases of the 19 merchants, Ituango, or Pueblo Bello, among others.

The supervision of the Commission and the role of the Inter-American Court in the countries under analysis is still critical and is an instrument that is increasingly used in different countries. The human rights and victims' organizations find in such a system the only hope and a lobbying mechanism with the States, which can push the political will towards a reduction of threats, empowering the systems of protection, promoting the investigation of cases or the agenda of the guarantees of non-repetition. There are increasing problems, such as an overburdened system, the response time for their demands, the lack of more effective mechanisms for the compliance with its recommendations or sentences, and the changes in the regulations and work procedures that weaken the role of the Commission.

In some countries, there have also been negative responses by the States, which tend to complain about the sum of economic reparations mandated by the sentences of the Court, when they exceed the amounts established by the States in the general reparation programs. The role of the Inter-American System continues to be a key element for the activation of the defense of human rights in the countries under analysis.

Institutionalism of the Truth, Justice, and Reparation Policies

A method to assess the policies of the countries and the importance of truth, justice, and reparation in those countries is to analyze the institutionalism in charge of implementing or coordinating those policies. The existence of strong institutions is an indicator of the importance attributed to them by the States. An

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

example is the Secretariat for Human Rights in Argentina, which coordinates the policies on reparation, accompaniment, and security of the judicial investigations, or the application of the existing legal frameworks for the reparation of the victims of the dictatorship. In other countries, institutionalism has been reduced to a department in the Ombudsman's Office (Paraguay), or through specific commissions, on many occasions lacking a clear legal framework for its operation and the relationship with the ministries or institutions of the State involved in the reparation, accompaniment, or investigation of the cases, such as the CNAM in Peru or the reparations program in Guatemala.

Such institutionalism has been separated, most of the time, from the demands for justice, thus ignoring that justice is a central measure of reparation for many victims and part of the satisfaction measures and guarantees of non-repetition in accordance with the Internal Law on Human Rights. But a positive example is the case of Chile, in which in addition to the institutionalism of the different programs for the victims, the pensions, scholarships, or health care through the PRAIS program, the Human Rights Program from the Ministry of the Interior provides logistic and documentary support to the investigation conducted by special judges. After 2009, the Human Rights Institute is a new institution with the mandate to support the investigation of executions or enforced disappearance and implement symbolic measures (Lira, 2011).

But in other countries, the level of institutionalism and its insertion in the community framework, in places where massive violence was mainly rural, is weak. The reparation program in Guatemala continues to have only the coverage of a governmental decree that depends on the governmental will and its action is not linked to accompaniment during judicial proceedings nor to the policies of the corresponding ministries that should be in charge of developing other reparation measures to offer a more comprehensive reparation with a broader perspective than indemnifications.

In the health care PRAIS program for the victims of the dictatorship in Chile, the program depended on a decree for many years, until 2007 when a specific law was enacted to consolidate the care for the victims after many years when such a program was about to be closed. The following chart shows an analysis of the positive aspects and limitations of this program, which represents a unique example of the broad measures with a reparation component for the victims.⁶

PRAIS Program⁶	
<i>Positive Aspects</i>	<i>Limitations or Problems</i>
Specific program for the victims of political violence.	It includes the care for the victims of domestic violence. The Director of the PRAIS is also in charge of other programs.
Insertion in public health care programs: free assistance.	Positive integration, but with criticism related to the economic contribution to the operation of the program.
The program is based on a law, this ensures financing and continuity.	Provisional nature of the program for some years. Registration in the priority programs of general public health, but not specifically for the victims.
Initial teams with the training and confidence of the victims: they preserve the memories and projects in certain regions.	Difficulties to keep the initial teams. Scarce training after new teams.
Registration in the priority programs of public health.	A need to adjust the program and the role of the PRAIS team: strengthen the insertion in the system. The health demands by the target population will increase in the next ten years due to the age of the survivors and their relatives.

6 Taken from Martín Beristain, C. (2010). *Diálogos sobre la Reparación, Volume II. IIHR, UNDP: Colombia. (Page 253).*

Specific mental health care. Special fund for physical disabilities.	A need for some special mechanisms for the cases that cannot find a solution in the health care network on a timely basis: access to specialists and waiting lists.
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A relevant aspect in this type of institutions is that they frequently include outstanding people from the civil society in their structure, as a way to legitimize their performance and rescue the experiences of the civil society for the State policies. This generates a frequent tension between human rights and victims' organizations and the development of these policies, mediated by this capacity of symbolic and practical relationship. For example, in Colombia, the Government created the CNRR in 2006, incorporating several members of the civil society, but with little capacity to influence the State policies and whose management maintained a critical public discourse with the victims and a justification of the governmental policies, detaching itself from a necessary privileged relationship with the victims and the human rights movement, regardless of the commitment of many of the workers. In other cases, such institutions have been seen more as an attempt to keep a positive public image than as the development of a more comprehensive and effective policy of the State. In any event, the most positive experiences have taken place when there is a collaborative relationship between the State institutions and the civil society, in which there is clarity about the different roles, including the capacity for criticism and the spaces of social participation in the design and implementation of such policies.

Within the framework of broader efforts of interstate coordination, the institutional memory initiatives of a regional nature are a powerful encouragement for other countries where the public insertion of the topic is weak, like the case of Paraguay with regard to the initiatives of the places of memory and sites of conscience of the Mercosur. In other countries where there is not such a context, where social conflicts direct attention toward other current topics, or where the work of the commission has not been known at a national level, like Ecuador, the future path is still unknown, even though the commission submitted a victim law and a proposal for the investigation of crimes against humanity and the discussion of its recommendations with some sectors of the State and the civil society to facilitate their subsequent implementation.

Security Policies and New Social Conflicts

In most of the countries under analysis, the Army was involved in or led the repression that resulted in massive violations of human rights. In other cases or in other times, even though it did not rule directly, it has had a very strong role in the political and economic management of the country. The military power often distrusts the truth, justice, and reparation agenda. However, the change that took place in Chile as of 1999 also involved the largest military collaboration in the investigation conducted in the regiments that were detention centers, and especially, of the revelations of the Valech Report about the implication in thousands of cases of torture. That report showed the existence of 1,132 reclusion centers, which revealed a systematic practice of torture and which, according to data provided, the repression started on the same day of the coup d'état at 11 am (Lira, 2011).

Such social repudiation was also shown by certain senior officers of the Army who absolutely rejected the violations and was also shown in the collaboration with the judges to identify the members of the Army who violated human rights, even though such actions largely depend on the leadership of the Armed Forces, given its hierarchical structure. As a whole, the cases of Chile and Argentina show, in general, certain changes because positive and solid actions have been taken, but other aspects are also fragile and depend on the political events.

One of the main risks in the role of the Armies in Latin American is their growing implication in the topics of internal security within a context where there is a weakening of the political parties and a rearticulation of

the structures of the political, economic, and media powers, as well as a growing dependence on personalistic leadership and their capacity to generate popular support or consensus among different social sectors. The risk, in some of the countries under analysis, is that the Armies become more relevant for the Governments as a central element of the State because they can use them for the current policies and the governance of the social conflicts. That can easily lead to a reluctance on the part of the civilian governments to question the Army's past role, since they are dependent on the militaries for present-day security. These trends also have negative effects on the civil police systems with little training and resources, which seek the strengthening of their performance to be more relevant for the security policies.

The countries with the least risk are those where there has been a discourse and coherent practice of breaking with the past and, consequently, changes in the military doctrine and submission to social sanctions, even though such actions have always been partial and based on the lobbying of the civil society organizations. Nevertheless, in other countries like Guatemala, El Salvador, Peru, or Colombia the military institutions have not expressed any self-criticism nor have they accepted their liability for the violations of human rights and continue operating largely with the same training programs, which is a negative and dangerous sign affecting the consolidation of democracy.

The role of the military officers in current security issues and their use by civilian powers as in Peru, Guatemala, or Paraguay, at different times, generates a risk of new violations of human rights, as well as obstacles to justice, without any guarantees of prosecution or depuration of the Armed Forces. In the last few years, the responses to the situations of citizen insecurity or social violence in countries such as Guatemala or El Salvador, but also to a lesser extent in Ecuador or Peru, in the face of social protest and land conflicts have led to the military intervention in issues of internal security and a trend towards the criminalization of the social protests in different countries by accusing the opponents or affected communities of being terrorists. This trend bears the risk of applying old stigmas, this time associated with other social conflicts and the risk of expanding these authoritarian responses that weaken the Rule of Law.

In the last decade, in almost every country there has been an increase of social violence resulting from a combination of factors, such as increased social inequality and social exclusion, especially in younger generations without any future, as well as the loss of collective or family support systems and the lack of social cohesion, and the impact of drug trafficking or other forms of organized crime violence. The social violence phenomena, such as theft or assaults with an undue use of force, have increased and in some countries they have dramatic dimensions, but due their frequency or, even, due to the use of high-caliber weapons and grenades against buses as a form of generating terror. In countries like El Salvador or Guatemala, but also Mexico, this violence has had a huge dimension in the last few years.

For example, femicide has increased drastically in Guatemala and El Salvador, and the forms of expression of horror, the trivialization of extreme violence or the authoritarian responses asking for the death penalty and a larger militarization in different countries bear the risk of returning the young democracies to old recipes of authoritarianism in the face of new threats, such as the trafficking of people, the actions of the *maras*, or narco-trafficking organizations. These issues are becoming *transnational* in the region, with a dissemination of illegal markets and powerful crime structures with a large capacity of violence. In many countries, they are related to the State, in the form of former or current members of the military intelligence, or they nurture themselves with police corruption, among other factors, thus generating the risk of penetration of mafia organizations in the State apparatus (Leonardo and Mack, 2011).

These new structures of criminality are similar to the mechanisms of horror that contributed to the large-scale violence in countries such as Guatemala or El Salvador, but also Colombia. The memory of the human rights violations perpetrated during a war is not only a memory of the victims, but it should emphasize the

dismantling of the structures that made them possible. In Guatemala, within the framework of the transition process after the signing of the Peace Accords, criminal gangs associated with the illegal business of car theft or drug trafficking started to proliferate. Well-known members of intelligence services involved in human rights violations filled key positions. This lack of a depuration of the State institutions, within the context of the ongoing and significant power of former perpetrators in new criminal activities and illegal yet profitable economic structures largely explains the rates of criminality, but it is also related to the link between the human rights violations of the past and the situation of violence of the present. Moreover, the recipes of a larger impunity and authoritarianism bear the risk of reproducing the events of the past in new ways, or of generating insensitivity in the face of suffering and a trivialization of horror.

From this perspective of longer-term processes, we can perceive the risk of ignoring the relationship between the problems of the present and the problems of the recent past, with an impact on the reduction of cooperation linked to human rights or the loss of benchmarks for the countries, such as the case of Central American regarding the Peace Accords that led to the path to transition that it is to be travelled.

The new forms of violence still show the relationship between impunity and corruption. If there is no connection between this issue and the impunity mechanisms that are still in force and affecting the conflicts of the present, we will not have critical societies that demand the State to respond as the guarantor of human rights.

The Role of the Victims and the Human Rights Organizations

The human rights organizations and the victim and survivor organizations have played a key role in the democratization processes and in the promotion of the truth, justice, and reparation agendas of the Latin American countries. In most of the cases, these efforts have continued the work that these organizations were doing since the period of dictatorships, authoritarian regimes, or armed conflicts, amidst extreme conditions. Such organizations have been an example of effort when the only possible horizon was adaptation or impunity. The work by the Vicariate of Solidarity in Chile, or the Legal Guardianship in El Salvador and other associations in each country nurtured the work of the truth commissions; therefore, these commissions would not have been able to fulfill their duties. The human rights movement has become an ethical benchmark even though its ability to influence the way of thinking and doing politics or a culture to prevent authoritarianism has been varied, as will be seen throughout this study.

Such organizations have become a moral benchmark in the transition processes even though their impact has depended on the level of organization, the coordination with other social sectors, or their persistence, training, and creativity. However, even in the countries where this impact has been more evident in public policies, the different periods and the emergence of other social problems also involved serious difficulties to keep a truth, justice, and reparation agenda alive in the country, like the case of Argentina during the first half of the nineties. The crisis of the neoliberal policies in 2001 generated complaints against the external debts involving some human rights organizations, or the economic and social rights agenda during the new Kirchner Administration, which combined, in practice, the end of the economic crisis and the recovery of the quality of democracy with the progress made with the truth and justice complaints still pending in the country.

During different periods, there have also been ruptures or crisis of leadership in the victims' organizations, such as the cases of Guatemala or Argentina. In the case of Guatemala, the organizations that had a common agenda for the creation of a reparation program were not able to reach an agreement at the onset, thus leading to attacks and ruptures that had an impact on the subsequent fragmentation and were later manipulated by successive governments. A central aspect to consider is the frequency of sectarianism or division during the

armed conflict that tends to reproduce during transitional times, as well as the importance of creating a new political culture where the assimilation of the historical memory process by the political leadership becomes a key ingredient. On the other hand, the exclusive use of economic reparation means that a significant element of the truth, justice, and reparation agenda, whose creation was promoted by indigenous organizations, will produce a fragmentation of the consensus processes that have been built for a long time and whose absence would make the process lose impetus and have an impact on the victims and society.

In other countries, the construction of a common agenda and the different forms of coordination among the organizations have played a major role to push the responses to the human rights policy in the same direction. For example, the Movement of Victims of State Crimes, the MOVICE, has played an important role in Colombia in the coordination of different sectors against the Justice and Peace Law or the promotion of a public debate on the topics of land, justice, and reparation in the country. Moreover, it has carried out different activities in the area of memory or even the first mobilization in the country to vindicate the rights of victims of human rights violations after the massive mobilizations against abductions by the FARC, which had a massive social and governmental support. These actions and the experiences of social resistance of the Comunidades de Paz in Urabá, the resistance of the indigenous movement against the war in different places in the country such as the Cauca, or the emergence of women's movements in the debates about truth, justice, and reparation in the country show a significant dynamics of the Colombian society and the plurality of base organizations that have been developing even amidst the armed conflict.

Another example is the Human Rights Coordinator in Peru, which played a key role in the resistance to authoritarianism and in the creation of the CVR and which is still a very important benchmark as a collective space to promote the truth, justice, and reparation agenda in the country, with the participation of new actors, such as more organized victims movements that have been demanding a more relevant role and a more horizontal relationship with human rights organizations that have a more professionalization level.

Almost in every country, women were the first ones to take to the streets to demonstrate against the dictatorships, such as the hunger strike in Chile in 1977, the marches of the Mothers of Plaza de Mayo, in Argentina, the manifestations of the *Comadres* in El Salvador, or the GAM in Guatemala during the war. As pointed out by the experience in Chile or Argentina, the role of women in those processes has been critical, notwithstanding that most of the direct victims have been men, even in the countries where violence had a massive and collective dimension like in Peru, El Salvador, or Guatemala. This happens because the women were considered enemies since they played a major public role and sometimes due to their larger political participation; however, when women did play such a major role, they have often become direct victims themselves, as it has been happening in Colombia in the last few years.

In other countries, the role of the victim organizations or the human rights organizations has not had as much social relevance or impact, such as the cases of Ecuador and Paraguay (even though the latter during the time of the CVJ, an association of families of the disappeared was created and its members have played an active role in the initiatives that have taken place in the country regarding the memory and search for the disappeared).

The victims or family organizations have also played an active role in the fight for justice, without which none of the cases would have advanced in the different countries. The activation of justice, while it has taken place in contexts with a combination of factors, would have not been possible without the support and persistence of the victims. But this also means that burden of the fight for justice and of the impacts of the judicial proceedings has been carried by them.

TRUTH, JUSTICE AND REPARATION

The case of Argentina is a good example that changes have not been automatic, but they have been made after the lobbying of society; moreover, it shows the importance of such changes and their inclusion in the guidelines of what they consider politics, with capital letters, in the country; for example, the bicameral declaration at the request of the Center for Legal and Social Studies (CELS), with regard to the need to ensure the truth and justice process as a State policy and to make sure it is always considered an important factor.

From a looking toward the future, one of the most serious problems of the human rights movements is generational change, as well as the new approaches, problems or methods of working in this areas that will combine the problems of the past and those of the present and that have an impact on the pending agendas in every country, regarding the new sources of social conflict that are closely related to economic and social rights. The right to truth or to the environment, the impact of extractive policies and the fights for the defense of the lands or territories in the indigenous cases, the emergence of new forms of social violence or the right to work and solution of the huge inequalities in Latin America, worsened by neoliberal policies, are part of this agenda that combines truth, justice, and reparation and the transformation of the present and the deepening of a participative democracy model that responds to the problems of the large majorities.

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Past and Future Central Issues of the Present in Argentina

Patricia Tappatá de Valdez

I. After the Transition

After almost three decades of democratic regime in Argentina, there are undisputed achievements in the dynamics of the recognition of the past. This chapter summarizes the main characteristics of the conflict that led to the military dictatorship, and it focuses on the analysis of the most outstanding results in terms of truth and justice. The social and political solution of the devastating effects of the dictatorship in the Argentine society, which continues to develop day by day, is derived from the combination of efforts and demands by the victims and human rights organizations and the answers by State institutions in successive governments.

A retrospective look at the path traveled presents the regulatory and political obstacles that since the end of the 1980's established the main characteristics of the struggle for the validity of human rights. Impunity laws and the subsequent pardons limited, for more than a decade, the knowledge about truth and court actions when they put a stop to the effects of the first and basic actions –CONADEP and the Trial of the Military Juntas- adopted by President Raúl Alfonsín at the beginning of his term. After taking a look at this, it is also possible to see how the confluence of a variety of local and international factors, particularly since the second half of 1990's, made it possible to gradually remove the existing obstacles to filing a high number of legal proceedings of today¹. Merit is not built only on figures, but it has also been possible to thoroughly study emblematic topics related to some of them: appropriation of minors; repressive coordination between countries or the Condor Plan, and the incorporation of other topics which are addressed less thoroughly, such as sexual violence² and appropriation of assets of kidnapped and disappeared citizens.

Six years ago, the Supreme Court of Justice, in a historical decision³ declared laws 23 492 and 23 521 (called *Full Stop* and *Due Obedience*) unconstitutional. Such decision radically modified the scenario of the fight for human rights. Trials went from being the main element of the claim to becoming the main concern and the reason for reconsidering the agendas of different organizations and groups. The idea was to think of strategies, reallocate resources, and make an effort so that trials went forward and had an impact on and support from the public opinion. Since then, proposals were made by the organizations of human rights to introduce improvements in the strategies of the Judiciary that would have a positive impact on the acceleration of the processes. The good news of the reopening of cases should become tangible for the witnesses, the victims, or their families, preventing the former to repeatedly testify about their experiences, and so that their rulings were issued in the shortest time possible in order to affirm the reparation nature of the proceedings.

a) The Different Challenges of Trials

The outlook, in every case, became both interesting and complex. On the one hand, unlocking the door that prevented national justice from following again the natural jurisdiction was not only great news, but

1 As of August 2011, a total of 1,763 persons, including civilians, armed forces members, and security staff, are or were involved in proceedings related to State terrorism. Out of this number, 198 have been found guilty, and sixteen have been acquitted. To review more information, see the blog on trials of the Center for Legal and Social Studies (CELS) at www.cels.org.ar/wpblogs/.

2 It is only during the last years that there have been explanations about gender violence, sexual abuse, and rape as common practices included or associated with the crime of torture of kidnapped detainees, especially women. The latest rulings have made progress by typifying sexual rape as a crime against humanity, and they have even ordered to file special judicial proceedings for separate investigations and trials (resolution by Judge Sergio Torres in the emblematic ESMA 2011 case). The foregoing becomes substantive progress in relation to the previous situation, which only distributed testimonial literature and there were isolated references in some judicial investigations. The international presence of the topic, after the war in the former Yugoslavia, the academic essay and report by the Truth Commissions in Guatemala and Peru, among others that were explicitly included, are factors that contributed to call the attention to the topic and make it visible as a systematic practice of the repressive plan during the military dictatorship.

3 Simón, Julio Héctor et al, on unlawful deprivation of liberty, etc., case No. 17768. 06/14/2005.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

in its foundations it also came back to the core principles of the Rule of Law, which the previous situation was making vulnerable: the supremacy of the international standards that have a constitutional rank in Argentina, the imprescriptibility of the crimes against humanity, and the impossibility of being the object of amnesties. It pointed out, specifically, that enforced disappearances represent a multiple and continued violation of numerous rights already enshrined in Inter-American standards, which the State must respect and protect. The ruling ratified and crowned a variety of precedents of judges and Chambers, as well as nullity of the laws that Congress had enacted in 2003. On the other hand, this new scenario revealed the shortages and fragilities of a democratic institution that needed to be renewed in different aspects, in order to address the challenges posed by political and legal decisions.

In this sense, it is now important to pay attention to an essential, but postponed, reorganization process in the different aspects of the judicial administration. The armed forces, the security forces, and the Judiciary were always the most elusive. In the case of the armed forces, the reorganization would only take place if objections were filed when the promotions of senior officials had to be approved by the Senate. It also took place as a result of police scandals in a province, which forced the authorities to discharge the officers that had actually participated in actions of repression during the dictatorship. The resuming of trials started disclosing this omission or delay because in the different offices that process the cases, there were some individuals who had collaborated with the dictatorship, or who, in compliance with their duties, had not protected citizens or guaranteed their basic rights⁴. Another relevant aspect to address was an updating of management procedures and the provision of infrastructure and technology to facilitate communication, investigations, and the normal work of courts and offices of public prosecutors. A change or re-orientation of their tasks and methodology in terms of a new paradigm was mandatory, and gave victims and witnesses the major role they played when the dictatorship was overthrown and which they should have never stopped playing. Nonetheless, this is an aspect which still has a road ahead.

A clear step ahead was the creation of the Prosecution Unit of Coordination and Follow-Up on Human Rights Violations perpetrated during the State terrorism⁵, in order to make a constant follow-up on the proceedings and coordinate the investigation and prosecution strategies with public prosecutors of all jurisdictions. The idea was to expedite the stages of trials and also to ensure the integrity of the parties and witnesses involved in the proceedings.

Two years later, the Supreme Court of Justice created the Commission to Coordinate and Expedite the Proceedings of Crimes against Humanity (Resolution PGN 26/09)⁶, also called “inter-power commission”, which joined the existing Unit for the Superintendence for Crimes against Humanity at the Supreme Court of Justice of the Nation, whose main responsibility is to support development of proceedings.

We must say that such institutional decisions were not concomitant to the reopening of cases. The existing delay and lack of coordination problems, or the infrastructure deficit or staff shortage, remained as evidence. It was necessary for the human rights organizations that are on the top of the list regarding complaints demanded changes and improvements, anticipated and warned about possible gloomy scenarios and put pressure on concerned officials. The awareness about the need to act was characterized by drama and tragedy when verifying that witnesses and the different parties involved in the trials were unprotected. This was made clear when Jorge Julio López, who had been kidnapped during the dictatorship, disappeared

4 There are numerous documented cases of members of the Judiciary who had been reported and removed due to their proven complicity during the last military dictatorship.

5 Through resolution of the Office of the Attorney General (Office of the Public Prosecutor) in March 2007.

6 In March 2009, the President of the Supreme Court of Justice of the Nation summoned representatives of different institutions of the State involved in the development of the proceedings on crimes against humanity committed during the State terrorism, with the purpose of creating a commission dedicated to the coordinated search of solutions for the problems that hinder the normal development of these proceedings.

TRUTH, JUSTICE AND REPARATION

again without any trace in September 2006. López disappeared before giving his final deposition against the one-time powerful Police Investigation Director of the Province of Buenos Aires during the dictatorship, Miguel Etchecolatz. After this event, the corresponding bodies made decisions that improved the situation.

A few months later, in 2007, the first defendant to be prosecuted in the case of the emblematic clandestine detention center that operated in the ESMA died after being poisoned⁷. Both events showed again that the legislative decisions or those agreed by the highest court of the country –even supported by advertisements and speeches about human rights topics- are more expeditious than institutional policies and the specific measures that facilitate the reopening of cases and make sure things happen in the best way possible.

The fact that trials have been reopened has inspired admiration in the country and other regions. Trials mean a giant leap in terms of compliance with the state obligation of being accountable for the illegality and deaths in the past, but they have, together with their nature of a true epic, aspects not yet accomplished.

In this case, and as it will occur in other important human rights topics, the tenacity of civil society organizations, the commitment by some key collaborators, and the political decisions that make these leaps possible, are not sufficient to guarantee the success of the projects. The observation of a progress process, as valuable as the one that took place in the last decade, has shown that the measures promoted to achieve truth and guarantee justice and memory in Argentina do not have the corresponding strategic and long-term plan. At the same time, they hardly have micro-management mechanisms these issues deserve, due to their nature.

b) Archives and Historical Sites

The historic deed of the trials also focused on other topics that seemed to pertain to specific areas: the historical or journalistic investigation –in the case of archives-, or the matters that usually seem related to the tributes and cultural and educational presence, such as monuments and museums. The development of court proceedings required information from these fields; therefore, even when archives and historical sites have an entity of their own, their contributions seem clearer and more strategic. This means an advantage in terms of the independent agenda that both topic topics need to promote, but which require the attention of state institutions that are accountable in these areas.

Since the end of the dictatorship, the basic data to clarify the fate and whereabouts of thousands of disappeared people were provided by the survivors, the victims' families, and human rights organizations, who always demanded democratic institutions to rebuild and provide this information. In this context, official and valuable archives gradually started to “appear,” such as the material of a “task force” that acted clandestinely at the Navy Mechanics School (ESMA)⁸ or the archives of the intelligence divisions of some provincial police stations⁹. Also, the Argentine Forensic Anthropology Team, along with a group of court employees from different jurisdictions, thoroughly investigated and answered the questions of the victims' families by identifying and naming the remains that had been identified as “NN.”

Due to the small number of official documents developed in the country, the declassification of documents from the United States Department of State became very important because it contributed

7 The case of Prefecto Héctor Febres revealed not only the scandalous and irritating privileges of the members of the armed forces who were detained, but also the gaps in terms of essential protection and security. See the modification to this situation in note 88 herein.

8 The archive included information on the disappeared and the methodology used, and it was delivered by the Center for the Documentation and Investigation of the Left Culture in Argentina (CEDINCI), the CELS and the Argentine Forensic Anthropology Team to the National Criminal and Correctional Court of Appeals of the Federal Capital, a court that investigates the crimes committed at the ESMA.

9 The most important is the police from the province of Buenos Aires. See Provincial Commission for Memory.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

new perspectives of the events and evidence for some legal proceedings. However, accessing documents that complement previous information which had to be prepared, among other aspects, by armed forced members and employees of the Argentine Foreign Service is still a pending task when rendering account to those responsible for their institutions of the same events described in the US declassified documents. The answers to the requests of access to the information made by human rights organization that allege the inadmissibility of the “secret of State,” when dealing with documentation about human rights violations, are not very encouraging because they are related to “unsuccessful searches,” or in the case of military archives, to “destroyed documentation.”

As the proceedings advanced, the defense of the military defendants argued their innocence based on the contents of the instruction manuals and regulations that governed the actions of the armed forces since the sixties. This type of documents, which had not been recognized before, started to be distributed.

For many years and until today, the armed forces have banned all the information about the final destination of the disappeared, insisting even in denying the existence of files containing the details of such an operation. Even so, in the last three years, there have been initiatives to review and investigate files in the Ministry of Defense, recently at the Foreign Affairs, and at the new Ministry of Health. These are important steps –along with other measures¹⁰- to break the rebellious secret: planned interventions, in a professional way, under the format of “units of search” in order to thoroughly study the knowledge about the period, adding information on facts, methodologies, and responsibilities in view of the judicial proceedings taking place in the courts around the country. These and another initiative, in the same sense that is developed in government agencies, are making up for the scarce actions of the different governments in previous decades –besides keeping and managing such important files as the result of the investigations by CONADEP- to make progress, based on these data, in the extension of the investigation about topics from the recent past.

A systematized summary of the existing files with useful information for the legal proceedings was prepared by Open Memory upon request of the corresponding Prosecution Unit¹¹, in order to facilitate the investigation of the judicial operators themselves. Its contents show that there are multiple lines to develop in this area, which would require a task coordinated by the State, with the purpose of generating standards to preserve and arrange the files and to establish clear criteria to access sensitive information.

The possibility of entering the buildings in which the kidnapped and disappeared people had been hidden or murdered during the dictatorship became a complaint by the survivors and human right organizations. This complaint goes back to the second half of the 1990`s. Some of them –due to their emblematic nature- represent their desires and vindications. Later on, we will refer to such process, but before that, we must say that in the last years, different paradigmatic sites have been recovered for public use. For example, the premises of the former Navy Mechanics School of Buenos Aires, or the buildings of the complex denominated “La Perla,” close to the city of Córdoba. Others are less conspicuous, but they were part of the many premises used by the State terrorism to deploy their strategy. While groups and authorities advanced slowly in the determination of their uses and management methods, the judges have inspected the places accompanied by witnesses so that they can recognize the spaces, determine the changes in the infrastructure, and obtain evidence for the proceedings.¹²

¹⁰ See in this chapter the section on “Confessions, self-criticism, and the opening of files.”

¹¹ See http://www.mpf.gov.ar/Accesos/DDHH/Docs/Archivos_utiles_para_investigacion_judicial.pdf.

¹² It is important to highlight the expert contribution that Open Memory (“Memoria Abierta”) has made for several years, generating an innovative possibility of reconstructing the environments and the operation dynamics of the former detention clandestine centers and from other provisional detention places, and this has provided very important elements to understand the operation of the systematic plan, as well as particularly suitable and protected opportunity for the testimony of those who were kidnapped there. See www.cij.gov.ar/causa-primer-cuerpo-del-ejercito.html, and “El lugar de la Justicia” in the website of Open Memory www.memoriaabierta.org.ar/rja.php.

TRUTH, JUSTICE AND REPARATION

The advances allow addressing new topics that were delayed to pay attention to the most urgent ones. Thus, the participation of civilians in the government structures during the dictatorship and the complicity of members of the Judiciary¹³ are now addressed and disseminated more frequently. This occurs as a result of different judicial actions before control organizations, filed by human rights organizations, and in some cases, by the official entities created to support the development of trials.

In Argentina, the decade has ended with notable advances in matters which for many years remained, if not stagnant, with a significant delay. Also, with the strong emergence of matters that were only mentioned in restricted circles of activists or scholars of the period. This is the case of gender violence, civil participation in dictatorship or theft of assets from kidnapped and disappeared victims. These facts were considered urgent, but it required a better timing to address them.

In 2010, due to the celebration of the Bicentennial of the May Revolution, the House of Deputies unanimously passed a declaration promoted by the Center for Legal and Social Studies, (CELS)¹⁴ which reaffirms the need to “ensure the process of truth and justice as a State policy of an inalienable nature, which should be completed within reasonable terms and with the highest respect for the guarantees of due process.” The text also states that “this justice and memory policy, which distinguishes us in the international community as a country that represents a core ethical hinge of the Rule of Law that benefits the Argentine society as a whole.” The recitals of the declaration present the unbreakable link between democracy and justice that was established during the political transition in 1983, which highlighted the value of equality before the law and the respect for human dignity. The declaration stated that CONADEP’s work, and the Juntas Lawsuits were the political cornerstones of the reestablishment of the Rule of Law and the ethical foundation of the social fabric.

II. The Years of Violence in Argentina

a) Background of the Conflict

Between 1930 and 1980, the Argentine armed forces seized power a dozen of times. During this period, only two democratically-elected presidents were able to finish their mandate; and both were military officers.

The violence was a constant factor in this long period of political instability due to the coup d’états, persecution, torture, and imprisonment of opponents. However, as of the 1960’s with the emergence of insurgent armed groups in the public sphere, there is an intensification of the repressive activity of the State. One decade later, abuses of human rights became more systematic and massive.

In 1966, a coup d’état led by General Juan Carlos Onganía defeated the democratic government of Arturo Illia, from the Radical Civic Union Party (Unión Cívica Radical del Pueblo). The organization of industrial and rural entrepreneurs, sectors of the Peronist labor union movement, all the political parties,

13 As in the case of the judge who was a member of the Federal House of Mendoza, Otilo Romano, recently suspended by the Judiciary Council that filed the proceeding for his removal. The justice has been accused of a poor performance of his duties and of crimes against humanity in 103 cases during his term as district attorney and acting judge between 1975 and 1983. In order to avoid the action of justice, former judge Romano has requested asylum in Chile. It is important to mention that there are many other cases of proven complicity of justices and of complains by victims and human rights organizations, which ended up in dismissals which were processed in different cities in the country in previous years, and which had not received a lot of attention from the media or generated the interest of activists and common citizens.

14 See the news and full document in:
<http://www.cels.org.ar/documentos/?info=detalleDoc&ids=3&lang=es&ss=&idc=1260>.

and the Catholic Church supported the coup after considering that the democratic alternative was no longer a possibility. The regime implemented a neo-liberal economic plan whose objective was to expand the great industrial plan. The logic of the accumulation implemented resulted in high levels of economic concentration and reorganization in the distribution of income, favorable to the multinational companies and the owners of capital. This meant the beginning of the end of an equalitarian Argentina with high welfare levels.

The implementation of this model had as contrast and important blocking level by the citizen participation. The answer was a social protest which progressively became more intensive. The context became more critical when the emergence of urban guerilla organizations joined the people's, student's and worker's movements. However, it was the Government who contributed more to the impairment of the social and political conditions. Events of protest and massive street violence, as the Cordobazo (1969) and other upheavals in some cities were harshly reprimanded by the armed forces.

Besieged and affected by a more and more severe crisis, the armed forces were forced to hold general elections, this time without any proscription. The country was run by Alejandro Agustín Lanusse. In 1973, the *Partido Justicialista* and Héctor Cámpora seized power. Soon, after the massacre of Ezeiza, he resigned to let the path free for Juan Domingo Perón, who succeeded him after winning the new elections held in October of the same year.¹⁵ A little time after, his Social Welfare Minister, José López Rega organized paramilitary ultra-rightist groups. The Argentine Anti-Communist Alliance or "Triple A" murdered hundreds of people with the most absolute impunity, among them, lawyers, workers, priests, intellectuals and politicians, who were considered leftists.

When Juan Perón died, his widow and Vice-President, María Estela Jiménez, took office. The use of parapolice groups to clandestinely repress the armed political organizations and the political opponents was exacerbated: Through two different executive decrees, the participation of the Army was allowed in order to fight against the guerrilla in Tucumán (February 1975) and after, in order to face the subversion in the entire country (October 1975). The outcome was foreseeable: in a climate of economic deterioration, social and political movements, and attempts by the urban guerilla, the Army that was instructed by the President to "neutralize" and/or annihilate the actions of subversive elements in the province of Tucumán", was encouraged by many sectors –as it had historically occurred—to fulfill its obligation to "save" the threatened nation. There was a new coup d'état, led this time by General Jorge Rafael Videla, leading to the beginning of a special dramatic period in the contemporary history.

a) The Military Dictatorship

On March 24, 1976, the armed forces overthrew the constitutional Government of María Estela Martínez de Perón, and they created a Military Junta, which exercised the supreme power of the Nation based on a clear program: imposition of a new social and economic order, in response to the social and political movement that was seeking a structural change. The dictatorship dissolved Congress, removed judges from the Supreme Court of Justice, confiscated some mass media, closed down others, and censored the rest. Between 1976 and 1983, the Junta established State terrorism as a general and systematic mechanism of social repression, which was justified on behalf of the national security.

The repression was carried out through a clandestine system. The cruelest method was enforced disappearance, which had a triple objective: prevent the supervision and control of the exercise of power, establish a state of terror in the population, which would paralyze their answers and avoid international

¹⁵ Perón finally returned to the country in June 1973. Million of people were waiting for him, and there were confrontations promoted by Peronist ultra-rightist groups. The events are known as the "Massacre of Ezeiza" (1973).

TRUTH, JUSTICE AND REPARATION

pressure. More than 500 clandestine centers were established,¹⁶ most of them in military premises or police facilities. Many thousands of persons were kidnapped and tortured in such centers after having been arrested in their houses, workplaces, education centers, or on the street. Many times, they were kidnapped with their children. The clandestine nature of these detentions led to denying the existence of prisoners and avoiding judicial investigations. More than 600 sons and daughters of disappeared people, detained along with their parents or were born under captivity, were abducted and illegally given to the families of the military officers, who registered them as their own. A little over a hundred have been recovered by their families of origin.¹⁷

Families were threatened so that they would not look for the disappeared, and the doors of government and legal institutions were not open to their complaints. The immediate consequence was the never-ending uncertainty for the families of the victims, as well as the total suspension of social, political, and cultural activities through the use and presence of terror. There were censorship mechanisms and a restricted distribution of any type of information, which led even to burning books and to threats to journalists as a means to destroy the political literature and limit the means for future criticism. These acts also caused symbolic and cultural incommensurate damages.

In view of this scenario, the great majority of the Argentine society responded with absolute indifference or confusion. The families of the victims started a solitary complaint process, which proved to be unsuccessful. At that time, more than 80,000 petitions for habeas corpus were filed, but a majority of them were rejected or filed without a previous investigation. But they found in the existing human rights organizations,¹⁸ and in the organizations founded during the dictatorship¹⁹ a place to receive the complaints that were not received in court or in the agencies of the State. The work of these local organizations was essential, especially because of their courage and clarity in the preparation of strategies to resist the dictatorship. The public actions and the national and international pressure for missing people to appear was a key ingredient for a democratic opening. This modality would eventually prove to be essential throughout the transition to achieve an advance in the claims for truth and justice.

The fall of the military dictatorship was the result of the economic policy failure and the ensuing crisis within the armed forces, a situation which was worsened by the participation in the Falkland Islands war.²⁰ The defeat marked an inflexion point, and the military had to hold elections without being able to restrict the process of transition to democracy. Nevertheless, this failure to establish conditions did not stop them. Before leaving power, the amnesty for all crimes committed was approved by executive decree.²¹ In one of the first actions of the recovered democracy, self-amnesty was nullified.

16 The Never Again (Nunca Más) Report informed about more than 340 places used as clandestine detention centers, but after, new premises emerged; therefore, such number increased to 500. For accurate information, see the clandestine detention centers at www.memoriaabierta.org.ar/ccd/.

17 As of August 2011, 105 cases of appropriation of children and identity substitution had been solved, through the work of the Grandmothers of Plaza de Mayo and the state organizations devoted to this task. For further information, see www.abuelas.org.ar.

18 Before 1976, there were the Argentine League for Human Rights (LADH), the Permanent Assembly for Human Rights (PDH), and the Peace and Justice Service (SERPAJ)

19 The latter were established with an identity based on the biological link with the victims, and it was also a source of its great legitimacy.

20 Argentina has historically vindicated its sovereignty over the Falkland Islands, located in the South Atlantic, historically exercised by Great Britain. In 1982, Lieutenant General of the Army Leopoldo F. Galtieri, de facto president decided to invade islands and fight a war against such power. That was the beginning of the end. The defeat was overwhelming.

21 Law Decree 22 924, of 09/23/83.

III. The Wounds of the Dictatorship

The dictatorship introduced in society structural changes that increased exclusion and inequality. The defeat of the social movement and the verification that the political participation and opinion could have such dramatic consequences as the loss of life itself explains the apathy towards the participation in citizenship topics that lasted many years and which, even today, establish a dangerous relationship between political participation and the possibility to be subject of justified repression or suffer the consequences of this commitment.²² This unwillingness to fulfill social or political obligations, which has been reversed in the last few years, always had an exception: the broad and crackless support of society to the demands of human right movements led by the mothers and grandmothers of Plaza de Mayo²³.

The economic model installed increased the dependence on the international economic power centers; the external debt became a central variable that conditioned social and economic development, becoming a straightjacket for the subsequent governments. The suspension of the institutional functioning, and the use of arbitrary procedures derived from the same central authority allowed consolidating an inefficient and corrupt justice, and from security forces and a penitentiary system that commonly violated human rights. An ineffective legal system maintained for years, the extended climate of intolerance towards differences, and the terror as daily experience increased authoritarianism in the Argentine society.

The extended social perception that the main parties to the conflict had been the armed groups and the State –the guerilla and the military– prevented a timely understanding of the period. There was a neglect of the existence of a broad and diverse social, student, labor union, and political movement, which did not have or had different degrees of relationships with the guerilla organizations, and which was swept by the persecution and terror used by successive military juntas. Such perception had different origins, and it was reinforced by the different speeches and the rationale of the measures taken by the Government of President Raúl Alfonsín at the beginning of his administration. Unlike the commissions²⁴ later created in other countries one of them, CONADEP did not include the violence of the period it analyzed in a historical journey nor did it establish its causes,²⁵ but it rather contributed to reinforce the idea of the ideological extremes in a sudden and unexpected manner that caused serious damage to the nation. Later on, this approach “... prevented the questions on the political conditions that made the coup d’état and the dictatorship possible, and what Germany has called the responsibility of the civil society for the cultural climate in which crimes were possible.”²⁶ The preeminence of this social representation, attributed to the so called “theory of the two demons”- expressed in the prologue of the Never Again Report²⁷- was strongly questioned immediately after the recovery of democracy. Such vision, bipolar and simplistic, does not allow recognizing the behavior

22 This attitude was portrayed in the common phrase “they were into something” when referring to the reasons why citizens had been detained or disappeared. To remain undamaged, the recommendation was “it’s none of your business.”

23 It is hard to make assumptions about the way in which that support could have been modified by the close relationship between the Néstor Kirchner Administration first, and then President Cristina Fernández with some human rights organizations. Specifically, the link with the Association of Mothers of Plaza de Mayo, led by Hebe de Bonafini, and with the Grandmothers of Plaza de Mayo, especially with its leader Estela de Carlotto. Both leaders expressed their explicit support to the Government beyond human right policies, and their presence is common at official events.

24 Those other commissions were named -with some variations- Truth Commissions or Truth and Reconciliation Commissions, after the commission created in Chile in 1990 by President Patricio Aylwin, the first democratically elected president, after the coup d’état on September 11, 1973, in which Salvador Allende was overthrown, and the dictatorship of Augusto Pinochet was established.

25 Although the comparative analysis of the truth commissions is not object of this chapter –there are multiple studies in this sense— suggests that many times that the great impact and dissemination, as well as the convincing nature of the Never Again Report, is due to its simple account and the accurate methodological approach. This report does not include references to the social structure or history of the country.

26 Sábato, Hilda. “Segunda Jornada. El Museo que queremos.” Buenos Aires, 2004.
http://www.memoriaabierta.org.ar/pdf/jornadas_museo_oct.pdf.

27 “Nunca Más,” a quoted work.

of different social and political actors of the past; a behavior which still prevails in a political culture that incorporates republican and democratic values, such as the plurality of opinion, the respect for differences, and autonomous leadership, among others.

These representations, assumed and disseminated with more or less intensity in the last few decades, according to the political needs and the listening conditions of society itself, hindered a reflection and debate that, avoiding the depoliticization of the confrontation, would allow to improve the understanding of projects of the different actors, the context at that time, and the terrible consequences for the country as a whole.

Until the half of this decade, the comprehensive visions of this period that analyzed what happened through a critical balance of state and social behaviors and attitudes were scarce. The most outstanding analyses, which became the predominant explanations, were self-justified. They presented a weaponless society that had remained indifferent to the conflict. These visions were related to ideological and political professions and behaviors of the past. Today, the scenario has been partially modified, but it has also become more complex. The discussions contained in books and periodicals,²⁸ as well as seminars and debates aimed at a larger audience about topics which were difficult or forbidden have become frequent, and the expression of controversial points of view emerges with a greater dose of respect and liberty.²⁹ But if this greater openness is produced and advances in the analytical view of the academic world, with a dissemination that reaches a larger audience, the same does not happen in the Government and some government. There, the predominant visions that are disseminated are generally aimed at the tributes of the victims. They emphasize first the heroic nature of the young political participation in the 1960's and 1970's, and they present epic unilinear visions that do not strongly favor the knowledge about what happened then.

During this stage, the dimension and cruelty of the repression, the resulting high number of victims and the pressing need to prevent it first and punish it afterwards contributed to simplified explanations. Efforts were made to report what was happening, using simple and depoliticized messages, almost desperately to have an international repercussion as a protection action. It was not the best timing for an analysis and nuances. However, even in the middle of a dictatorship, the detailed analysis that Augusto Conte and Emilio Mignone³⁰ disclosed in 1981 already offered clear conclusions of another complexity. For example, soon after the coup d'état, due to a strategy of terror, armed groups were no longer a threat. In 1977, the estimated number of disappearances and murders amounted to 22,000.³¹

A hypothesis that might contribute to explaining the above was that human rights organizations were practically in charge of this issue since the return of democracy. They, stubbornly and almost always in an

28 The emergence, in December 2004, of the magazine "Lucha Armada en la Argentina" showed, with its publication, a tendency to think and analyze the experience from the point of view of its protagonists and scholars of that historical time, and it became an essential bibliographical reference. In the previous years, many other books and academic papers had been published. At least ten of them were the result of the work of the Regional Action of Latin America (RAP) of the *Social Science Research Council*, whose purpose was to promote research and the training of young researchers about the memories of the political repression of the Southern Cone. The program supported around 60 scholarship grantees from Argentina, Brazil, Chile, Paraguay, Peru, Uruguay, and the United States, and between 2002 and 2005 it published a collection of then books titled "Memorias de la Represión" (Siglo XXI Editores – Spain and Argentina).

29 As in the case of the exchange among several authors who after a letter from Oscar del Barco regarding the use of violence. This issue was analyzed in a book titled "Sobre la responsabilidad: No Matar." Several authors. El Cíclope Ediciones/La Intemperie/Editorial de la Universidad Nacional de Córdoba. Córdoba, 2007.

30 See, among others, "El caso argentino: desapariciones forzadas como instrumento básico y generalizado de una política," from the Center for Legal and Social Studies (CELS), a document known as "Doctrine of Global Parallelism" and submitted during the symposium "The policy of enforced disappearances," held in Paris in January 1981.

31 Enrique Arancibia Clavel, a former secret agent of the Chilean police-DINA- in 1977 informed in Santiago de Chile that, according to a document of Battalion 601 of the Army Intelligence, the number of deaths and disappearances since 1975 until today amounts to 22,000 people. Document V/232-238, July 1977. Quoted by John Dinges in "The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents" (The New Press, 2004).

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

isolated manner, claim for truth and justice with regard to the perpetrators, who almost wearily were prosecuted, freed, once again prosecuted and sentenced. This was due to the ambivalent movement of the political power, which opened and closed paths to the performance of justice. This protagonist presence of human rights groups stated, to some extent, that the past and the actions that were taken do not apply to society as a whole. They should mainly refer to, in our absolute opinion, to the surviving victims and the relatives of those who died directly as a consequence of repression or their involvement in armed activities by guerrilla groups. All of this has almost determinedly characterized the speeches and has set limits for advances not only in the discussions but also in the methods used to remember and commemorate.

There is no doubt that the organizations of relatives were the main actors who shaped that social and political period of fight against impunity. This “overrepresentation” placed not only the symbolic burden but also the material burden of justice and truth about the past on the shoulders of human rights organizations. It is possible to think that it was one of the reasons why their explanations and discourses became predominant.

They defined, with their permanent presence, the symbols that go beyond borders and which became an emblem of similar fights around the world. That’s why maybe the narrations of the past disseminated to the rest of society are analyzed today from a point of view of the political power. These narrations portray the most attractive aspects of the tragic history of disappearances and assassinations of the next-of-kin relatives by the dictatorship.³²

In contrast, since the end of the dictatorship and with different intensities according to the political situation, the voices of the most conservative sectors are different and mainly opposing. These groups, which gave their support to the dictatorship and continued to vindicating their objectives and acts, are now defending the victims of the guerrilla groups. They try to recover that balance between facts and responsibilities which would reduce the history of confrontation between two equivalent sectors which produced symmetrical damages. This claiming intervention that is seeking a “complete memory” has appealed throughout the years to different aspects of the past to achieve its objective, which is always the same, that is, to match the crimes perpetrated by guerrilla groups to the illegal actions by the State. Therefore, they want to overlook that the State implemented a repression plan that was the framework for the perpetration of a large number of crimes against humanity, and which was intended to fight against guerrilla groups and eliminate all kinds of opposition.

Justice was the only possible road for those who were perpetrators of very serious crimes. But this was always a winding road and the main hindering factor to the future. The present -the trials- seems static, frozen in time, as if it would never end because it continues having a mandate and an inescapable but unfinished task: prosecute and punish past behaviors. Upon punishing and disclosing the judicial truth, we could think of starting another stage. This stage would provide more space to include other reflections about the period under analysis by social activists, political scientists, academicians, political leaders, and direct actors who now believe that they have to close ranks with the prevailing version. It would also be valuable to open to the representatives of younger generations who are part of the contemporary scenario. In the present, they would include a different perspective of the past, in terms of its impact on their present social and political experiences.

The vestiges of State terrorism are profound and lasting, even at a subjective level. There are different studies about the presence of trauma and the consequences of the widespread policy of terror, particularly enforced disappearances and its ominous variations in the Argentine case, on the psychic organization of individuals, their consequences on family groups and society at large. The analysis of the traces of these

32 They are the “direct victims,” as they are usually called. The phrase is a concept of the victims of the dictatorship.

TRUTH, JUSTICE AND REPARATION

facts is beyond the framework of this chapter, but it is essential to mention some of the main characteristics of the traumatic situation:

In the face of a traumatic situation, the path to reorganization drastically demands –more in these cases than in any other– an explanation of the events, an identification of the causes, an identification of the protagonists, an identification of the perpetrators, and the corresponding punishment. We are not talking exclusively about social trauma. But if we are talking about the latter, then appealing to the law as the organizer of a devastated psychic field and as the organizer of the social field is, in every case, the only way to give the psyche the possibility of healing.³³

For a long time, the Argentine State neglected the recognition of its institutional accountability and the designation of the perpetrators who deserved to be punished, besides their refusal to providing genuine information to recognize the events. All this went in the opposite direction of what people needed to develop the traumatic facts. Only based on truth can victims face them and overcome them. The State, by hiding the truth, hindered this development. By facilitating the possibility of prosecution, it is reversing that situation of delay and paralysis in the unfinished grieving in which most victims were trapped.³⁴

We should mention the disappearance of boys and girls kidnapped together with their parents and the appropriation of newborns during the captivity of their mothers who were pregnant at the time of the abduction and who were later assassinated because this gives a sinister and distinctive seal to the dictatorship. As it is known, children born in clandestine detention centers or hospitals were largely given to couples who were members of the armed forces and the security forces. The identity of those kids was later changed.³⁵

This type of terror designed by the military dictatorship for their pregnant opponents and their offspring is the emblem of the lies and silences that dictators, in their omnipotence, intended to extend to infinity.

IV. The Search for Truth and Justice: Events and Debates

In December 1983, with the return of the democratic regime, the families started searching for the truth about the whereabouts of the disappeared. So, the first new levers of justice started to be applied.

Since then, the Argentine policy has been characterized by progress and setbacks of the State to respond to the claims about the human rights violations perpetrated in the past. The demands for justice for the victims, voiced by the human rights groups and the vindication, through solidarity or corporate voices, of the actions of the armed forces as a necessary step to “eliminate subversion,” were the pattern for the alignment of citizens, officials, leaders, and political, religious, professional, and social groups.

The positions adopted about past events or the revelation of behaviors at that time have a relevant impact on the political definitions of the present. But the explanation of the validity of memories and the activation of the social memory about the events during the State terrorism can be found in the public political debate and the dynamics of the conflicts between civil society organizations and groups and democratic institutions in the last few decades.

33 Center for Legal and Social Studies. (2000). *La verdad, la justicia y el duelo en el espacio público y en la subjetividad. Informe de la situación de Derechos Humanos en Argentina*. (Chapter XII). Buenos Aires.

34 I think the status of victim cannot be reduced to disappeared and assassinated person, nor can this be done to mothers, grandmothers, or relatives. A case of armed forces declaring war to their nation and society is unusual.

35 See page 9 of this chapter.

a) Investigation of Disappearances and the Trial of the Military Juntas

When the Radical Civic Union Party published its election platform for 1983, which later won the elections, it proposed a structure to judge the unlawful acts perpetrated by the military dictatorship. It stated that civil justice should differentiate among three groups: those who gave the orders, those who obeyed the orders, and those who abused the implementation.

President Raúl Alfonsín had planned to prosecute the main perpetrators of illegal repression within six months. One of his first actions was the creation of a National Commission on the Disappearance of Persons (CONADEP)³⁶. This presidential commission was composed of independent and prestigious citizens who were granted powers and autonomy to investigate the disappearances. After a year, it published *Never Again: A Report*,³⁷ which provided the first essential elements for the subsequent judicial proceedings of the perpetrators of the crimes committed during the *de facto* regime.

Soon, there was a trial of the Military Juntas. Pursuant to Law 23 049³⁸, the jurisdiction of the military courts was established for the proceedings. Therefore, the Government sought to implement a strategy to prosecute the main perpetrators and guarantee the stability of the system. Due to the pressures exerted by the civil society, the possibility of appeals of the decisions before the civil justice system was included. This would take care of the proceedings at any stage, in case the military officers unjustifiably delayed the trial formalities. In September 1984, the Supreme Council of the Armed Forces decided that the orders issued in the alleged “exercises of the fight against subversion” were “unquestionably legitimate.” The investigations did not continue and so the Government strategy of “self-depuration of the armed forces” failed. In the face of complicity and the delay of the military courts in April 1985, the Federal Chamber of the Criminal and Correctional Court of the Federal Capital was in charge of the proceedings and started the Trial of the Military Juntas³⁹. The result was to serve time in prison for five of its members: Jorge Rafael Videla and Roberto Eduardo Viola (the Army), Emilio Eduardo Massera and Armando Lambruschini (the Navy), and Orlando Ramón Agosti (the Air Force). With this background, there were new and countless trials in the courts across the country.

These two first and essential actions were not welcomed enthusiastically, nor did they get the unanimous support of the human rights organizations. As it would happen throughout the decades, their coincidence was related to the need to break with impunity, make progress regarding the knowledge of truth and promote the exercise of memory. But the roads to achieve it always generated controversy.

Some months before the beginning of the new democratic government, such organizations proposed the creation of a Bicameral Investigation Commission in Congress. The commission would include representatives of the victims’ families as a mechanism to ensure a political condemnation of the events and

36 Decree 187 of September 15, 1983.

37 A text that has been permanently reedited thus proving its current nature and the high level of demand by the audience.

38 The law stated that due to the facts linked to State terrorism (since March 24, 1976 until September 1983), the first three military juntas should be prosecuted by the Supreme Council of the Armed Forces. However, it foresaw the control of the Federal Chamber of the Criminal and Correctional Court that could hear and rule on the cases (that is, being in charge of them) in the event that there was no prosecution. This was what eventually happened: in September 1984, the Supreme Council of the Armed Forces decided not to prosecute the former commanders in chief because it understood that “there was no crime” because “the decrees, directives, operational orders, etc. that implemented the military actions against terrorist subversion are, regarding content and form, unquestionable.”

39 The members of the three military juntas were prosecuted pursuant to a Decree of the Executive Branch. The historical sentence was issued on December 9, 1985. The Federal Chamber of Criminal and Correctional Court ruled the existence of a systematic, deliberate, and concerted plan for a covert repression policy and sentenced five commanders for the crimes of homicide, unlawful deprivation of liberty, and torture, among others. In the case of four of the commanders who were prosecuted, they were acquitted because the available evidence was insufficient (Omar Graffigna, Leopoldo Galtieri, Jorge Isaac Anaya, and Basilio Lami Dozo).

TRUTH, JUSTICE AND REPARATION

prevent the horror from repeating. In preparation, a few teams were created to systematize the information gathered during the dictatorship to search for the disappeared and document and investigate the complaints for the violation of human rights. But this “Technical Data Collection Commission” which did not include all the organizations was a key source of information so that CONADEP could guide the investigation and make progress. The differences of opinion regarding the decision to give support and information upon the creation of the Commission were disclosed during the meetings with members of CONADEP through the media. The Mothers from Plaza de Mayo and the Argentine Human Rights League continued to disagree. The watershed was between those who defeated the initial skepticism and chose to participate in those organizations while others continued to distrust and stay at an arm’s length. The former put all the information and experience of the most difficult times on the line and were able to extend the limits set forth by the law. This was the behavior that would be repeated with a few variations until the present.

b) Measures of Impunity

Three years later, in 1987, the permanent military resistance to the judicial proceedings became a rebellion. Those who were summoned did not appear in court. Simultaneously, the country was affected by successive military uprisings. The most important uprising took place during the Holy Week of 1987. After an obvious negotiation, the Government, with the euphemism that society could not live in a “general state of suspicion and uncertainty” and the presumed purpose of “speeding up the trials” took the first steps in the process of impunity. The Full Stop⁴⁰ and Due Obedience⁴¹ Laws were issued by the Congress of the Nation during the Administration of the Radical Civic Union Party. Later, the decrees of the pardons granted during the Peronist Government of Carlos Menem⁴² acted as a lock for justice.

The national Constitution considers the presidential power to pardon citizens who have been individually held liable as perpetrators of crimes with a final decision. But in this case, the Executive Branch granted itself the power to hear and decide about pending actions in the Judiciary. Moreover, due to the generality

40 In 1986, the Raúl Alfonsín Administration decided to extinguish the criminal actions for crimes perpetrated during the so-called “dirty war” within sixty days. This law -the so-called “Final Stop”- stirred a legal debate that was trying to determine if there was a retroactive reduction of the term for the prescription of the action, or if it was indeed an amnesty law that some did not want to call it this way. In any event, for practical purposes, the law had all the elements of a law of oblivion, pardon, or waive to a criminal action that was in force at the time it was signed. But since the nature of the law was essentially political, why couldn’t its effect have also this nature? ... Therefore, against all odds, there were several prosecutions within the brief terms stipulated by the law. Also annoyed by the “instructions that the Attorney General of the Republic gave to the federal prosecutors to file the fewest actions possible, the judges ruled more actions that were originally foreseen.

41 Law 23 521 of the Determination of the Scope of the Duty of Obedience, known as the Due Obedience Law, was enacted to find the most definite solution. Legally speaking, the law imposed the mandate to the judges to accept certain cases as proven and give them a specific interpretation that would lead to an acquittal or dismissal of the defendant regarding the perpetration of the crimes. In practice, all the military officers who acted upon following orders were freed. Once again, there was a heated debate in the legal community and some actions were taken that were trying to prove its unconstitutionality. Some authors even believed that it was not exactly a law but a judicial ruling issued by Congress, which issued an opinion regarding hundreds of facts without previously analyzing the files or the proceedings.

42 In October 1989 –just three months after his inauguration- President Carlos Menem, based on four decrees, interrupted the trials and freed 267 people who had not benefited from the two aforementioned laws. They were 39 military officers prosecuted for illegal deprivation of liberty, serious injuries, torture, and homicide; 64 former guerrilleros or political militants; three former commanders in chief of the armed forces who were deemed negligent when leading the Falkland Islands War of 1982, causing the death of hundreds of soldiers and 164 military officers known as “*carapintadas*” of the Albatross Corps of the Prefecture, officers, and civilian agents of the Air Force who participated in the rebellions against the democratic government during the Holy Week of 1987, Monte Caseros, Villa Martelli, and Jorge Newbery Airport in 1988, led by Lt. Colonel Aldo Rico, Colonel Mohamed Alí Seineldín, and commodore Luis F. Estrella. Finally in 1990 President Menem, using an amnesty decree, freed the former commanders of the Military Junta, the main people responsible for the State terrorism and proven perpetrators of the disappearance of thousands of Argentineans; Mario Firmenich, head of the guerrilla organization called Montoneros and several leaders of such group who had led thousands of young people who were later annihilated to a confrontation with the military officers.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

and the extensiveness of the recitals to which the decrees of 1898 referred: “the confrontation among Argentinians,” “prevent union,” “overcome disagreements,” “the events of the past,” “open rounds,” “overcome the resentment for the magnanimity,” “reconciliation,” “forget the hatred,” “share the public property,” etc. because they indiscriminately involved 30 cases and their regulations, they were treated as amnesty⁴³.

Both President Menem and his Minister of Defense, Dr. Italo Luder -the same person who while acting as chairman of the Senate, signed in 1974 a decree that authorized “the annihilation” of the guerrilla in Tucumán- and other officials, insisted in the fact that the signing of such decree was not the result of any kind of pressures. Nevertheless, even though the issue of pardons and peace process has been discussed over and over again since the early days of the Peronist Government, the rush of the measures adopted was due to several factors: the undeniable pressures of the military high command, the decision to prevent the disclosure of some of the causes to be submitted during the trial and the conviction of some members of the Government about the kindness of the road they chose.

The families of the victims of illegal repression said that the measure “had the virtue of making the wounds that were no longer so painful bleed again.”⁴⁴ In view of a *fait accompli*, citizens also voiced their rejection of the pardons through massive demonstrations on the streets and in the squares of the most important cities in the country.⁴⁵

In 1990, justice had practically stopped the formalities of the cases of the return of the children of the disappeared people or those born in captivity, which were promoted by the Grandmothers of Plaza de Mayo⁴⁶. In the cases where actions were taken, the decision was made in favor of those who had supported repression. In April, the number of justices of Supreme Court of Justice was increased from five to nine as an action articulated by the Government that proposed justices linked not only to the Executive Branch, but also to the President of the country for those positions. This maneuver guaranteed the judicial viability of the State privatization and reform projects. But it also guaranteed the certainty that the second amnesty decree would not be hindered by unconstitutional claims.

In that year, there were other measures in which the advancement of a justifying and vindictory discourse of the performance of the armed forces during the military dictatorship was clear.⁴⁷ Therefore, there was no knowledge of the previous decisions by the justice system that, right after the reestablishment of democracy, had shown the possibility of a different operation of the juridical institutionalism. The presidential pardon measures, overstated by an arrogant and omnipotent discourse,⁴⁸ underestimated the resulting

43 Later, several judicial decisions, including the decision of an appeal court, declared the amnesty decrees unconstitutional for various reasons, among them, the inclusion in the constitutional level of the UN Convention on Imprescriptibility of Crimes of War and Against Humanity, which represented the materialization of the principles already in force for the national State as part of the International community.

44 In “Nuestra respuesta frente a los fundamentos de los decretos del indulto” (1989), a document by the human rights organizations from Argentina.

45 According to the press at that time, the rejection of amnesty increased to 75% for the military commanders and to 81% in the case of Mario Firmenich, former head of the Montoneros organization.

46 Only the cases of appropriation of children were excluded from the enforcement of impunity laws. It is assumed that the number of children who were kidnapped from their parents or were born under captivity amounts to 600.

47 In October, Congress passed a law that exempted the children of disappeared citizens from military service on the basis of a principle of physical and psychological protection of the most vulnerable victims of illegal repression. With an attitude that surprised the Peronist members of Parliament, Vice-President Eduardo Duhalde, in his capacity as acting president during a trip of President Menem, vetoed the law. The military claims argued that the law attributed enforced disappearances to the “actions of the military officers, but without having proven this fact,” and unaware of the ruling of the justice system in the trial of the former commanders. There were several arguments, with a vindictory tone of the illegal actions of the armed forces, which even expanded their arguments about the need for illegal pressure (torture) by the police in the fighting against crime.

48 President Menem invoked his moral authority as a victim of the military dictatorship to adopt such a measure and was reiterative when stating that he would only bear the political cost of amnesty.

international discredit. In the country, they were experienced by the population as a provocation for the democratic society and a failure to fulfill the promises made by the President in his electoral campaign.

c) Human Rights Organizations Face to Face with Impunity

The defense of human rights started to be part of the national policy since the moment the groups of mothers gathered to find out about the whereabouts of their kidnapped children and to claim for their return. The method devised almost by chance to identify each other was a white handkerchief,⁴⁹ and it became an emblematic symbol, and they, the Mothers of Plaza de Mayo, became an inescapable icon of the decisive fight against arbitrariness and the absolute power of the military dictatorship.

The Mothers were the most visible figures of a comprehensive human rights movement. Other human rights organizations, some of which were created in the periods previous to the military dictatorship and others immediately after, sought to defend the life of those persecuted, jailed, disappeared, and exiled. In the country and abroad,⁵⁰ several groups actively worked on solidarity tasks and used the most varied testimonial strategies: public denunciation, legal action, material assistance, and legal defense of political prisoners, management and protest before the public powers. Those who were members of these organizations and groups shared a fundamental ethical stance in favor of human rights and which recognized different origins: the religious commitment and perspective, militancy for an active non violence, or the republican convictions. To those who were members of political-military organizations, the denunciation and solidarity tasks meant, in some cases, a shift in the conceptions of the forms of political action and the use of the law as a defense and solidarity tool based on an essentially humanitarian approach and language.

Human rights organizations emphasized different aspects of the task in their actions: the judicial actions, the search for grandchildren, and the defense of political prisoners. Such dynamics shaped the current institutional profile. Some people, whose human rights advocacy background was put on the line years before the collapse of the constitutional order, became well-known leaders and frequent voices of this comprehensive movement of opposition to the dictatorship. This is the case of Adolfo Pérez Esquivel, a leader of the Peace and Justice Service in Latin America, who was later awarded the Peace Nobel Prize in 1980; or the Catholic bishops Jaime De Nevares, Jorge Novak, and Miguel Hessayne, just to mention some examples. Also, there were the new leaders of the associations of the victims' families, generally mothers and grandmothers of the disappeared, but also jurists such as Augusto Conte and Emilio Mignone, educators such as Alfredo Bravo, followers of political parties, who became an ethical and social benchmark for a very large sector of the Argentine society.

In 1990, the flag of the defense of human rights, which was lifted by the opposition to the dictatorship, was no longer the hub around which the protests of the Argentineans revolved. The human rights organizations, which achieved experience during the military Government, were not able to find a significant space to relate to the new problems. During the eve of a profound national crisis, there was an emergence of new social and political situations derived from the economic situation first and, then, from the rapid transformation of the structures of the State that worsened the violation of economic and social rights.

The laws of impunity and the amnesty decrees swept the spontaneous consensus resulting from demands for truth and justice promoted by human rights organizations since the transition to democracy. Even though the organizations did not interrupt their actions to achieve these goals, they were not able to produce

49 In fact, at the beginning it was a piece of white gauze, which since the beginning was called "handkerchief," an expression that is now recognized by everybody.

50 The exiled people (militants, intellectuals, relatives, former prisoners who had been granted the "right of choice," or survivors of clandestine detention centers) actively participated in the groups that worked abroad.

an echo beyond their always limited “circumscriptions.” The difficulty to link the demands for truth and justice due to past events, to the problem of the democratic present, was evident. The different groups were trying to find a new role in the face a new a situation. However, many years went by before the agendas of human rights organizations included specific actions aimed at the defense of social and economic rights and proposals for a democratic and transparent operation of institutionalism. The Grandmothers of Plaza de Mayo was the only group that somehow escaped from the general situation. Its main and basic objective, i.e., the search for the boys and girls who were born under captivity to restore their identity, drastically kept its current nature. The regular appearance of a person who was appropriated since his/her childhood and the restoration of a true identity legitimized the task of the grandmothers and gave their organization a greater capacity to reach the population.

d) Appeal to International Organizations and the “Right to Truth”

In 1989, human rights organization, under the leadership of CELS⁵¹, intensified their task before the international judicial organizations due to the refusal and impossibility of justice at a national level. Since the military dictatorship, the Inter-American Commission on Human Rights (IACHR) has received many complaints for disappearances and other related cases. Its visit to the country and the publication of a report⁵² in 1980, was a key event that allowed improving the level of international recognition about the events in Argentina and contributed to a growing isolation of the military government that was leading the dictatorship.

The human rights organizations insisted to the Commission about the need to assess the approach of the Argentine government that when it passed the Final Stop and Due Obedience Laws, it violated constitutional mandates and ignored the imprescriptibility of the crimes against humanity. In 1992 -in its ruling 28- the IACHR stated that the government had violated the American Convention on Human Rights. Over those years, and more specifically as of de 1997, the Inter-American Commission placed the most important role to invigorate the judicial proceedings internally by stating specific demands to the government that was making efforts to cancel the search for truth⁵³.

On the other hand, the legal work of human rights organizations was activated in the search for creative and innovative channels for the action of justice. The resulting concept of the “right to truth and grieving” achieved international recognition and became the driving force of what we know today as Trials of Truth. The judicial proceedings were based on the right of the disappeared people’s families to knowing what happened to their beloved ones and on the right of society as a whole to know about its past, among other things, as a way to protect itself for the future. The Trials of Truth have been conducted since 1999 in the different federal chambers in the country because it is in these places where the criminal proceedings for the events occurred during the military dictatorship. The most relevant proceedings were conducted by the federal appeal courts of La Plata, Buenos Aires, Bahía Blanca, Mar del Plata, Córdoba, and Rosario⁵⁴.

The human rights movement continued “representing” the memory, acting as a stubborn opposition to each step taken by authoritarianism even though it was not able to explicitly articulate itself to the majority percentage of Argentineans who opposed impunity. This sector of the population, though hasty in its

51 Center for Legal and Social Studies (CELS), a human rights organization that set out to document crimes and report them internationally; therefore, it improved its defense of human rights, specifically from a judicial perspective. Since 1990, its agenda included the impact on public policies.

52 IACHR. (1980). Report on the Situation of Human Rights in Argentina (*Informe sobre la situación de los Derechos Humanos en Argentina*). Session 667 of the 49th period of sessions. Washington: OAS-IACHR.

53 It is important to point out the friendly solution for the “Lapacó case,” which establishes specific obligations for the Argentine State in the search for truth.

54 Their purpose was not to establish the criminal liability of the people involved and, therefore, they do not take into account the possibility of a sentence. Every person is summoned to declare as a witness and, in that capacity, they have the obligation of appearing and can be prosecuted for false testimony.

TRUTH, JUSTICE AND REPARATION

opinions, kept to itself the prerogative of becoming a living prison for the pardoned prisoners. This was evident in the frequent confrontations and protests in public places and on the streets where common citizens recognized characters who were involved and were accountable during the period of State terrorism and requested to expel them or loudly insulted them.⁵⁵ This scenario of social condemnation was a frequent behavior that made a positive contribution to the recognition of events and the awareness about the horror of the dictatorship.

The complaints filed in other countries by the leaders of the human rights movement and the victims in Chile and Argentina, were successful when Augusto Pinochet was detained in England in 1998. The complaints filed by judge Baltasar Garzón in Spain became relevant and expedited the presentation of victims who previously expressed certain skepticism towards the complaints filed abroad. Therefore, in just two years, important results were achieved in Italy, where the former generals Guillermo Suárez Mason and Omar Santiago Riveros⁵⁶ were sentenced to reclusion and life in prison, respectively. As the judicial proceedings proceeded in Spain, new proceedings were filed in Germany and Israel. These trials ended with a sentence of life in prison for the officer from the Navy Alfredo Astiz in France, found guilty for the disappearance and assassination of the French nuns Alice Domon and Leonie Duquet.

e) Confessions, Self-Criticism and Opening of Files

In 1995, the harsh testimony of Captain Adolfo Scilingo, who worked in the widely known concentration camp in Argentina, the ESMA, was crucial⁵⁷. He revealed the details of a methodology related to the bureaucratic structure created in the Nazi Germany for the implementation of a systematic plan of extermination of Jews: the victims of State terrorism, who were mostly captured alive and “disappeared,” were sent to clandestine concentration camps, and then thrown into Río de la Plata to erase all the evidence of their existence and of the crimes. The statements by Scilingo shocked the Argentine society⁵⁸ and were the starting point for some other –scarce– testimonies about the final whereabouts of other disappeared detainees made by the military officers who participated in the events.

Consequently, the Chief of Staff of the Army, Lt. General Martín Balza⁵⁹, addressed a message to the country in April 1995 in which he ratified the fact that during the military dictatorship there was an obvious violation of military standards and behaviors of the Army. He criticized the overall performance of his institution, asked the families of the victims of repression for forgiveness, and stated that no one is required to obey an immoral order that is unlawful or does not comply with military regulations.

Nine years later, coinciding with the presidential decision of build a museum in the premises of the ESMA, Almirant Jorge Godoy, Chief of Staff of the Navy, gave a speech in which he admitted that its premises were used “... to perpetrate acts that were deemed deviant and insulting for human dignity, ethics, and law;” therefore, the ESMA ended up “... becoming a symbol of barbarism and irrationality.” He

55 These manifestations, which at the beginning were isolated and spontaneous when citizens recognized those who were involved in the repression, had a planned and organized nature that led to the so-called “escraches.” The “escraches” are methods used to denounce repressors and are used by the group called HIJOS (Sons and Daughters for Identity and Justice against Oblivion and Silence). They mainly consist of identifying a repressor, collect data on the crimes of the repressor, march, and gather at the door of his/her residence or workplace, and denounce his/her crimes to his/her neighbors and bystanders. The word “escrache” comes from *lunfardo* (a popular language) and means “make known to the public through a demonstration.”

56 They were respectively the commander of the I Army Corps and the commander of the Military Institutes (zone IV).

57 Verbitsky, H. (1995). *El Vuelo*. Buenos Aires: Editorial Planeta.

58 Moreover, they led to the first tribute for the disappeared in front of Río de la Plata, where there was an emotional religious ecumenical event that ended up with the throwing of flowers into the river, which is the final destination of a large number of disappeared people and it is recognized as a “historical site.”

59 He was appointed as the Ambassador to Colombia during the Administration of President Néstor Kirchner in 2003 and ratified in the same position by President Cristina Fernández in 2007.

expressed the Navy's categorical rejection of such acts and said that "... only through justice and truth can a full and long-awaited reunion of the Argentine society be achieved."⁶⁰

Both reviews of the military behavior in the past were significant from an institutional point of view. But, they also stirred rejection among certain groups of the armed forces under retirement and were not accompanied by specific actions such as opening files about repression. The advances in this sense started to take place when, in order to support the investigations about gross violations of human rights, a decree from 2007 recognized that "...based on the current democratic and republican State, we should review the need for the secrecy and confidentiality of information that might encourage a better awareness of the terrible situations experienced by our country."⁶¹ Therefore, considering that most of the people accused and prosecuted for the violations of human rights in the past are members or were members of the armed forces, security forces, the police, or intelligence corps who, when performing their duties, they did it under the obligation of preserving secrecy; then they are relieved from that duty so that they could contribute to the search for truth based on the information they had access to. Two years later, in 2009, and at the request of different courts, a ruling was issued to declassify the lists and documents about the civilian personnel who rendered services in different outposts during the dictatorship. Finally in 2010, and considering that 25 years after the recovery of democracy, it is not possible to keep the secrecy of information that prevents the knowledge about the recent past and weakens the right of society to know its past, all "the information and documentation linked to the activities of the armed forces from 1976 to 1983, as well as any other information or documentation produced in another period and related to those activities" were not classified.⁶² An exception was made with the information regarding the South Atlantic conflict or all the documentation related to inter-state conflicts.

In line with the advances set forth in previous decrees, in 2010 the Minister of Defense issued two resolutions aimed at reviewing the documentation existing in the Historical Archives of the Armed Forces⁶³. The main idea is to identify information useful for judicial investigations or society at large to be kept as part of the policies related to the preservation of memories. Therefore, task forces were created to identify, based on an analysis, information that the Ministry would send, on a regular basis, to the judicial authorities, the Office of the Public Prosecutor, and governmental organizations with regard to the investigation of cases of violations of human rights during the State Terrorism.

V. State Measures to Recognize the Past

The recognition of facts related to the violations of human rights in the past shows a dynamics that, as previously analyzed, has not been linear. In the search for truth, we can see actions that are considered milestones, such as the investigation conducted by the CONADEP and the beginning of the truth trials. But also, the ambiguous and intermittent action of justice, as influenced by the changes in the political power, used different legal subterfuges to guarantee the impunity on several occasions, in complicity with conservative groups and the military corporation.

Democratic institutions advanced unequally regarding two key issues: truth and justice. While this was happening, another dynamics gained force. The academy developed an analysis of the different aspects of the past and included them in their analysis. Social organizations continued with their demonstrations and tributes. Therefore, the artistic manifestations of these topics and their experiences in the present proliferated,

60 Speech given on March 3, 2004.

61 Decree 44/2007, 01/29/2007.

62 Decree 4/2010, 01/5/2010.

63 Resolutions by the Ministry of Defense 308/10 and 1220/10.

TRUTH, JUSTICE AND REPARATION

particularly in theater, documentaries and science fiction movies,⁶⁴ music, plastic arts, and literature. These creative works contributed, as a whole, to creating a vision about the facts based on art and also contributed with key efforts not only to preserving the memories about past events, but also to improving the critical knowledge about such a period and its inclusion in the interpretation of current events.

Upon reviewing the actions taken by the State during successive administrations, there is also a differentiated process. On the one hand, there is progress regarding the measures taken to fulfill their duties related to the investigation and punishment of the crimes committed by the preceding governments and the reparations for victims. On the other hand, there is a marked reluctance to formulating a convincing official and public recognition of the concerted and unlawful actions by the State and the essential vindication of the dignity of victims.⁶⁵

The advances took place along the lines of the complaints of human rights organizations to successive governments. This led to actions that, though partial and in some cases remarkably insufficient, agreed with the international recommendations to make a difference between the authoritarian past and the democratic regime. This happened with the identification, proper preservation, and public access to the archives that provided new information about past events.

However, 28 years after the end of the dictatorship, the main progress can be seen in the return of the jurisdiction of courts that will be in charge of the crimes of State terrorism. The determinants of this fundamental change are varied, including the serious and creative work in terms of the legal matters of human rights organizations; the commitment of judicial officials, and, specially, a change of context as a result of the modifications in the mechanisms to appoint the members of the Supreme Court of Justice. The immediate consequence of this resolution was the crucial renewal of the Court, whose composition today is a matter of pride for large sectors of society and allows anticipating the future of institutionalism from a different perspective. This was one of the first and most suitable actions taken by the Néstor Kirchner Administration who took over the proposal made by a coalition of non governmental organizations just a year before.⁶⁶

This does not mean that there is a prevailing spirit of acceptance of the rules of the democratic game. The changes in the logic of the political action are neither prevailing nor visible, and there are persistent corporate and patronage behaviors that are betting for ephemeral and short-term solutions. The electoral dynamics and the alliances that are forged to win elections usually lead to setbacks at different levels. They can lead to eliminating the most serious human rights problems from the agenda and can endanger the cumbersome agreements to control the actions of provincial and public authorities that have a poor performance regarding the protection of those rights.⁶⁷

64 In June 2011, Open Memory published a movie catalogue about the dictatorship that included 440 feature films. See www.memoriaabierta.org.ar/ladictaduraenelcine/.

65 An exception to this could be the speech given by President Néstor Kirchner regarding the decision to establish a Space for Memory in the premises of the former clandestine detention center -the ESMA- on March 24, 2004. However, his speech denied very important advances produced since the recovery of democracy (actions taken by the CONADEP, the Trial of the Military Juntas, the reparation policy) thus causing a counterproductive effect both on political leaders or officials who had promoted such measures and on extensive protagonist sectors of these rights or scholars, who go beyond unambiguous evaluations; this is a long path full of visible and inescapable achievements. Then, President Kirchner added nuances to his statements. We should also consider the aforementioned “self-criticism” –though partial and insufficient - of senior military officials about the members of the armed forces who did not have any criminal records.

66 See “Una corte para la democracia,” a document by the Association for Civil Rights (ADC), the Center for Legal and Social Studies (CELS), the Citizen Power Foundation, the Environment and Natural Resources Foundation (FARN), the Institute for Comparative Studies in Criminal and Social Sciences (INECIP), and the Users and Consumers Union. It was submitted in January 2002.

67 As an example, we can mention the setbacks in terms of unsolved prison problems that affect citizens who are serving time

The long, persistent, and massive impunity is at the core of this fragility. A dependent justice that is sensitive to the influence of power and whose ambiguity was promoted by ideological discourses⁶⁸ that were justifying illegal repression, was outrageously delaying the trial and punishment of perpetrators. With skill, the current justice system might not obtain results in the investigations about paradigmatic cases of the present, such as the attempts against the Embassy of Israel (17/03/92) and the Jewish Argentine Mutual Association -AMIA- (19/07/94). There are provinces where the cases for the crimes against humanity have been facing a significant delay in the entire country. This persistent trend towards the refusal of justice can be only achieved when the efforts of the claimants are so significant that they can make the organization in charge of controlling officials such as the Judiciary Council to take action. The slow progress in the judicial area neutralizes the effect of other positive state measures aimed at dealing with and recognizing the past, and therefore, it conspires against the consolidation of democracy. Injustice establishes a timeless place in which times does not pass and establishes another form of conflictive, painful, and even perverse memory. If injustice is not solved, institutions and the purposes of the present will not be fully developed.

All this makes us deal with other relegated or poorly solved issues with a more determined action, but above all, with group actions toward the long lasting change so needed by the country. Among them, we have the redefinition of the mission of the armed forces in a democratic society, the reconversion of the police forces to guarantee the rights and security of citizens, besides innovation actions to reverse and prevent inequality from worsening.

The Governments of Néstor Kirchner and Cristina Fernández took significant steps in the area of institutionalism, and they had a positive impact on the dynamics of trials and in the operation of the judiciary as a whole.

The operation of the democratic institutionalism is now more fluid. After the destructive and painful crisis in 2001 which increased the skepticism towards politics as a way to solve conflicts, the country has been able to solve some serious problems, such as the economy. This reality is a positive element to foster the functioning of the State and its institutions in general. Nevertheless, we cannot say that these advances produced evident improvements in the area of political culture.⁶⁹

After mentioning all of the above as an undeniable context, we will now describe the most important state measures implemented to deal with the legacy of State terrorism since the return to democracy.

a) Creation of the Secretariat for Human Rights

After the activities of the CONADEP ended, the Argentine Government created the Deputy Secretariat for Human Rights, under the supervision of the Ministry of the Interior which was later given the status of Secretariat and was within the scope of the Ministry of Justice and Human Rights. Its main duties were initially the protection and systematization of the archives composed of the records that were based on the complaints received by the CONADEP, as well as all the information derived from its activities, the updates

there; a systematic use of torture; an abusive use of weapons by security forces; the disrespect for the rights of indigenous peoples, among others. These severe deficiencies are even more difficult to deal with due to the federal character of our country. The autonomy of the provinces, which does not mean avoiding the essential coordination of public policies to achieve results in terms of ensuring the validity of rights, collides with political-electoral confrontations to ensure the support of voters and the provision of funds for the local administrations. Within this framework, the rights of the poorest are always affected, and there is a risk that the difficult advances made by the advocacy actions of the civil society might benefit state institutions.

68 Vigorous and still valid speeches (that are still read in the conservative press) which describe the crimes of the dictatorship as “alleged crimes,” the perpetrators of these crimes as “defendants of alleged actions at odds with legality,” or the methodology used to hide the traces of the murders as “imaginative plots of subversion.”

69 This relationship is a unique challenge for the Argentine society, which has deep imbalances between the institutional mechanisms and the social behaviors.

TRUTH, JUSTICE AND REPARATION

based on the new information about the cases under investigation and the reception of new complaints. It also monitors the compliance with human rights international standards, of which Argentina is a signatory, and implements the reparations policy of the State. Since 1992, it has had a National Commission on the Right to Identity (CONADI), in charge of identifying children who were kidnapped together with their parents or who were born under captivity and whose identity was substituted.

Since 2003, the Secretariat for Human Rights has increased exponentially in accordance with the new duties and bodies that had an emphasis on human rights in the last two governments. The Secretariat has made major efforts and has maintained a particularly visible presence in activities related to the memory of the recent past, particularly to the recovery of buildings where clandestine detention centers operated. To choose the members of the work teams, the emphasis was given on the political affiliation or the membership to human rights organizations instead the professional expertise or specific skills, and this did not necessarily contribute to producing results in tune with the hierarchy that the Government itself grants to human rights by considering them as the cornerstone of its policies. With a national favorable context full of opportunities, it is disappointing to know that a state entity that is in charge of these issues has not promoted clearer and more stable policies for aspects as essential as the archives and historical sites, even more taking into account that their management dates back to the Administration of Néstor Kirchner in 2003.

To reverse this trend, we should deprive it from its usual competition spirit to clearly see the difference in roles and duties between the civil society and the State. To distinguish them, it would be easier to achieve its goals faster and more effectively through cooperation relationships that would produce more and better results than before.

b) Victim Reparations Policy

The reparations policy of the Argentine Government has been implemented during successive administrations since the reestablishment of democracy. The Never Again Report (1984) made some recommendations to provide financial assistance to the children and families of the disappeared. Since then and progressively, laws have been enacted to meet the need to repair the prejudices caused by State terrorism and the military dictatorship in specific situations: workers dismissed for political reasons; citizens who were in jail under the custody of the National Executive Power⁷⁰ and the military courts; citizens who have survived illegal abduction; immediate families of missing and assassinated people; and young victims⁷¹.

As pointed out by a study conducted in 2004 by the CELS⁷², as part of a comparative investigation of the international experience, these laws represented a wide coverage of economic reparation by the State to the victims and their families⁷³. At the time of the approval of these standards in Congress, there was not a substantial dissent. The impact of the fight for truth and justice for the families of the disappeared and

70 During the state of siege, a person without a judicial proceeding or who had been dismissed or acquitted by civil justice could be legally detained by the National Executive Power (PEN) until stipulated otherwise. During the last military dictatorship, most political prisoners were detained under these circumstances.

71 In the case of workers who had been expelled or laid off, reinstatement was established, as well as a calculation of the inactivity period for retirement purposes. In the case of disappeared citizens, pensions and social security coverage were provided to the spouses and children. The legal concept of "absence due to enforced disappearance" was created, and economic reparation was granted to the surviving victims of enforced disappearances and to the successors of people killed by military officers and members of security forces or paramilitary groups.

72 Center for Legal and Social Studies. (2004). *La experiencia argentina de reparación económica de graves violaciones a los derechos humanos*. (Mimeographed). Buenos Aires.

73 The same study points out that according to the Secretariat for Human Rights, until mid-2002, there were 6,483 requests of reparation for cases of enforced disappearance; 4,718 reparations were granted. There were 1,648 requests for reparation for cases of murders; 937 were granted. In total, by virtue of Law 24 411, 5,655 benefits were granted. Regarding the benefits set forth in Decree 70/91 and subsequent Law 24 043, aimed at those had been detained under the custody of the Executive Branch due to the state of siege during the de facto regime, and for those who had been detained because of a decision of the military courts, reparations were granted to nearly 8,000 people, out of 13,600 requests received.

human rights groups has pervaded society. These benefits were never questioned. Rather, an opinion that a State that has never seriously neglected its protection duties, acting against its own citizens, must somehow change the results not only of such vulnerability but also of state aggression.

Human rights organizations composed of those who have experienced the effects of State terrorism more visibly and directly, the Mothers of Plaza de Mayo, the Grandmothers of Plaza de Mayo, and Relatives of the Disappeared and Detained for Political Reasons, initially showed some reluctance to the possibility of an economic reparation: “The resistance was based on the idea that a reparation involved changing the life of the disappeared and give up the claim for justice in exchange for money.”⁷⁴ But, after visiting the offices of international organizations and proposing mechanisms to prevent those crimes,⁷⁵ they included the state obligation to provide reparations for the early claims for truth and justice.

Nevertheless, at the Association of Mothers of Plaza de Mayo, there was a strong dissent. A sector led by Hebe de Bonafini opposed the proposals and the symbolic tributes by the State or the civil society, including monuments⁷⁶ and museums or public forgiveness demonstration, as economic reparations. She described those who collected that benefit as prostitutes who “sold” the blood of their disappeared children. This and other equally radical positions⁷⁷ that judged the actions of people, political parties, and leaders led to the division of said organization, which very early gathered those who had become the emblem of the opposition to the dictatorship, beyond the national frontiers.⁷⁸

c) Armed Forces and Security Forces

At the end of the dictatorship, the new role of the armed forces in the democratic system was defined essentially on the basis of their subordination to the civil power. Under the new political framework, the action of justice and the possibility of prosecuting the perpetrators of State terrorism was related to the threat to governance and democratic stability. At that time, no value was placed on the significant work of courts and which –together with other basic democratization and modernization measures- would result in institutional strengthening and, consequently, an improvement in the quality of the political system as a whole. All this came much later and its implementation revealed the speculative nature of the threat constantly used by the armed forces to explain their resistance –then the explicit rebellion- to be subject to the new rules of the game.

Upon the return of democracy, no special measures were proposed, planned, or developed to purge the armed forces and the security forces; for example, by separating those who had different degrees of responsibility for the illegal repression. In the face of a lack of mechanisms, the challenge in the promotion procedures in the military hierarchy was the tool that demanded an annual identification of those who were still in the ranks of those institutions to prevent their promotion to higher commands positions.⁷⁹ Moreover,

74 CELS. (2004). A text quoted in note 72.

75 Such as the work conducted since 1981 to approve an International Convention for the Protection of All Persons from Enforced Disappearance, which was recently approved in 2006.

76 In 1999, during the ceremony to lay the foundation stone of the Monument –see below in this chapter -, Hebe de Bonafini organized a small but loud demonstration to express her disagreement and made a statement in which she threatened to use a chisel to destroy the names to be engraved in the future.

77 Such as the opposition to the exhumation and identification of skeletal remains buried as “NN” or in collective graves, the tributes, and the economic reparations. For further information about the reasons of the division of the organization and the creation of “Madres de Plaza de Mayo Línea Fundadora,” see a document written in 1986 at www.madresfundadoras.org.ar/pagina/origendelalineafundadorademadresdeplazademayo1986/45.

78 In 1986, the Mothers of Plaza de Mayo were divided into two groups: the Mothers of Plaza de Mayo Línea Fundadora and the Association of Mothers of Plaza de Mayo. The scission was the result of a difference of opinion about the methodology to fight a constitutional government and of the rejection of authoritarian methods to run the movement.

79 A task that since 1983 has been performed by several members of Congress, individuals, and organizations, particularly, the Center for Legal and Social Studies (CELS).

TRUTH, JUSTICE AND REPARATION

due to the change of government and the appointment of new senior military officers, or when there were new internal problems in the military institutions, there was a gradual purge –though it cannot be said that it was a total purge⁸⁰- of groups that were involved in gross violations of human rights.

The results of the investigations by the CONADEP, the historical trial of the Military Juntas, well as other lawsuits and the countless military insurrections at the end of the eighties, led to a consensus in society regarding the outright unsuitability of the military intervention in the political matters of the country and the need for limiting its intervention and prerogatives in different areas.

The effort to assign a role to the armed forces under a democratic system was materialized through the National Defense Law of 1988 and the Internal Security Law of 1992. Moreover, we should mention its size and its organizational structures and resulting intervention capacity through a growing but significant budgetary cut. The aforementioned laws clearly frame the functioning of the armed forces and the security forces. First, “national defense” is established as the exclusive mission of the armed forces, removing duties and prerogatives that allowed them in the past to get involved with and militarize the internal security. The Internal Security Law, on the other hand, sets forth the legal, organic, and functional foundations of the national efforts of the police to protect “...the freedom, life, and assets of citizens, their rights and guarantees and the full validity of the institutions of the representative, republican, and federal system set forth in the Constitution.”⁸¹ Moreover, it describes the duties of internal security of police institutions.

This does not mean that the balance in the civilian-military relationships has been achieved. The armed forces have repeatedly appealed to the need to plot the “new threats.”⁸² They have been encouraged by the claim by the United States for their participation in the control of conflicts that endanger the internal security in the Latin American countries. In this way, they tried to recover a protagonist role in the decisions and the budget. It is clear that the definition of functions and of institutionalism in accordance with the democratic framework is a pending task for Argentina. In recent years, the curricula, the training system and the internal functioning that were still permeated with the doctrine of national security were thoroughly assessed. It is well known that this idea led the activities of Argentine and Latin American military officers in the past decades, but with disastrous consequences.⁸³

In this advance process, conflicts are still present. Those who were considered guilty of crimes against humanity in the lawsuits about the activities during the dictatorship, or those who were not prosecuted but who were accused of participating in violations of human rights, were and still are subject to a general social repudiation.⁸⁴ The aforementioned *escrache* activities “... show what justice does not show.”⁸⁵ Somehow,

80 Even in recent times and thanks to the investigations conducted by the Ministry of Defense while Minister Nilda Garré was in office, either for complaints filed by society, legal requirements, or the review of files, members of the forces who were involved in unlawful activities are still identified.

81 Law 24 059, article 2. 01/06/1992.

82 First terrorism, but also poverty, social imbalances, drugs trade, a growing indigenous nationalism, corruption, migration, the AIDS virus, religious fundamentalism, and an extensive list of social problems that, according to US strategists, includes the claims by social groups who are seeking a change of system: “Apreciación de la Situación Estratégica del Hemisferio,” a paper by the International Chief of Staff of the Inter-American Defense Board. Quoted by H. Verbitsky in the newspaper “Página 12,” 03/21/05.

83 There is enough evidence (in archives and lawsuits) about the contents of military training at that time, the training methods, and the close relationship with fundamentalist ideological frameworks that encouraged illegal actions.

84 Expressed in different modalities: the aforementioned modality of open rejection through public demonstrations against military officers recognized as violators of human rights and through “escraches” (as explained in footnote 55), particularly promoted by those groups of the children of the disappeared, in front of the residences of repressors. This type of demonstrations also affected other civilian authorities who conspired or were involved in repression, physicians, and judges accused of collaborating with the dictatorship, among others.

85 Center for Legal and Social Studies. (2000). *La verdad, la justicia y el duelo en el espacio público y en la subjetividad. Informe de la situación de Derechos Humanos en Argentina.* (Chapter XII). Buenos Aires.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

they are separated from the category of citizens, calling the attention of the State for its omission and reporting to those living in the neighborhood that one of the neighbors is a torturer and murderer. But at the same time, the accused military officers receive a regular vindication of some of their former retired comrades, journalists, and conservative ideologists, including some member of the hierarchy of the Catholic Church, who still expect to name those who have been nationally and internationally accused for deviant acts as “alleged offenders” or “saviors of the country.”

Even though the armed forces have been incorporated as actors of the system, the efforts to redesign them in a democratic context have been made for many years, even more intensely due to the denial or restriction of old privileges and functions than due to a new look that will finally abandon its authoritarian bad habits and will allow for a different relationship with society. Even though it is difficult to evaluate at the present time if the context and the significance they had for society then allowed for another development, we have to say that as of 2006, during the term of Minister Nilda Garré as Defense Minister, it was possible to make progress in important pending issues: the reform of the military justice system, education and training; human rights policies, and a fundamental change in gender issues.

The repeal of the Code of Military Justice, opposed for so many years, opened possibilities to update the establishment of a modern disciplinarian regime and the extension of duties of the Ombudsman, now existing for all citizens, to include also the military population.⁸⁶ The changes were designed based on the idea of the member of the armed forces as a citizen who enjoys the same rights and freedoms as a civilian and who is, at the same time, a specialized officer who, in that capacity, is supervised to make sure he/she plays that role. This was only possible when the military jurisdiction was removed and all the standards and regulations were reviewed to keep up with international human rights standards. In the area of education and training at the recruitment centers, new courses on history, human rights, and administrative law were included. Regarding the essential adaptation of human rights criteria (which go beyond the incorporation of subjects in military training), there were some significant events, such as the correction of the files of all the soldiers that at the time of their mandatory military service were abducted, disappeared, and considered as defectors. The Ministry, through a resolution⁸⁷ followed by a ceremony attended by the families of those conscripts, changed that epithet for the status of disappeared detainee. Moreover, the Ministry of Defense conducted a thorough follow-up on the responses of the armed forces to the court requirements in the prosecution of the violations of human rights perpetrated during the dictatorship and, as clear support for the advancement of justice measures, it also removed the possibility for military officers who were serving time in jail for crimes against humanity to be imprisoned in military units.⁸⁸ These measures were taken as part of a procedure that was sending clear messages of change by continuing with the reforms of the doctrines and routines pertaining to the exercise of intelligence by the armed forces and that still had reasons or obstacles to manage information or justify the behaviors displayed during the dictatorship. Finally, supporting the initiative of the Secretariat for Human Rights, the Ministry of Defense authorized placing signs on buildings and premises where human violations were perpetrated and that are still used for military activities. Regarding gender policies, particularly important modifications were done, addressing not only the reality of a larger incorporation of women in the armed forces, but also basic equality principles.⁸⁹

86 These changes are contained in Law 26 394 enacted in 2008, or they derived thereof.

87 Resolution MD 420 of May 7, 2009.

88 In 2008, Minister Garré asked the federal judges who kept military officers in military units due to their prosecution in human rights lawsuits, to transfer them to common prisons as set forth by the law. The requested was based on the equality before the law of civilians and military personnel, the military and non-prison nature of the headquarters, and the bad example that such a presence will set for the officers who are not related to the crimes under investigation. Therefore, all the military officers who were distributed in different units were gathered and, at the same time, the military prison that operated in Campo de Mayo was transferred under the supervision of the Federal Penitentiary System.

89 For further information, see <http://www.mindef.gov.ar/genero.html>.

Therefore, there were changes that in some cases timidly started years before and ratified a modern role for the armed forces, with an emphasis on the modification of the internal relationships of the armed forces and breaking its compartmentalized and secrecy relationship with society. A greater collaboration of the armed forces with other countries in the region took place not only within a context of growing Latin American integration, but also within a clear subordination to the civilian power.

d) Reparation Measures with a Strong Symbolic Content

A public policy to recognize and take care of past human rights violations, during a transition, must contribute to building the social memory about what happened.

Since 1983, different places in the country promoted initiatives that emphasize the recognition of what happened or on the tributes of victims. These actions included naming streets and squares after the victims, planting of trees, murals on significant buildings, placement of plaques to indicate the places where relevant resistance actions took place or in the residences of disappeared citizens, among others. This chapter will address only the most recent national projects and some others in the city of Buenos Aires.

Driven by the strong manifestations of memories in 1996, during the celebration of the twentieth anniversary of the coup d'état, human rights organizations promoted the construction of a memorial monument in the city of Buenos Aires. Soon after, they were able to approve a rule that allocated public space to “erect a monument and a group of sculptures in honor of the detainees who went missing or were murdered by State terrorism during the 1970’s and the beginning of the 1980’s until the recovery of the Rule of Law.”⁹⁰ Since that time, a commission was created⁹¹ to follow up on the monument, whose foundation stone was laid on March 24, 1999. The monument and the park, whose total area is fourteen hectares, are included in a larger project that is intended to give back to the city of Buenos Aires its connection to the river through the treatment of the entire river bank. The powerful symbolism of the project lies in the location of the monument on the shores of Río de la Plata, a place where the bodies of thousands of disappeared people were thrown.⁹²

The process has led to interesting debates about the method to represent and remember recent historical events, of which we mention only the most significant: criteria for the definition of the list of victims to engrave on the monument; the relationship between the tribute of victims and the recognition of the ideals of the fight; the capacity of the works of contemporary art to contribute to the reflection and transmission of memories; the tension between the permanent nature of a monument and the exercise of an active memory; the possibility to adopt management methods that guarantee not only a proper maintenance of the facilities and works of art, but also the fulfillment of the original objectives, thus preventing them from being diluted over time.

The completion of the monument took ten years of uninterrupted work.⁹³ Only then it was possible to fulfill the wish of the families to have a place in the city where they could “see and touch” the names of the disappeared and assassinated victims engraved on stone. In the meantime, the square with an access to the

90 Law 46 passed on 07/21/1998.

91 The Pro-Monument Commission –whose duties ceased in 2009 with the passing of a law that coincided with the end of the Multiple-Use Hall, was composed of lawmakers, officials from the Executive Branch, representatives of ten human rights organizations and the University of Buenos Aires. The Park and Monument are managed by a board of directors and an executive directorate, respecting the main characteristic at the time of its creation: mixed management between the civil society and the State.

92 For further information about the Monument for the victims of State terrorism and the Memory Park, see www.parquedelamemoria.org.ar.

93 The Monument was inaugurated in November 2007, and in the following years, different sections of the Park were opened. In 2011, the Park completed the most important stages of its electrical infrastructure which will all its full and final operation.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

park that was opened in 2001 became a space to pay tribute on commemorative dates, until the different stages of the works were completed. Therefore, it was possible to complete the monument in 2007 and inaugurate it in the same year and complete the exhibition and conference room in 2009 and use it in 2011. The monument and park are full of symbolism and beauty and are visited by a large number of students and the public at large, even though it has not been possible to disseminate its existence and location due to a lack of urban signage and an effective dissemination policy. There were emotional ceremonies organized for the death of relatives of the disappeared, who decided while they were alive that their ashes will be thrown into the same river where the bodies of their beloved ones were also thrown into.

At a national level, the Néstor Kirchner Administration created the National Memory Archive,⁹⁴ soon after he took over. The purpose of this archive was to preserve the information, testimonies, and documents to contribute to the study and research of the fight against impunity and give access to documents in order to ensure the prevention of human rights violations in the future. The archive is composed of a set of documents produced by the activities of the CONADEP, particularly, the files of the complaints submitted to the Commission as well as documentation about the subsequent investigations and files about victim reparation. This was an initiative that at the end of 2003 slowly took actions to preserve and organize the documents that will allow the public to review its contents in the future. The National Memory Archive, which is located in one of the buildings of the former ESMA, is intended to recover key documentation produced by the armed forces and the security forces. It also has the mission -as part of the State policy- to preserve the historical heritage which is so essential to conduct a thorough investigation of past events during the last military dictatorship and contribute to the lawsuits and the historical investigations. Even though some reasonable time has elapsed since its creation, the information of its work and services is scarce, and the levels of access to the current documents have not been yet established.

In coordination with human rights organizations from different cities in the country and the joint successful work, the Argentine State⁹⁵ led the presentation of 29 Argentine archive funds which are the documentary heritage about human rights in the country and which are valued at an international level and were included in UNESCO's Program of Memory of the World due to their authenticity, importance, uniqueness, and the impossibility of replacing them. This achievement is significant due to the value of the process to carry it out, and because this process organized information from many documentary collections and related them, due to the results and because of its medium and long-term effects. This was a work methodology that might be used in other human rights and memory efforts.⁹⁶ In any event, since then and as continuity of this early initiative, the Argentine State will be responsible for guaranteeing its preservation and organization of its access.

On March 24, 2004, on the anniversary of the coup d'état, President Néstor Kirchner together with his entire cabinet attended a ceremony at the Military Academy during which the Army Commander at that time, Lieutenant General Roberto Bendini, removed the portraits of the dictators and de facto presidents Jorge Rafael Videla and Reynaldo Benito Bignone. Both have been directors of the Military Academy. The presidential statement to his Ministry of Defense that the portraits would be removed caused an expected gesture by the Navy Commander, Almirant Jorge Godoy, who removed the portrait of former Almirant Emilio Massera from the gallery of former commanders located in Edificio Libertad, the headquarters of the

94 The full text of the decree that created the Archive can be reviewed at www.derhuman.jus.gov.ar.

95 Through the Secretariat for Human Rights, which included the fund of the CONADEP as the pool of the National Memory Archive, which has the state responsibility of guaranteeing the preservation of these archive funds.

96 The experience of applying for the Memory of the World program (2006-2007) should represent not only a precedent but an example to follow by the Secretariat for Human Rights and its different bodies. The achievement involved the work by the civil society and state bodies. The work was organized through a mixed technical team that worked together with the participating institutions. Moreover, there was a planned and coordinated -also collaborative- influence task without the presence of useless protagonists. The Minister of Foreign Affairs played a key role in the achievement of this objective.

TRUTH, JUSTICE AND REPARATION

Army General Staff. Unlike the ceremony presided by Kirchner, the gesture of the Army was not public and was published in the press two months after.

The removal of the portraits of those who led the illegal repression and ran the country for seven terrible days had been insistently requested to the Ministry of Defense in the last few years⁹⁷ by the CELS. This was an effort to transform the difference in the former behavior of the military institutions, which is at the core of the illegal and sinister action of the dictatorship and the behavior established by the new rules of the democratic regime for them, into visible gestures and attitudes.

On that anniversary, just a few hours later, the Space for Memory and the Promotion of Human Rights was created during a multitudinous ceremony conducted in the premises of the former Navy Mechanics School –ESMA– and other military institutions. As a serious deviation of its original mission, there was a concentration camp at the headquarters of such institution where nearly five thousand citizens were imprisoned and murdered. It is useful to remember that in 1998, President Carlos Menem⁹⁸ ordered the transfer of the School to use the premises as “green space” where a “symbol of national unity” would be erected after the demolition of the building. The measure was a hideous attempt to delete the facts and force a reconciliation that deserved the rejection of all the human rights organizations. The families of the disappeared at the ESMA filed a remedy for the protection of constitutional rights to suspend the effects of the decree.

Then, the agreement entered into by the President of the country and the Head of the State in the city of Buenos Aires in 2004 to give the place a completely different use: a museum about the dictatorship and which could be used as a place of reflection and knowledge about the past for future generations. This gesture sent a clear message to those who did not obey the laws and the elementary rules of human coexistence; it has a strong content of reparation for society at large and fulfills an old desire of the human rights organizations, which since the 1980’s had taken several steps at a municipal level in favor of the creation of this museum.⁹⁹ In October 2007, the premises were completely vacated by the Navy once the Ministry of Defense authorized moving the institutions working there to another location and the buildings were transferred to a commission composed of the National government and the government of the city of Buenos Aires until the current public entity that is the body responsible for the design and management of the entire space, was created.

The *Casino de Oficiales* (Officers’ quarters), one of the 35 buildings in those huge premises, was the place for the disappeared detainees under captivity and the center where guided tours can be arranged. The opening of the center to the public and the arrangement of guided tours was the target of heated discussions, and the institutional and management model faced difficulties because it is discussed between the city and the nation¹⁰⁰ and with the participation of human rights organizations. Even though this initiative had serious implications (in terms of occupation of the territory, budget, and symbolic value), there was no involvement

97 Ministers Ricardo López Murphy, Horacio Jaunarena, and José Pampuro, during the Administrations of De la Rúa, Duhalde, and Kirchner.

98 Presidential decree 8/98.

99 For further information about the background of this initiative, see the website of the Association of Open Memory at www.memoriaabierta.org.ar; and about the advance in the work by the governmental bodies that are part of the Bipartite Commission: www.buenosaires.gov.ar/espacioparalamemoria and www.derhuman.jus.gov.ar/espacioparalamemoria/, in charge of the eviction of the premises. In September 2011, the website of Space for Memory and the Promotion of Human Rights www.espaciomemoria.ar was created.

100 The city of Buenos Aires owns the land where the buildings are located. Moreover, when there were no possibilities to open a museum at a national level, in the city of Buenos Aires there were progressive public policies for the creation of the Space for Memory Institute. This institute is today the most intolerant and difficult actor in the combination of wills for the management of the former ESMA.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

of government bodies that are competent in urban development, architectonic heritage or culture, which could contribute their essential opinion and management for these ventures, if they are planned for the long run and beyond governmental procedures. This confusing but allegedly inclusive game between actors who have different responsibilities and participation capacities is one of the major challenges of this “project.” Beyond its close link to human rights organizations -because it was part of the vindications and due to its current participation in the management- the intervention of the ESMA should be evaluated soon because of its results and beyond this link, particularly the accountability of the State. This is about assessing the contribution to the objectives of remembering the past by generating awareness about the fatal consequences of dictatorships and the State Terrorism and by improving the value of democratic participation and the involvement in public affairs.

Though initially, the museum would operate next to the casino, in the emblematic building known as the “four columns,” this has not happened yet. However, other governmental and non governmental organizations have already been created to host different activities.¹⁰¹ The most consolidated organization is the Haroldo Conti Cultural Center for Memory, which hosts a variety of cultural activities.

The place was not the first site recovered in the city of Buenos Aires, and it opened to be visited by the public -something that happened very slowly and faced some difficulties- with a single format of guided tours that started a few years ago.

Even though there are a lot of memory sites in the Federal Capital¹⁰², there is no coordination among them, something that would be undoubtedly desirable and necessary due to their potential role as learning vehicles about the past and the awareness about the effects of totalitarian governments.

There are other relevant initiatives in the country. The oldest initiative was the Museum for Memory in the city of Rosario¹⁰³, created by the local legislature in 1998. This museum started operating in 2001 at a provisional location. In December of 2010, the museum was finally located in the building where the II Command of the Army operated between se 1976 and 1983. The museum, which was under the supervision of the municipality of Rosario, offers exhibits that do not focus on the chronology of the events but rather proposes topics and experiences to the visitor. The museum has a documentation center and offers interactive spaces, and its educational program is a proposal that has been proven by the team for many years while working with the schools from the city and other places.

In July 2000, the House of Deputies of the Province of Buenos Aires created the Provincial Commission for Memory in order to implement a Place of Honor for Memory, which “will contribute to keep the recent history alive in the memory of the population of Buenos Aires.”¹⁰⁴ This commission develops broad analysis, dissemination, and education activities about past events.¹⁰⁵ It is in charge of the Archive of the Directorate of Intelligence of the Province of Buenos Aires (DIPBA), which keeps detailed information about intelligence reports of events, organizations, and individuals who were under surveillance. The archive has 3,800,000 pages and 300,000 personal file cards, besides sound and audio-visual documents. The previous objective of the archive was changed, and the new purpose is to stop keeping secret information controlled by the police forces and start making this information -in accordance with sensitive information protection standards-

101 For further information about the location of the institutions in the premises, see the institutional section in the website at www.espaciomemoria.ar.

102 See Memoria Abierta. (2009). *Memorias en la Ciudad. Señales del terrorismo de Estado en Buenos Aires*. Buenos Aires: Eudeba.

103 See www.museodelamemoria.gob.ar.

104 As indicated in Resolution 2172 of the House of Deputies of the Province of Buenos Aires that created the Commission, it was later ratified by Law 12 483.

105 For further information, see www.comisionporlamemoria.org.ar.

TRUTH, JUSTICE AND REPARATION

available to the public and use it in lawsuits to disclose the truth. This is essentially a gesture of reparation and ethical, civic, and historical rearrangement. Then a Museum for the Art and Memory was created to display important political art collections. The commission also offers a vast educational experience which is mainly focused on the Program for the Youth and Memory, which today has been reproduced in other cities and provinces.

Some years later, continuing with the policy that promoted the recovery of spaces that were formerly torture centers and where thousands of abducted citizens were killed, it was possible to “conquer”¹⁰⁶ as sites for memory places like formerly clandestine detention centers from the Police Information Department of the Province of Córdoba (D2),¹⁰⁷ La Perla,¹⁰⁸ and La Ribera¹⁰⁹. Similar experiences were developed in other cities in the country such as Mendoza (House for Memory and Popular Culture), Morón (House for Memory and Life, which was the former detention and torture center called Mansión Seré), Resistencia (House for Memory), and Trelew (Cultural Center for Memory).

The work processes aimed at making decisions about the main objectives in each location, the methods to make them available to the public and the tour scripts, the methodologies to build exhibits and develop educational contents, the activities organized in those places are the main reason for the creation of communication channels among those experiences. Since 2006, there has been a Latin American Network of the International Coalition of Sites of Conscience,¹¹⁰ that today links 32 institutions, sites and museums in the region (state, mixed-managed, and non governmental), which are working for the memories in twelve Latin American countries. The network has been able to establish itself as a horizontal exchange space about lessons, reflection, and discussion related to topics related to the work done by memory spaces.

Moreover, the Secretariat for Human Rights created the Federal Network of Memory Sites within the scope of the National Archive for Memory in order to exchange experiences and coordinate policies among state institutions in this field.¹¹¹ The Secretariat is also in charge of the signs placed in different locations that were detention centers with the use of three cement pillars with the words: Memory, Truth, and Justice.

VI. Considerations about Future Human Rights Issues

The human rights movement became the ethical benchmark of a stage, but it also influenced, through its presence and actions, the new way of thinking and conducting politics in the country. The most immediate effect was the effectiveness to curb authoritarianism. The acknowledgment of past events and the understanding of such history as part of an identity have built a social memory that clearly contrasts dictatorial and democratic practices. Therefore, it contributes to valuing the differences between the social and political

106 In the province of Córdoba, people choose to use the verb “conquer” to refer to the processes to recover the public use of former clandestine detention centers.

107 Located downtown, the building that today houses the Archive and the Provincial Commission for the Memory of Córdoba was the seat of the Police Information Department of the Province of Córdoba, which operated as a clandestine detention center between 1974 and 1978.

108 On March 24, 2007, the Government of the nation transferred the lands of that former clandestine detention center to the Provincial Commission for Memory of the Province of Córdoba, so that it could be used as memory site. It was open to the public on March 24, 2009.

109 Campo de La Ribera was a military prison and during the dictatorship it was transformed into a clandestine detention center. Since the arrival of democracy and since 2009, it is used as an educational center.

110 See www.sitesofconscience.org; www.memoriaabierta.org.ar/redlatinoamericana/index.php.

111 The Federal Network was created by Resolution SDH 014 of March 22, 2007, and it is intended to become a body to organize activities and exchange experiences, methodologies, and resources among the human rights governmental organizations which, at a provincial and municipal level and at the level of the Autonomous City of Buenos Aires, are in charge of running the “memory sites” about State terrorism all over Argentina.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

organization. This perspective, which is present in different initiatives for memory, tribute, and dissemination of past events fosters, especially when combined with other actions, a preventive culture of the return of authoritarianism.

This unquestionable contribution to the affirmation of democracy which encouraged the fight for human rights in Latin America, particularly in Argentina, was more the result of the incorporation of human rights standards derived from international treaties in the internal jurisprudence, than the result of the extension of those rights to every citizen. With an unprecedented increase of social exclusion, the effective exercise of those rights was limited to a few. Therefore, the human rights movement was not always able to coordinate the capacity to work on legal and political institutionalism with the social movements. The limitations to influence the social dynamics were drastically evident in the terrible political and economic crisis in December 2001.

The effectiveness of human rights organizations to document the crimes of State terrorism and enforce national and international justice showed a clear preference in society for democratic rules of the game over authoritarian mechanisms. The last few years have witnessed significant advances regarding central issues addressed in this chapter. But together with the identification and recognition of those advances, we have to point out the weaknesses that are evident after the dissipation of the impact of the statements and emotions of the gestures and speeches.

The strength of the announcements when a political decision is made, even when this decision gathers the most emotional and dramatic moments of our history, does not automatically produce lines of action or programs to solve new problems in the area of human rights. One of the reasons for this is the design of organizational structures and appointment mechanisms for officials who have to manage and implement those policies. The situation becomes more complex when such a lack is not acknowledged and it is immersed in a crackless loyalty, towards an ideology or a person, and in the allocation of public resources, which is the management core.

The question is how to continue when laws have been amended; other laws have been enacted, and institutions have been created to face the challenges of the transition stage, but the results are incomplete. On many occasions, we can see that the objectives are neutralized by the lack of action or the distortion of the original purpose.

The civil society organizations are not responsible for or do not have the capacity to achieve progress in the area of micromanagement. But it is important to work towards a new political culture that favors citizen commitment and towards the concept of public values and the value of professionalism to perform this task within the framework of renewed and transparent democratic institutions. Something that is still difficult to accept is that it is maybe the only way to guarantee rights for everyone and effectively respond to social demands.

The outstanding debts of the democratic State, that is, health, education, and housing, are increasing in a society that is becoming more and more unequal. In this area, unmet needs are perceived more as rights. Consequently, there is a need to develop policies aimed at achieving specific results and to take tax-related actions aimed at addressing the causes of the factors that are reproducing such inequalities.

This society, which has lived in democracy for almost three decades, is also affected by new problems in the area of citizen security. The increase of the prisoner population and the search for solutions that separate the causes of the crime and its new formats pushes the possibility of successfully solving them even farther. The coverage of basic human rights, the criminalization of the poor population and the difficulty to perceive the legal conceptions and the judicial apparatus as part of the problem overshadow the horizon.

TRUTH, JUSTICE AND REPARATION

The fight for the respect for human rights in the seventies and eighties does not look like the fight of today. The problems in the past do not look like the problems of today. At present, it is difficult to get the support in favor of the abolition of torture used with detainees at the police stations and prisons of the country. The situation and the treatment of detainees represent a set of negative attitudes present in our culture, including racism, xenophobia, generational conflicts, and social exclusion. Most detainees are young, poor, dark-skinned, and torture is used as a daily subjugation and humiliation tool. In close connection, it is difficult to include the need for a greater strength and democratization of institutional structures, beginning with justice, in the public debate.

Exclusion and inequality as common elements of the problems of the denial of rights and the deficient functioning of the democratic regime are the challenges that we have to address today. The experience gained in other areas and the possibility of having a perspective of the significant advance ahead of us make us think of the complexity of the problems, propose strategies to solve them and, most of all, seek a consistent democracy, capable of guaranteeing the rights of every citizen.

Truth, Reparation and Justice: The Past Living in the Present*

Elizabeth Lira

*One country have I lost
When I sleep
In my dreams
It comes to me
Like a foe
As if my heart were hit
By the sea I cast in oblivion
And my eyes witnessed
The life I lived before**.*

* Part of this article was based on a research study for project Justicia y Memoria *Justice and Memory* conducted in the Ethics Center at Alberto Hurtado University and sponsored by the Ford Foundation since 2009.

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Background Information

The military dictatorship in Chile (1973-1990) overthrew the Constitutional Government led by President Salvador Allende Gossens. Reasons for the **military coup** were first cited in *Bando 5* issued on September 11, and then included in Executive Decree 5 of September 12 (published in Official Gazette, Issue 28 657 of September 22, 1973), stating that "...the state of siege decreed because of internal disturbance, in the situation prevailing now in the country, should be understood as 'state or time of war' for the purposes of the provisions contained in the Code of Military Justice and other criminal laws" (Loveman and Lira, 2002: 321, 337-341). Chile was subject to several states of constitutional exception until August 30, 1988, and different types of curfew prevailed.

Authorities of the Government overthrown, their supporters and members of political parties grouped in *Unidad Popular* (Popular Unity) were forced into councils of war across the country, prosecuted for short periods and sentenced to capital punishment or long prison terms with little or no defense whatsoever. Torture was an everyday experience. The condition of **enemy** was the excuse for political repression, ignoring the rights of prisoners of war as set forth in the Humanitarian Law, effective in the country since 1951 (National Commission on Political Imprisonment and Torture, 2005).

Since 1974, some of the detained never returned, whether arrested at home, in the workplace or in the presence of witnesses. The Government denied their arrest in each and every case, and the Judiciary dismissed nearly every remedy for the protection of constitutional rights of the detained (Vicariate of Solidarity, 1979).

State responsibility for human rights violations was reported to the Courts of Justice and international organizations in 1973, leaving numerous records on human rights violations perpetrated at that time. All special reports on Chile from the Inter-American Commission on Human Rights and annual reports until 1989 recorded these reports (Vargas, J. E., 1990). The IACHR received and followed up on different cases of the dictatorship¹. On some occasions the military dictatorship excused authorities for their actions, but in most cases it denied arrests and their legal existence and distanced itself from any responsibility.² The United Nations General Assembly, in turn, issued convictions for the military dictatorship in Chile from 1974 to 1989. The initial conviction was a consequence of the pressure by the international community on human rights violations occurring in Chile (Vargas M. C., 1990). Every conviction highlighted the lack of information about the disappeared. The United Nations appointed a commission to investigate the reported situations, and then special rapporteurs were appointed to follow up on cases reported to the end of the dictatorship.

In addition, the Committee on Freedom of Association of the Governing Body –the executive body of the International Labour Organization (ILO) –received numerous complaints on trade union rights violations perpetrated in Chile since 1973. The ILO maintained constant follow-up on the complaints filed by Chilean trade union organizations until 1990, demanding information on and solutions to the cases submitted to the military dictatorship (Lira and Rojas, 2009).

In retrospect, reports on human rights violations showed how repressive politics caused fear and pain, their consequences being in most cases traumatic for those who suffered and resulting in subjugation

1 See special reports of the Inter-American Commission on Human Rights: 1974, 1976, 1977 and 1985 at <http://www.cidh.oas.org/pais.esp.htm> (accessed on 07/27/2011).

2 Chilean delegate to the United Nations, Sergio Diez Urzúa, submitted to the General Assembly of this body on November 7, 1975 two documentary reports titled "Situation of Human Rights in Chile," revealing that of a total of 768 allegedly missing people, 153 had no legal existence. Similar reports were submitted in June 1976 at the 6th General Assembly of the OAS held in Santiago.

and silence of most people involved for many years. At the same time, the effects of persecution, torture, imprisonment, disappearance and death not only had a psychological and material effect on those who were under persecution and their families, but also on many other close people and their communities, and an indirect effect on society as a whole.

The consequences of persecution forced thousands of people to protect their lives and leave the country. Many of them were dismissed from their jobs and had to move somewhere else in the country or, in the case of farmers, they lost their jobs, their houses and lifestyle. These situations concerned different groups, especially some churches, resulting in their implementation of provision of legal defense, assistance and support to those under persecution (Orellana and Hutchinson, 1991). The Committee for the Peace first and then the Vicariate of Solidarity gave priority over legal defense before councils of war and courts of justice.

The families of the victims formed groups in 1974 to support their members who were in prison but above all to keep track of those missing:

(...) because the life of our people was in danger, we set to the task of keeping track of them across the Stadium of Chile, the National Stadium, Chacabuco, Pisagua, Tejas Verdes, Quiriquina, Tres Álamos, Cuatro Álamos, Puchuncaví, Ritoque, and many other places that were concentration camps during the military dictatorship, holding a red carnation in our hands as our identifying characteristic (Association of Families of the Detained and Disappeared, 1997: 11).

Reports for missing people and lawsuits for torture against those responsible were filed with no effective results throughout the dictatorship. Nevertheless, insisting on legal proceedings made it possible to leave record in courts of hundreds of cases of those claiming for their rights or their families'. With a few exceptions, the judges dismissed remedies for the protection of constitutional rights or failed to effectively process cases or find the perpetrators. In 1989, most cases were granted amnesty. In spite of this, human rights lawyers were seeking and are still seeking justice before the courts to date.

In 1988, according to the 1980 Constitution, a referendum was conducted to determine the continuity of the dictatorship. 54% of the electorate voted **against** the Government of Pinochet running for an additional eight years. In June 1989, a new referendum was conducted on some reforms to the constitution agreed with the opposition party. In December 1989, the President of the Republic and the Congress were elected by democratic rule. Christian democrat Patricio Aylwin was elected President of Chile, marking the **transition** within the framework established by the 1980 Constitution.

Human Rights Policy by the Concert

President Patricio Aylwin and his supporting party coalition –the Concert of Parties for Democracy– proposed a program of deep institutional reforms seriously constrained in their implementation by the Constitution and institutionalism imposed between 1973 and 1990. With regard to human rights violations, this project pointed out:

The Democratic Government will insist on finding the truth in cases of human rights violations occurred after September 11, 1973. (...) will allow for judging under the existing criminal law on human rights violations amounting to atrocities against life, freedom, and personal integrity (...). The knowledge of these cases will lie in regular Courts of Justice whose knowledge and judging should conform to the rules of due process of law in full compliance with the legal protection of victims and offenders (Concert Project, 1989: 3-4).

This program contained specific proposals for victim reparation (property damage, pain and suffering), restoration of nationality (to the nine Chileans who were denied their nationality as a repressive measure, including Orlando Letelier, assassinated in Washington in 1976). Such project proposal sought to develop

an active policy to promote the return of all Chileans to their homeland, “exploring possibilities for their full integration.” Preparation of social, physical and mental health policies was expected and targeted specifically at the people affected by political repression as so was return of confiscated property to individuals, political parties or social and trade union organizations. Finally, it expressed their intent to “vindicate those fellow citizens who were victims of crime against their lives or arrests followed by disappearances for their political beliefs (Concert Program, 1989: 4).

Such proposal admitted that the legacy of human rights violations was a major obstacle to democracy building. Consequently, the program required the new Government to a) find out the truth about human rights violations; b) ensure the necessary information to conduct the judicial investigation into these crimes; and c) vindicate the victims.

It is important to remember that by the time Patricio Aylwin took office as the President of the Republic in March 1990, the 1980 Constitution was in effect and Augusto Pinochet was Commander-in-chief of the Chilean Army, serving in the office of Commander-in-chief until January 1998. Amnesty Executive Decree 2191, issued in 1978, under which persons who committed offences between September 11, 1973 and March 10, 1978 were granted amnesty. During this period, the state of siege was put in place with most cases reported as enforced disappearances, extrajudicial murders, and the highest number of torture victims. Such executive decree favored a certain number of political prisoners, who were released in 1978. In contrast, those who commuted imprisonment for estrangement had to remain in exile because they were denied entry to the country. Although the Concert of Parties for Democracy was determined to repeal the Amnesty Executive Decree once in the Government, such coalition failed to gain the necessary votes in Congress to make it happen. During the validity of this Executive Decree, the results of court proceedings on human rights violations were conditioned, especially for the detained and disappeared until 2004.

The Government of President Aylwin witnessed the first policies of truth. Reparation policies were developed, considering different human rights violations during the military dictatorship. A first attempt was made to address the situation of political prisoners by enforcing laws to ensure due process, and several legislative initiatives were presented to expedite judicial investigation on cases of the detained and disappeared and on the Amnesty Executive Decree. Only a few of these bills were passed by Congress. Doing justice took decades.

President Patricio Aylwin frequently declared that he planned to fulfill his commitment in a short term (i.e., the four years of his Administration) and reach reconciliation. Still, it was impossible to complete the tasks scheduled for such term. This process was simultaneously developed in different fields, including the Government, associations of victims, national and international human rights organizations, the armed forces, the Judiciary, and Congress at different times and with different objectives in line with their views on the legacy of human rights violations and their political approach. For some, general and inclusive amnesty was sufficient. For others, identifying and healing the victims and doing justice were essential conditions for a political reconciliation process.

The Government was required both to comply with constitutional obligations and those derived from international commitments of Chile to the victims and to provide for legal, social and political conditions to ensure non-repetition. The proposed policy reasserted that human rights violations and reparations were a problem to be faced by the ruling coalition but assumed by the Government. Therefore, large consensus was required to rule on these subjects.

Different political views and tensions derived from these differences made it difficult to reach consensus and meet these objectives. Political discussion gave account of convictions and loyalties around these processes and marked ideological and ethical differences between the past and the present. Opposing views

of the past seemed to reinforce, for some sectors of society, preference for legal oblivion (amnesty and pardon) as the political formula to **close** the past, as it has always been in the history of the Republic. Still, other sectors –especially associations of victims– were constantly questioning impunity: the historical key of what was then considered social peace. A growing change in political expectations was observed mostly to gain recognition of responsibilities by various political figures. Nonetheless, persistent divisions and a break in national coexistence –and fear to build on them– were not only ideological but also moral and emotional concerns rooted in painful and traumatic experiences of the victims, revived to excuse what happened for the sake of the common good. As torture and disappearance were justified as a political need **to save the nation**, it seemed impossible to provide minimum reconciliation conditions.

To President Patricio Aylwin, reaching political reconciliation was a key objective during his Government service. His foundations were in finding the truth about what happened to the victims in a highly sensitive political context, his approach to human rights violations both by the victims and by Commander-in-chief Augusto Pinochet, the Armed Forces, and supporters. President Patricio Aylwin put institutional stability first and was not willing to risk a new military coup:

(...) We have said –as we solemnly reaffirm today– that the moral awareness of the nation requires the truth to be told about the missing people, atrocious crimes, and other serious human rights violations during the dictatorship. We have also said –as we say today– that we should address such a delicate matter by reconciling virtue of justice and virtue of good judgment, and once relevant personal responsibilities are defined, the time for forgiveness will arrive (Aylwin, 1992: 20-21).

However, the **national reconciliation** process in Chile after 1990 required identification and reparation of victims and punishment of perpetrators, mainly due to centralized political resistance to human rights violations by the opposition party during the military dictatorship before the Courts of Justice, since the beginning.

Implementing the policies of truth, reparation, justice and memory took more time than initially expected, mainly because of different and growing ethical, political, and cultural demands. For centuries, social peace had been built on impunity, but as soon as the first remedy for the protection of constitutional rights was filed on September 14, 1973, courts became the places where people claimed for their rights, accountability of the authorities, and duty of the judges to enforce the law, preventing –in practice– the legitimacy of impunity as a political resource used to resolve conflicts and put an end to their consequences. Such dispute took on different tones in the years of transition. A general demand for rights and guarantees as the foundation of social peace suggested radical questioning on historical political reconciliation rooted in impunity. The process is not over, neither is dispute among various ethical and political views. The ending is not predictable because it depends not only on the development of a democratic culture in the country but also on the international context for the protection of human rights.

In this chapter and following a chronological order, policies of truth, reparation, justice, and memory developed by the Government of Chile to date were revealed, examining their continuity over time through local governments from 1990 onwards. Such distinction is somewhat arbitrary because the truth depends on the particular truth of court proceedings rather than on truth commissions. Reparation is not reached through administrative measures but through acknowledging what happened to the victims and punishing perpetrators. Truth and reparation pervade in sites of memory and in various initiatives restoring the good name of victims. In other words, these processes are interrelated, mutually developed, and added to a major process to recognize the rights of the victims and their rehabilitation, requiring specific actions by the Government to ensure political conditions and a culture centered on the value of life and dignity of people, preventing new human rights violations in society.

Moral Resistance to Dictatorship and the Fight for the Lives of their People and of Others

The following history would not have been possible without victims' and their families' constant fighting to know the whereabouts of their people, especially in the case of the detained and disappeared. Women started to protest wearing pictures of their relatives on their chest and holding banners with the phrase **“Where are they?”** The first hunger strike by the Association of Families of the Detained and Disappeared (hereinafter “the Association”) took place between June 14 and 23, 1977 at the offices of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago. The strike ended with a commitment by the military dictatorship before the General Secretariat of the United Nations to “investigate reports for enforced disappearances” (Association of Families of the Detained and Disappeared, 1997: 23).

The Amnesty Executive Decree in April 1978 led to a hunger strike in several parishes. The statement of women on hunger strike was: *Our life for the truth!* This hunger strike started on May 22 and finished on June 8. External support comprised of 80 groups who organized hunger strikes in more than sixty cities around the world. Numerous Catholic Church premises hosted reflection meetings and supporting actions to petitions to the Association (Archdiocese of Santiago, Vicariate of Solidarity, 1978).

The Association has been founded and run by women. The first president was Sola Sierra, wife of detained and disappeared Waldo Pizarro. Following her death, Viviana Díaz, daughter of detained and disappeared Díaz, presided over the Association. Lorena Pizarro, daughter of Sola Sierra, has been the president since 2003. In the mid-eighties, Viviana Díaz commented on the ultimate goal of constantly working for the Association, “To me, the most important thing is to show everyone that this is a problem requiring a solution, where each and every Chilean plays a major role (...). But we know, we are aware, that we are not going to make it alone. The entire community has to be involved.” (Rosario Rojas, 1987: 299)

In retrospect, sudden disappearances caused such great despair and helplessness that mothers, wives, cohabitants, daughters, and sisters changed their lives into a relentless search for their people sustained over time especially on legal proceedings. Only in cases where bodies were identified, the case was closed and funeral rituals were held. Nevertheless, an accurate identification of bodies **found** has taken decades due to a lack of proper scientific and technological resources in the country, still pending for most people. In rare cases, court proceedings have revealed the truth about the fate and whereabouts of the disappeared and the circumstances around them. A statement by the Armed Forces in 2001 that a certain number of disappeared victims were thrown out to the sea drowned –for many– any hope to find and bury remains of their people.

Although the Association of Families of the Detained and Disappeared has been ponderous on human rights policies for the last two decades, reparation policies were founded on organized claims of the victims, including outcasts, farmers expelled from the land, exonerated civilians, returnees, and former political prisoners. Such claims have led to a review and reorganization of policies in different Governments. Although the history of these claims and the fights is outside the scope of this paper, what has been achieved so far would not be possible without the existence of these organizations and their constant reparation claims and reports. Similarly, such achievements would not be possible without the constant work by human rights lawyers, who have supported victims and their organizations for decades.

The Policies of Truth

Historically, the country has been through civil wars and dictatorships in the past, in some cases seeking the truth about what happened mainly to legitimize new authorities after the crisis (Loveman and Lira, 2003). Additionally, reparation measures were implemented, but every conflict ended in wide and inclusive amnesty

for the sake of national reconciliation³. In 1990, the truth about what happened to the victims seemed a key element to grant them recognition and reparation, and –unlike previous conflicts– demands for truth and justice started to redefine requirements for political reconciliation, seemingly more reliant on responsibility recognition and criminal trials than on immediate perpetrator impunity, as in the past. Nonetheless, a large number of issues related to human rights violations during the dictatorship were addressed as contradictory matters putting stress on political transition.

Below is a summary of the different **truth and clarification** initiatives on human rights violations that affected victims, including commissions and institutions established to support and follow up on such initiatives.

National Commission on Truth and Reconciliation (1990-1991)

President Patricio Aylwin established the National Commission on Truth and Reconciliation (Supreme Decree 355 on April 25, 1990). Commonly known as the Rettig Commission after its chairman and lawyer Raúl Rettig, the report released in 1991 identified the victims of enforced disappearances, extrajudicial killings, and political violence. Such document accounted for 3,550 reports received, and registration of 2,130 victims of enforced disappearances and extrajudicial killings, and 168 victims of political violence⁴. Some unregistered cases were handed over to the National Corporation for Reparation and Reconciliation founded in 1992 by Law 19 123.

The report's recommendations included reparation policies for families of the victims and suggestions to implement ways for symbolic reparation of society (National Commission on Truth and Reconciliation, 1991). President Aylwin announced such Commission report to all Chileans in the first days of March 1991, stating that the recognition of the truth was a way of repairing the dignity of the victims. He apologized to the families of the victims. In his speech, he declared, "Many fellow citizens believe it is time to close this chapter, but for the sake of Chile, we should look into a future that will bring us together rather than to a past that will set us apart."⁵

The Armed Forces and the Supreme Court both rejected the report, arguing that it failed to consider the political and historical context and the circumstances of the facts. The Army said that they condemned "the campaign to announce the report alluding to punishment or inhuman coercion for innocent people" (Law Enforcement and Armed Forces, 1991: 471).

The statement by the Armed Forces justified the repressive measures and pointed out the inconvenience of holding celebrations and acts to teach future generations since they "could contradict the concepts of reconciliation, forgiveness, and oblivion that should prevail in this stage of the historical process in Chile" (Law Enforcement and Armed Forces, 1991: 484). The Armed Forces insisted on the value of the Amnesty Executive Decree as a reconciliation instrument to "give form to the first stage of peacemaking in the country" (Law Enforcement and Armed Forces, 1991: 488). The Air Force and Chilean *Carabineros* [police force and gendarmerie] rejected the report and emphasized that they had to leave the past behind to achieve reconciliation in the country (Law Enforcement and Armed Forces, 1991: 489-504).

The Supreme Court strongly denied that the Judiciary was responsible for the lack of protection of the victims (Supreme Court, 1991: 237-250). Given this context of reactions, President Aylwin sent an official

3 Constitutional charges against the ministers of President José Manuel Balmaceda accounted for the first *truth commission* in the Nineteenth Century established to examine political actions leading to the civil war and repressive measures by the Government of Balmaceda, who lost the war.

4 The Commission cost nearly one million dollars payable to the National Treasury.

5 <http://www.derechoschile.com/espanol/rettig.htm> (accessed on 07/27/2011).

letter to the Supreme Court requesting such authority to investigate the facts “that led to the death and disappearance of people without the 1978 Amnesty Executive Decree being an obstacle for such purposes” (APSI, 1991: 6). Notwithstanding the political rejection of the report by the Law Enforcement and Armed Forces and the Supreme Court, human rights violations against individual victims could not be denied.

Commission on Human Rights, Nationality and Citizenship of the Senate: The Search for the Detained and Disappeared (1998-2000)

The Commission on Human Rights, Nationality and Citizenship of the Senate received a claim sustained by the Association of Families of the Detained and Disappeared about the fate and whereabouts of their relatives, initially filed to the Executive Branch and to Congress. The Commission informed that “for a simpler acceptance of records (...) with regard to the detained and disappeared because they unanimously believed that this situation was probably one of the most serious issues in the case of suspected or actual human rights violations that were confirmed in the country” (Senate, January 19, 1999). The Commission worked between 1998 and 2000, receiving representatives of the Association of Families of the Detained and Disappeared and of the Communist Party of Chile, and former president of the Corporation for Reparation and Reconciliation. In addition, it held private meetings with the Commander-in-chief of the Armed Forces, Minister of National Defense Edmundo Pérez Yoma, and President of the Senate Andrés Zaldívar. The Commission held meetings with auditors from different ranks of the Law Enforcement and Armed Forces, candidates for President of the Republic Ricardo Lagos and Joaquín Lavín, and President of the Episcopal Conference Monsignor Francisco Javier Errázuriz.

The Association of Families of the Detained and Disappeared released classified information on 985 cases, including 132 detained and disappeared minors; 31 initially disappeared minors whose bodies were found; 9 cases of pregnant women at the time of their detention and later disappearance, ignoring if their children were born; a list of public and secret detention centers, identifying people in charge. They reminded that these cases were not included in the Amnesty Executive Decree, for cases outside the scope of this law (Art. 3) included the crime of child abduction and infanticide. With regard to the 39 cases involving minors, they were not granted amnesty either because they were child abduction cases. Consequently, they allowed for both investigation and punishment to perpetrators.

The Commission summarized actions taken and submitted a report on the *Collection of Records for the Detained and Disappeared* (Senate, July 11, 2000) to the Senate. As to this final report, President of the Commission on Human Rights, Nationality and Citizenship, senator José Antonio Viera Gallo, pointed out that such report would have mentioned that the number of the detained and disappeared amounted to 952 people, including those identified by the Rettig Commission, of which 39 were minors, and nine were pregnant women: eight from Chile and one from Argentina. He concluded that they spared no efforts to collect information on the fate of the detained and disappeared and believed that “this work contributed to promoting an atmosphere of understanding (...) that subsequently paved the way for the Round Table” (Senate, July 11, 2000). The Commission completed their work with this report accounting for actions taken and recommending actions to Congress and the Executive Branch with respect to some matters related to the main issue, including:

1. -Characterization of the crime of enforced disappearance.
2. -Creation of a DNA bank: the Forensic Autopsy Agency started the creation of such bank in August 1998, forming a special commission for such purpose.
3. -Identification of human bodies of the detained and disappeared in *Patio 29*, General Cemetery, in Peldehue and San Francisco de Mostazal.
4. -Establishment of rules to regulate certain civil situations derived from disappearances.

The completion of the work by the Commission coincided with the end of the Roundtable Discussion on Human Rights. The creation of the latter seemed to have influenced the work of the former by exposing the seriousness of the situation of the detained and disappeared and the need to face political and ethical problems involving their persistence in families and society.

Roundtable Discussion on Human Rights

Various initiatives for the search, identification, and recognition of the victims failed to gather more information on the fate and whereabouts of the detained and disappeared, becoming a pending issue for the Chilean society. Some decades later, authorities of the military dictatorship and the Armed Forces assumed responsibility for their involvement in the disappearance of the detained. Such identification took nearly 25 years to complete, following the arrest of Augusto Pinochet in London, as a result of the agreements by the Roundtable Discussion on Human Rights (1999-2000).⁶

In August 1999, during the Government of President Eduardo Frei Ruiz Tagle and at the initiative of the Minister of Defense Edmundo Pérez Yoma, the Roundtable Discussion on Human Rights was established with the participation of representatives of the civil society, human rights lawyers, and representatives of Commanders-in-chief of the Armed Forces.⁷ The discussion started as Augusto Pinochet was arrested in London. The main topic was the situation of the Detained and Disappeared. A final agreement was reached with the Law Enforcement and Armed Forces on June 13, 2000. They committed themselves to collecting information in their institutions about the detained and disappeared because they reported lacking such information (Roundtable Discussion, 2000).

Pamela Pereira, human rights lawyer, daughter of a detained and disappeared victim, and member of the Roundtable, stated –a few days after the end of the Roundtable– that:

Building institutional commitment of the Armed Forces to the country and the President of the Republic to deliver information was the heartfelt aspiration of the families throughout these years. But for many cases, families spared no efforts in searching yet afraid of what they may encounter because life is destabilized again. We have to express our deepest sympathy to the family: we are living in a true reality where this information will be available, forcing us to go back to a tragedy that torn our lives apart (Pamela Pereira and Raquel Correa 2000: 491).

In addition, in an interview to *El Mercurio*, General Juan Carlos Salgado stated:

(...) because of a commonly held opinion that could not be supported any longer... I am not saying hiding *ex profeso* [looking for the right expression]... but revealing the truth. That was part of the catharsis we needed. Everyone knowing what happened is not the same as we confirming that it happened. That was the brilliant part of the statement. Although some people may not like how it was said, it confirmed tragic situations that must not be repeated (Juan Carlos Salgado and Mauricio Carvallo, 2000: 502).

He added that the best support given to Commander-in-chief Pinochet

was to express our willingness to move past issues of the situation and the past. And although hierarchical institutions –like our institution– are not supposed to evaluate the Superior, the gesture of the Commander-in-

6 The detention of Augusto Pinochet in London on October 16, 1998, occurred due to an injunction of Judge Baltazar Garzón by virtue of a genocide trial that started in 1996 in Valencia. See the details of the proceeding in Spain at: <http://www.ua.es/up/pinochet/noticias/mundo/19N0084.html>

7 Roundtable participants included delegates of the Commander-in-chief from each rank and of the General Director of the *Carabineros*. Representatives of the civil society included Catholic bishop Sergio Valech, former Vicar of Solidarity Neftalí Aravena, Methodist Church bishop León Cohen, representative of the Jewish community Jorge Carvajal, Great Master of the Masonic Order, three members of the former Rettig Commission –one of them a former minister of the military Government, three human rights lawyers who worked for the Vicariate of Solidarity, and other academic members invited by the Government. Other participants included deputy secretaries of the Ministry of Defense, the minister, and two coordinators. The author of this chapter participated as a scholar.

chief to sign the document is the best support ever given to Commander-in-chief Pinochet because the Army is dealing today with a situation from the past (Salgado and Carvallo, 2000: 503).

Finally, he insisted that although he did not condone human rights violations, they were somewhat understandable in terms of the context in which they occurred: “(...) our staff was dragged to these behaviors. We dare not judge perpetrators of acts considered human rights violations today. On the contrary, the Army is somehow assuming such responsibility” (Salgado and Carvallo, 2000: 504).

The Association of Families of the Detained and Disappeared refused invitation of the Government to participate in the Roundtable Discussion. Similarly, it opposed to such Discussion.

The Roundtable Discussion on Human Rights ended after the return of Augusto Pinochet to Chile, agreed between the authorities of England and Chile on the grounds of humanitarian reasons for his mental deterioration. His arrest influenced many aspects, but above all questioned how Chilean courts responded to crimes against humanity during the military dictatorship.

In January 2001, President Ricardo Lagos received the report on the detained and disappeared subject to agreement by the Roundtable Discussion. He handed the report over to the President of the Supreme Court and asked him to appoint on-site ministers for the specific task of finding the whereabouts of the detained and disappeared. Such report contained information about 180 individual victims and 20 anonymous victims, indicating that most bodies or remains of the detained and disappeared were thrown out to the sea. The official report of the Government in late 2001 put on record that such report admitted that “(...) the detained, disappeared, and executed for political reasons –Chilean men and women– were thrown out to the sea or illegally buried in different places.” “The inalienable right of the families of the victims to find the whereabouts and the circumstances of the disappearances of their loved ones” and the duty of the State were both recognized, forcing the Government to “reinforce legal and institutional bodies to find out the truth about what happened (...) and continue searching for the 1,180 Chileans whose bodies have not been found.” The Judiciary appointed special judges to investigate reported cases with the help of the Human Rights Program of the Ministry of the Interior, the Armed Forces, and other public entities⁸. Searching for the detained and disappeared and imposing court sanctions to those responsible for such disappearances continued for the following decade, with varying levels of support from armed institutions, in connection with court proceedings initiated by the victims or their families.

Historical Truth and New Deal Commission

The policy of the Government of Chile for the *Mapuche* people and, in general, for indigenous peoples has a long history of conflicts denied for centuries and pending issues in different areas. In the case of the *Mapuche* people, claiming ancestral lands has been one of the major and most controversial issues since the Nineteenth Century. The conflict became more and more tense in the ensuing years because of the lack of clarity on legitimacy and legality of land transfer, sale, or appropriation. Added to this was the impact of projects developed in the Twentieth Century, especially hydroelectric and forestry projects in some of these lands, and the resistance to such investments and development projects, regardless of the communities living in such lands.

In response to the claim by the *Mapuche* people, whose organizations and leaders insisted for the last years on the need to have a deeper discussion on issues underlying the relationship among indigenous peoples, the State, and the Chilean society, the Government of President Ricardo Lagos decided to establish on January 18, 2001 by Executive Decree 19, the Historical Truth and New Deal Commission with Indigenous

8 “Government Accountability 2001: Human Rights Policy” (Taken from the website of the Government of the day, summarized and cited by Lira and Loveman (2005).

Peoples (CVHNTPI). This Commission was composed of indigenous and non-indigenous representatives and chaired by former President Patricio Aylwin.

The Commission was established to give the Government advice on developing a new policy for the Government of Chile, addressing key problems of indigenous peoples. Such Commission was organized in task forces: historical review, legislation and institutional system, social and economic development, and land use planning. These task forces produced background reports for the final report submitted by the Commission.

The final Report by the Commission was submitted to President Ricardo Lagos on October 28, 2003. Such report made reference to indigenous peoples and their relationship with the Government and the Chilean society. It offered a series of recommendations to develop a new policy allowing for new treatment by Chilean society and a new encounter with indigenous peoples.

The Commission reconstructed the historical background of the conflict with the *Mapuche* people. It put on record that most of the press in the Nineteenth Century reproduced and reinforced the political views in favor of “peacemaking,” stressing the enormous economic benefits of occupying these lands. Journal references of the day were misleading and biased against the *Mapuche*, justifying the reduction and dispossession policy developed by the Government of Chile during the “peacemaking” (CVHNTPI, 2008). Indigenous lands were considered “colonized lands.” The province of Arauco was established in the land of the *Mapuche* people. The Government developed a “reduction” policy; that is, it defined a reduced land area for the *Mapuche* settlement (CVHNTPI, 2008: 44). The Indigenous Settlement Commission was founded in 1883 to define their land area, posing a threat to their survival.

In the words of the Commission:

The Government of Chile was responsible for creating a conflict with immediate effects on the area and a strong impact on the *Mapuche* people. In addition, the Government promoted a conflict with the indigenous peoples –prevailing to date– not only for misappropriating lands but also for entrapping numerous *Mapuche* communities into serious and long legal disputes with third parties through the process of land settlement and distribution in the Araucanía Region –a situation clearly reflected today (CVHNTPI, 2008: 46).

The Commission admitted that the Government owed a ‘historical debt’ to indigenous peoples, either for a failure to recognize their rights or for non-recognition in political terms of a multicultural reality in the past and in the present (CVHNTPI, 2008).

This Commission based their assessment on historical investigation rather than on victim statements. It was the only commission appointed to acknowledge violations of economic, social and cultural rights of hundreds of thousands of people for being indigenous, adopting a process initiated in the Nineteenth Century and permeated with violence and death from the beginning, with the history of such conflict not included in the national history, affected individuals not considered rights holders, or their rights not recognized because they were indigenous peoples.

Nevertheless, recommendations by the Commission were not considered, and legal, political, and economic reforms –suggesting recognition of collective rights and repair of damage caused by the Government– were not implemented. Michelle Bachelet, president of the Republic, published the report of the Commission in 2008 –pending since 2004. She admitted that such initiative was unprecedented. Never before had the Government addressed the relationship with indigenous peoples, reviewed what happened to these peoples –even those extinct– and considered the possibility of developing proposals for a new State policy.

Nevertheless, in terms of reclamation of ancestral lands by some *Mapuche* groups, the conflict escalated to higher levels in the ensuing years. Governments applied the Anti-terrorism Law to the groups claiming these lands through violence. The conflict with these groups pushed into the background other aspects of the historical conflict, which was not only about them claiming lands but also about their recognition as indigenous peoples (CVHNTPI, 2008: 5).

National Commission on Political Imprisonment and Torture

In 2003 and even some years before, several organizations of former political prisoners advocated to the Government for the need to tell the truth about what happened to them. They demanded reparation policies for the large number of people who suffered imprisonment and torture, and required a special commission to carry on this task, given that such cases were left off the Commission on Truth and Reconciliation in 1991, focusing on the executed and disappeared victims. Ricardo Lagos, President of the Republic, replied with a general proposal on human rights: “No tomorrow without yesterday,” addressing various issues pending and emphasizing follow-up on measures. Lagos advanced on the creation of the National Commission on Political Imprisonment and Torture (also known as the Valech Commission), stating that this initiative was:

A further step in this long process by which the Government of Chile somehow answers to the pain of those who were victims of serious human rights violations in the recent past (...) Many have thought that “moving on” or repressing memories was enough to heal past traumas (...) A social, political and moral fracture as serious as we Chileans went through is not going to be repaired in a specific time or situation. It is impossible to heal the pain embedded in the memory through a series of measures, regardless of how many, how well intended and how bold they are. We need to move faster in the healing of our wounds, walk through the roads we have taken wisely and tenaciously: the road to the Courts of Justice and the rule of law, with no exceptions (Ricardo Lagos Administration, 2003).

These assertions left no room to “close” the chapter on human rights violations and their consequences, reaffirming that the final judgment issued by the Courts of Justice would close each of the cases. The political construction of the consequences of human rights violations required both victim identification and sentences for perpetrators. Such plan emphasized the need to face the truth about what happened as the basis for national unity, openly expressing a view opposite to the tradition of impunity of the political reconciliation in the history of Chile.

The Commission on Political Imprisonment and Torture was established on November 11, 2003 by Executive Decree 1040 of the Ministry of the Interior, to “determine (...) who were the victims of imprisonment and torture for political reasons or acts by agents or servants of the State from September 11, 1973 to March 10, 1990.” In addition, the Commission was supposed to “propose reparation measures to the President of the Republic for victims to be identified and to produce a work report.”⁹

The Commission received statements of 35,868 people. Information collected was subject to strict review process to determine the truth and relevance to the situations defined in the mandate. Most deponents provided documents supporting their testimonies. The Commission, in turn, collected information from several sources to subsequently determine the nature of the crime and of the applicable punishment. Databases were built using information from international organizations (IACHR, ILO, among others), the press of the day, remedies for the protection of constitutional rights, and lawsuits for torture. Additionally, the Army provided a list on political prisoners in the country in November 1973, including nearly 15,000 names and identifying the reason for and the place of detention. Each case was reviewed and assessed against available records. Commissioners formed their belief in view of the facts reported, especially of imprisonment for political reasons by the agents of the State.

⁹ For six months, the Commission received statements through personal interviews across Chile and in more than forty other countries, where people submitted their statements in writing.

The Commission submitted their report to the President of the Republic on November 10, 2004. A total of 28,459 people were identified as victims of political imprisonment and torture, including other 1204 people during the review process extended to May 31, 2005. Such examination revealed that 1,244 were under eighteen and 176 under thirteen years of age. Women amounted to 3,621, that is, 12.72%. 94% declared to be a victim of torture (National Commission on Political Imprisonment and Torture, 2005).

The report stated that the most common acts of torture included beating, public display of nudity and denigration, humiliation associated with physical traits, death threats (by firing squad or suffocation), electric shocks to sensitive body parts, rape of men and women and other forms of sexual abuse, interrupted sleep, exposure to hunger and cold temperature, manipulation of feelings and emotions, and forced witnessing of torture and violation of others, including relatives. The report indicated that thousands of tortured people exhibited physical and emotional effects, some of these effects intact when making statements.

Said document addressed violence and sexual abuse against women and some men who reported abuse. Most of the 3,399 women declared that they were victims of sexual abuse and molestation; 316 said that they were raped. 229 pregnant women were detained and tortured, and twenty suffered miscarriage due to torture. Eleven women gave birth in prison. The Commission determined that unborn babies upon detention were affected by torture inflicted on their mothers, given the biological bond between pregnant women and their fetuses, regarded as victims. Thirteen women reported to be pregnant by their abductors. Only six of these pregnancies were carried to full term.

1,132 imprisonment sites were identified, and torture was established as a systematic practice during the military dictatorship. These and other findings no longer justified torture as a result of individual excess demands. The Commission put on record the lack of legal protection and defense for the victims, resulting from actions of the Judiciary by resigning their powers in terms of supervision of military courts and, especially, in terms of sentences. The victims –prosecuted and sentenced in councils of war– lacked in most of the cases minimum conditions of due process. For the Commission, political imprisonment and torture were part of a State policy installed by military dictatorship authorities, using resources, personnel and equipment from public institutions since day one all over the country.

In compliance with their mandate, the Commission offered reparation recommendations considering petitions by organizations and people appearing to make their statements. Proposed reparation measures were targeted at the victims in the first place, designed to repair any damage caused.

President Ricardo Lagos announced the report to the country on November 28, 2004. In his speech, he said that the work of the Commission and the report both represented “an act of dignity for the victims and an effort to heal the wounds of our national soul.” He pointed out that the report would reaffirm that “political imprisonment and torture were an absolutely unacceptable institutional practice of the State, completely unrelated to the historical tradition of Chile” (Lagos, 2005: 310).

The Armed Forces, the *Carabineros*, Investigations, and the Supreme Court ended up with some responsibility for the acts described in the report. Institutions admitted their responsibility for the first time not only for the past but also for the future. Days before the report was submitted, Juan Emilio Cheyre, Commander-in-chief of the Army, described the position of said institution:

(...) the Chilean Army has been making, for several years now, decisions designed to retreat from a Cold War-centered concept. (...) A view leading to an understanding of politics from a perspective considering enemies those who were only adversaries and reducing the respect for people, their dignity, and rights (...) As a result of the abovementioned situation, the Chilean Army could not escape the final whirl of this view (...) becoming one of leading figures in our country. It firmly believed –in that context– that their actions were well intentioned and stood up for the general common good and most of its citizens (Cheyre, 2005: 505-506).

Some days before the report was announced, the Chief of the Investigation Police, Arturo Herrera, made a public statement, pointing out that the truth about human rights violations that had been disclosed accounted for “institutional practices and behavior of Police officers that resulted in serious crimes against basic rights derived from human dignity.” In his capacity of Chief of Police, he appealed to “all fellow citizens for forgiveness” (Arturo Herrera, 2005: 509-510).

The Commander-in-chief of the Navy, Admiral Miguel Ángel Vergara, made a statement on behalf of his institution on November 30, indicating that the Navy “generously and humbly received the report of the National Commission on Political Imprisonment and Torture... We accept every statement as true (...) the reading is shocking and moving, and no one can ignore that human rights and dignity of many innocent victims were seriously violated in Chile.” In this respect, such institution asserted, “We have never approved or even hinted at the application of torture. Human Rights violation has never been an Institutional policy,” but they could not ignore “that some people in the chain of command running interrogation processes made, authorized or just allowed such deplorable acts at their detention sites.” His statement made clear that using training ship *Esmeralda*, “a true symbol for all Chileans,” as a detention center and “establishing a special unit on board to interrogate the detained civilians under duress” had both been unfortunate. “In this regard, we are willing to do everything in our power as a gesture of reparation and reconciliation.” He pointed out that you had to understand what happened in the context of “polarization and hatred” before 1973 and concluded asserting, “This context is luminously explained in the Report prepared by the Commission on Truth and Reconciliation (Rettig Report), Chapter I: Political Framework, pages 33 to 53” (Vergara, 2005: 511-512). More than a decade has passed since this report was rejected at an institutional level in 1991. A somewhat different view of the facts seemed to partially change judgments made at another time. Yet, attempts were made to “explain”, once again, that human rights violations were somehow justified, given the environment of “polarization and hatred” generated by the era of the Government of the Popular Unity (1970-1973).

The Air Force said that they appreciated the work of the Valech Commission as a contribution to the national reconciliation. They said that “the content of the report of the Commission compromised the Air Force,” and that “the High Command of the Air Force faces such painful truth and reaffirmed their commitment so that these acts will never happen again” (Chilean Air Force, 2005: 514-516).

Chilean *Carabineros* admired the work of the Commission, adding that this institution “takes care of their history and believes that acts of political repression, imprisonment and torture described in the Report should have never happened since they were against the essence and mission of said institution” (Chilean *Carabineros*, 2005: 513).

On the other hand, the Supreme Court stated that “it was impossible to escape the seriousness of these acts and their painful effects” and was “in great dismay” for the situations described in the report, acting differently from the judges during the military dictatorship but complained about “general reproaches against the Judiciary released in said report (...) even though during such period the institutionalism in the country, the judges and High Courts could not fully perform their duties effectively.” They further stated that in light of reports of illegal detention and disappearance of people, the courts lacked an effective support from the relevant authorities “and in most cases, information or accurate records were withheld (...) becoming evident (...) with the establishment of the ‘Roundtable Discussion,’ which accounted for what have really happened to numerous victims whose bodies were thrown out to the sea” (Supreme Court, 2005: 527-529).

The report of the Valech Commission allowed for the broadcasting of victim testimonies in the media and for public statements of numerous institutions, condemning the torture perpetrated by the State agents and admitting that it was about institutional practices rather than “individual excesses,” as stated on numerous

occasions until then. Further human rights violations will not be justified by “any war,” as it happened with these institutions reacting to the report of the Rettig Commission when the Commission was criticized for overlooking contextual conditions under which the reported acts happened.

In 2004, the Commander-in-chief of the Army, Juan Emilio Cheyre, said that explaining what happened –in reference to the context of the conflict –was not a sufficient argument. Conflicts are actually tests for the effectiveness of institutional principles and adherence to self-proclaimed morality centered on the dignity of the human being.

The truth about what happened to the victims and to society as a whole was investigated in depth in legal proceedings at national and international courts. Various trials were held in countries where crimes were committed, describing the organizational structure developed to perpetrate these crimes outside the country, e.g., the assassination of Carlos Prats and his wife Sofía Cuthbert in Buenos Aires in 1974; the assassination attempt on Bernardo Leighton and his wife Ana Fresno in Rome in 1975; and the assassination of Orlando Letelier and Ronnie Moffit in Washington in 1976. These cases were widely advertised outside the country and contributed over the years to telling the rest of the truth about the dictatorship in the country.

The search for truth is not over yet. Nevertheless, what has been commonly known as **the truth** is still dividing society. Generally, human rights violations have been condemned, but there is a sector of society insisting on excusing them as “some collective madness” that has been taking place in a “context of polarization and hatred” before 1973, as clearly expressed in the statement of the Navy in response to the Valech Report.

The truth known to date is mostly about admitting that these acts really happened and that State agents were actually involved in them, that is, in human rights violations. In addition, it has been determined that these acts had an impact on the victims, their families and their social and work environment. Following the statement of the Navy mentioned above, the truth must include the previous conflict and the actors responsible for the political crisis and the outcome, although the conflict continues to be approached from a subjective perspective (hatred) and an ideological perspective (polarization), detached from the social, economic, and political conditions of society at that time, and further away from reliance on the political and ideological framework of the Cold War, whose most critical expression was found in massive human rights violations against those regarded as enemies. The truth of the victims is not sufficient, especially when said truth, in practice, is limited and restricted. The **never again** as an ethical and political statement accounts for recognition and condemnation for what happened, yet requiring institutional and legal support to effectively and sustainably protect the rights of people. Although accounting for this context is outside the scope of this chapter, it is important to mention that amendments to the criminal proceedings as relevant institutional reforms have aimed at protecting the rights of the detained and defendants within the framework of due process, ending the inquisitorial criminal justice system.

Reparation Policies

Reparation policies were implemented in specific programs dealing with different human rights violations and designed to compensate for damages; rehabilitate and redress victims; and reinstate and restore their rights. Reparation measures were based on individual recognition and identification of those who were considered as victims in every situation through administrative programs established by law.

Each of the programs applied measures by law to different groups of people who suffered specific rights violations. In many cases, people suffered various cumulative situations. It was not uncommon for a person to be detained, tortured, dismissed from work, and exiled. In some cases, reparation measures contradicted each other, as in the case of the pension for those dismissed for political reasons and reparation pension

for former political prisoners, but there was no conflict with legal actions of any kind, including private prosecutions.

A certain number of private prosecutions were filed for the detained, disappeared, and executed for political reasons and tortured victims for amounts far exceeding the total amount of pensions granted. Requested compensations were rarely granted, given that the State Defense Council constantly argued that compensations for the detained and disappeared and executed for political reasons had been duly repaired through pensions as established by Law 19 123. In 2002, the Supreme Court ruled on three cases in which administrative reparations established by said law successfully compensated for damages caused (Lira and Loveman, 2005).

Once legal proceedings were exhausted in national courts, some cases were submitted to the Inter-American Commission on Human Rights, and some of them were referred to the Inter-American Court of Human Rights, claiming denial of justice. The cases of Carmelo Soria and Luis Alfredo Almonacid Arellano were examples of such interventions. Following case review, the Court set forth several measures. In the case of Almonacid, the Court admitted administrative reparations granted yet ordered –among other measures– to refer “the case file to provincial courts to identify and punish those responsible for the execution of Almonacid Arellano in criminal proceedings” (Inter-American Court of Human Rights, 2006: 59). The Court ordered to publish the judgment as part of the reparation. In the Carmelo Soria case, the Court ruled additional indemnity to administrative reparation pensions paid by the Government of Chile.

Agreements of the Inter-American Commission and judgments of the Inter-American Court have included options of individual reparations based on circumstances and suffering of the victims and their families. In every case, the Government claimed in their defense that the country had implemented administrative and symbolic reparation policies and that claimants successfully received such reparations. Nevertheless, behind the claims of the victims was generally a notion that what they suffered was beyond repair. Although the Court admitted and considered initiatives implemented by the Governments in addition to taking specific actions for each claimant family, it is clear that they will rarely be sufficient for the victims and their families in **subjective and moral terms**.

A brief and succinct description of each of the programs that contributed to implementing administrative reparation measures included specific actions and elaborated on the institutional system to implement said actions. Each program was established by law, defining their competence and power, except for the initial measures to identify farmers expelled from the land. Targeting people by the same situation encouraged these groups to organize locally and regionally into associations with representation in and pressure on the Governments to obtain recognition and reparation for themselves and their members.¹⁰

National Office of Return

In 1990, the Government submitted to Congress a bill to establish a program designed to support the return of the exiled. The bill was passed as Law 18 994, allowing for the establishment of the **National Office of Return**, subordinate to the Ministry of Justice.

Two laws were subsequently enacted, solving specific problems related to the reintegration of the exiled. Professional practice was granted to people who majored abroad by Law 19 074. Duty-free import to the country of household goods (up to US\$ 5000), work equipment (up to US\$ 10000), and a motor vehicle (up to US\$ 10000) –working until 1994, was granted by Law 19 128.

¹⁰ In addition to the Association of Families of the Detained and Disappeared and the Association of Relatives of Executed Political Prisoners, local and regional associations of former political prisoners, of those dismissed for political reasons, and of PRAIS (Integrated Healthcare and Reparation Program) beneficiaries were established, among others.

This Office offered employment grants in cooperation with the World University Service; developed a work support program in cooperation with the International Organization for Migration (IOM), made arrangements and signed agreements with universities for the enrollment of students with incomplete studies in their countries of exile and provided healthcare through different programs. The National Office of Return closed in September 1994, assisting 19,251 returnees. These returnees and their families amounted to approximately 52,577 people back to the country, that is, over 25% of the exiled returned to the country between 1982 and 1994, following that previous estimates showed that 200,000 Chileans were exiled for political reasons (Lira and Loveman, 2005).

Freedom for Political Prisoners

Upon taking office, President Patricio Aylwin committed himself to granting freedom to nearly 400 political prisoners who were prosecuted or serving a sentence. Some of them were sentenced for offences defined by the Anti-terrorism Law, preventing prison benefits and pardon. Release from prison as promised by Aylwin took place throughout his Administration.

On March 20, 1990, various bills were submitted and later known as “*Cumplido* Laws” (after the last name of the Minister of Justice who led this initiative). Their objective was to amend court proceedings by abolishing typical crimes during the military dictatorship, especially those related to lawful behaviors regarded as offences by said legislation. In 1991, Law 19 029 abolishing capital punishment for some offences; Law 19 027 amending Law 18 314 on Terrorist Behavior; Law 19 047 modifying Law 12 971 on Interior Security of the State; the Code of Military Justice; Law 17 798 on Arms Control; the Criminal Code, and the Code of Criminal Procedure were all passed. Such laws allowed the defendants to withdraw before provincial courts what they declared before the military court (given the risk of out-of-court confessions obtained during torture). Most of the cases were referred to provincial courts.

A constitutional amendment was subsequently implemented to regulate Law 18 050 and Article 9 of the Constitution, authorizing the President of the Republic to grant one-time pardons to political prisoners accused of terrorist acts. Such constitutional amendment was negotiated between the National Renovation Party and the opposition party and was used by 119 people (Loveman and Lira, 2002). With these measures, all prisoners were released although their court proceedings were not completed. The Government, through the Ministry of Justice, implemented different initiatives to support labor insertion for those set free (obtaining employment, supporting capital up to US\$ 1,500 for micro-entrepreneurship initiatives funded by international cooperation agencies).

The last prisoners to be released were those accused of the assassination attempt on Augusto Pinochet in September 1986. They left the country, as they commuted imprisonment for estrangement at the end of the Patricio Aylwin Administration in March 1994.

National Corporation for Reparation and Reconciliation

In April 1991, processing the General Law of Reparation was initiated in Congress to follow some recommendations by the Rettig Commission. On March 26, 1991, the President sent a message to Congress to initiate the processing of the law (National Corporation for Reparation and Reconciliation, 1996). The Association of Families of the Detained and Disappeared and the Association of Relatives of Executed Political Prisoners were both consulted. Enacted on February 8, 1992 as Law 19 123, this law created the **National Corporation for Reparation and Reconciliation** (CNRR) as a decentralized public service supervised by the President of the Republic through the Ministry of the Interior¹¹.

11 The text of the law is available at http://www.ddhh.gov.cl/ddhh_ley19123.html (accessed on 06/26/2011).

The first objective of the Corporation was to implement the recommendations made by the National Commission on Truth and Reconciliation (CNVR) and the reparation of moral damage caused to the victims, providing the social and legal assistance required by families to access reparations established by law. As mandated by the law, the second objective was to determine the whereabouts and circumstances of the disappearance or death of the detained and disappeared and of those whose bodies could not be traced despite legal recognition of their death. In addition, this Corporation had to analyze those cases in which the National Commission on Truth and Reconciliation was not convinced about the condition of the victim.

Finally, they were advised to file records collected by the National Commission on Truth and Reconciliation and those collected during their term. The law established that the term of the Corporation was for two years, but it was annually extended in Congress (Laws 19 274 in 1994; 19 358 in 1995, and 19 441 in 1996), expiring on December 31, 1996 (CNRR, 1996).

The work of the Corporation was organized along six lines of action, each running as a specific program:

a) The *Assessment Program* collected records to analyze 634 pending cases from the CNVR and to examine reports received on the dates specified and announced for this purpose. 2,188 cases were examined, and 899 were assessed (644 victims of human rights violations, and 255 victims of political violence). Due to the lack of records or cases inconsistent with the mandate of the Corporation, 1,289 cases were not assessed. The assessment process was developed between August 5, 1992 and February 28, 1994. Finally, 3,197 people were recognized as victims under the characterization mandate of the Rettig Commission and the Corporation: 2,095 cases were confirmed deaths, and 1,102 victims who disappeared after their detention. This number was corrected in 2009 by subtracting six disqualified cases. 3,189 qualified cases were then recognized by these authorities (CNRR, 1996: 18-46).

b) *Investigation Program about the Final Destination* of the victims was intended for the most part to determine the whereabouts of the detained and disappeared and of those whose bodies had not been found despite legal confirmation of death. The law granted the Corporation specific powers to collect information, ask for assistance from State organizations, and conduct investigations to determine the circumstances of detention followed by disappearance. 1,251 cases were investigated, and bodies of 144 people were found: 54 detained and disappeared victims and 90 deaths (CNRR, 1996).

The investigations conducted by this program led to finding bodies of 117 people: 79 detained and disappeared and 38 dead, and location and exhumation of remains in *Patio 29*, General Cemetery, following the proceedings before the 22nd Criminal Court in Santiago. In regards to exhumed bodies, although allegedly and properly identified and returned to their families, 10 years later it was revealed that at least 48 bodies were misidentified¹².

c) *Social and Legal Assistance Program*. The team of this program consisted of professionals involved with the victims, their families and their associations, who developed procedures for families to make use of reparations by law because said reparations were granted or managed by different services of the State Government.

12 On October 17, 2006, the Chamber of Deputies released the Report of the Commission on Human Rights, Nationality and Citizenship investigating misidentification of the bodies found in *Patio 29* of the General Cemetery in Santiago. The report summarized the actions of the Forensic Autopsy Agency and the Judiciary in this case, indicating that in July 2003, judicial investigation of *Patio 29* was assigned to the then Minister of the Court of Appeals, Sergio Muñoz, who arranged exhumation of most of the previously identified bodies and ordered to conduct mitochondrial DNA tests on the 96 skeletons identified and sent from *Patio 29* for suspicions and contradictions raised from these cases. On April 19, 2006, Minister Carlos Gajardo, replacing Minister Muñoz, revealed to the board of the families associations the findings of the expert report, account for 48 misidentified cases. <http://ciperchile.cl/wp-content/uploads/Informe-C%3%A1mara-Diputados-Patio-29.pdf> (accessed on 09/03/2011)

d) *Education and Cultural Promotion Program* aimed at introducing a program on human rights formal education from kindergarten to college in order to consolidate a human rights culture in the country (CNRR, 1996: 58-74). Upon expiration of the Corporation, the team of the program joined the Ministry of Education.

e) *Program on Legal Investigation and Studies* developed studies on military justice, criminal proceedings, and criminal justice (CNRR, 1996).

f) *Program “Archive and Documentation Center of the Corporation”* aimed at laying the foundations for a historical, documentary and bibliographical background of public information collected, analyzed and processed by the Corporation (CNRR, 1996).

In June 1996, the Corporation Board submitted a plan to the Minister of the Interior to establish nationwide a constitutional institution for the promotion and protection of human rights with functional, financial and administrative independence to the maximum extent possible, intended to consolidate a culture of respect for human rights. This plan was turned down (CNRR, 1996).

The Corporation was legally terminated in December 1996. Some of their responsibilities were allocated to the Follow-up Program under Law 19 123 by virtue of decree 1005 of the Ministry of the Interior. As to reparation measures, Law 19 123 set forth life pensions for immediate family members (wives and mothers; children below 24 years, except for handicapped children, who were given life pension)¹³. Children of the detained, disappeared, and executed for political reasons were entitled to a full scholarship from school through college to vocational training, including tuition and monthly fees until they turned 35. In addition, they were exempted from mandatory military service and provided with professional healthcare by the Program of Reparations and Comprehensive Healthcare (PRAIS).

In 2004, Law 19 980 was enacted, amending Reparation Law in 1992, Law 19 123, increasing or offering other benefits. Article 2 changed life pension for wives or mothers from \$104,000 pesos (US\$ 175) to \$ 156,000 pesos (US\$ 260), that is, an increase of 50%. Pension amount for cohabitants was equivalent to a pension amount for wives and mothers.

Article 5 set forth a reparation bond for children of the detained, disappeared, and executed for political reasons –to be expressly requested by them– for \$10,000,000 (then equivalent to US\$ 16,600) as the total amount, subtracting amounts granted as pension until they turned 24. Most children were not granted reparation whatsoever because they were above 24 when Law 19 123 was enacted.

Article 6 authorized the President of the Republic to grant a maximum of 200 discretionary pensions, especially naming as beneficiaries economically dependent cohabitants with no children of the victim as well as economically dependent siblings or third-degree relatives of the victim. The amount for discretionary pensions was equivalent to 40% of the amount for reparation pensions, as set forth in Article 2 thereof, that is, \$ 156,000 pesos.

Program of Reparations and Comprehensive Healthcare for Victims of Human Rights Violations

The National Commission on Truth and Reconciliation recommended reparation measures and included specific considerations for health of victims. They referred to the consequences of human rights violations on the victims, stressing the need for professional healthcare services for victims and their families (CNVR,

13 Pensions were calculated on the amount of \$250,000 pesos, then equivalent to US\$ 500 (1992). Wives were granted 40% of said amount and each child 15% until 24 years of age. Cohabitants received a pension equivalent to 15%.

1991: 830-832). Furthermore, this Commission stated that health authorities were to be responsible for running a special care program with funds and the technical coordination of the Ministry of Health, and the technical cooperation of non-governmental health organizations, especially those that provided healthcare to this population.

At the beginning of 1991, the Ministry of Health established the Program of Reparations and Comprehensive Healthcare for victims of human rights violations (PRAIS) by ministerial decision, setting up seven teams between 1991 and 1992 in regional hospitals and in Santiago. Said decision set forth that the objective of this program was to provide free healthcare and mental health to all the victims of human rights violations and their families. In the first years (1992-1995) the program setup and implementation was funded by the United States Agency for International Development (USAID) for \$205,823,739 or equivalent to US\$ 600,000 (Lira and Loveman, 2005).

PRAIS teams consisted of physicians, psychiatrists, psychologists, social workers, and service assistants, usually from eight to ten people. Once the first stage was completed, this program was then part of the Ministry of Health, assigned to the Department of Mental Health and charged to sector funds. Procedures to regulate the incorporation of such population into public healthcare system were established by the **Standards for Qualifying as PRAIS Beneficiaries** (1993), defining criteria to grant PRAIS certificates and identify the benefit holder¹⁴. Former political prisoners, families of the detained, disappeared, and executed for political reasons, those dismissed for political reasons, people in exile who had returned to the country, tortured victims, and underserved groups were all qualified as beneficiaries under technical standards. The above situations included immediate family members such as parents, children, siblings, and grandchildren¹⁵. These standards provided that people qualified for the healthcare system on the grounds of the repressive situation they suffered rather than some previous medical diagnosis since the benefit stemmed from the recognition of the right to reparation for human rights violations. Once the status of beneficiary was demonstrated, people were entitled to free healthcare for life by the public healthcare system, regardless of any health condition over the course of their lives. The Government informed that 4,197 family groups –with members who were victims of torture– were assisted by PRAIS until 1995 (United Nations Covenant on Civil and Political Rights, Fourth Periodic Report of Chile, 1998).

The population registered in PRAIS until August 2003 included 110,453 beneficiaries across the country (Ricardo Lagos Administration, 2003). Law 19 980 of October 29, 2004 regulated PRAIS running as a health reparation program. Article 7 thereof established that planned assistance must be extended to grandchildren of those qualified as beneficiaries. This Law provided that every beneficiary was entitled to free access to any public health service, including healthcare and dental care, tests and consultations by specialists, hospitalization, diagnosis and therapeutic procedures, and urgent care. These rights are in force. The number of beneficiaries in 2007 was 189,831, but in April 2011, the number of PRAIS beneficiaries reached 600,030 users¹⁶.

The institutional and professional capacity of the health system has managed to meet healthcare needs of most PRAIS beneficiaries, despite limitations of the public healthcare system assisting 80% of Chileans with variable waiting times to access services (mostly medical specialties) –same waiting times for any other patient in the public health system: from 15 days to some months. PRAIS programs have tripled their coverage for the last three years, reaching the entire country. Yet, PRAIS teams themselves did not guarantee

14 The technical standard was developed in 2000. Years later, exemption resolution 437 of June 30, 2006 passed a new general technical standard. See juridico1.minsal.cl/RESOLUCION_437_06.doc (accessed on 08/24/2011).

15 Internal exile was about forcing people to live in some location, being subject to regular monitoring by police authorities rather than imprisonment.

16 <http://consejonacionalusuariosprais.blogspot.com/2011/06/consejo-nacional-de-usuarios-prais-y.htm> (accessed on 08/23/2011).

compliance with their reparation objectives. A local and national assessment of the level of compliance with political and technical objectives was required, assessing especially how healthcare needs of patients varied and identifying the epidemiological profile of such population¹⁷.

A key aspect was the relationship between the demand for mental healthcare –service specifically provided by PRAIS teams– and the demand for general health. To date, epidemiological records and analyses by these teams are classified, and there is no data on health requirements for patients.

Recognition Program for Those Dismissed for Political Reasons

Those dismissed from their positions for political reasons during the military dictatorship asked for recognition in the **Recognition Program for Those Dismissed for Political Reasons**, subordinate to the Ministry of the Interior. This program was established upon publication of Law 19 234 of August 5, 1993. Said law provided for pension benefits by favor to people dismissed for political reasons and established credit for time of dismissal¹⁸. Opposition deputies and senators attempted to limit the recognition of pension benefits (time credits and non-contributory pensions) and even the very notion of “dismissed for political reasons.”¹⁹

In 1998, the Government of Eduardo Frei (1994-2000), second president elected by the Concert of Parties, enacted Law 19 582 to expand the categories of renown civilians dismissed for political reasons, including members of the Armed Forces. The Government of President Ricardo Lagos enacted Law 19 881 of June 27, 2003, granting a new term to submit applications for recognition as persons dismissed for political reasons.

The established benefits were based on pension savings of the beneficiary to determine time credits and make up for the years required to obtain a pension. In most cases, pension savings were insufficient. Therefore, the President of the Republic granted beneficiaries life discretionary pensions. In 2010, there were 157,624 beneficiaries with 12,000 files still pending. The Government of President Sebastián Piñera decided to supervise the recognition process for those dismissed for political reasons. This process was under way upon publication of this paper.²⁰

Reparation Program for Farmers Expelled from the Land

This program was established to meet the demands of organizations representing farmers and obtain reparation for those who were expelled from land reform settlements and expelled from land allocation by application of Executive Decree 208 of 1973, amending Land Reform.²¹ Said executive decree excluded farmers who lead and supported this process from land allocation. These organizations had requested as reparation the establishment of a Lands Fund for allocation to those excluded. Filed in 1982 and supported by the Catholic Church, said demand was eventually replaced by the allocation of discretionary pensions by the President of the Republic. An estimated number of 5,000 farmers were living in this situation.

17 See PRAIS teams in force until July 2010 at <http://www.ddhh.gov.cl/prais.html> (accessed on 08/25/2011).

18 *Leyes sobre beneficios para exonerados y exiliados políticos*. Santiago, Ediciones Publibey, Carlos González. Editora Jurídica Manuel Montt. Ed. 1998.

19 Discussion in *Diputados*, session 26, November 26, 1992, on the different political views in terms of reparations for this sector is particularly revealing.

20 Ninoska Leiva. “Gobierno denuncia mil 500 casos de exonerados políticos falsos e interpone querrela” in *Diario Electrónico. Radio Universidad de Chile*. August 13, 2010. <http://radio.uchile.cl/noticias/78493/> (accessed on 08/23/2011).

21 Executive Decree 208 (December 19, 1973) regarded as non-expropriable, for the purposes of land reform, properties equal or less than 40 hectares for basic irrigation –excluding some countrymen from allocation.

In his speech on the Farmer's Day in 1996, President Eduardo Frei reported on the reparation initiative for farmers excluded from the land reform, referred to as "reparation of injustice" to the world of farmers, "especially to leaders that, by virtue of Executive Decrees 208 and 1600, were denied access to the right to land." He asserted that said reparation was brought to the program by the first Government of the Concert of Parties for Democracy but was not implemented: "For approximately twenty years, hundreds of farm leaders and their families have failed to initiate a family development process based on the land where they had put their efforts and certainly their hopes into a future of greater welfare for them and for their children" (Frei, 1996). He finally stated that these measures contributed to "meeting the justice imperative of Chilean farmers. Once again, we support Government determination to make all efforts to consolidate the reunion process among Chileans in the country."

The program began in 1995, and pensions were initially granted in 1996. Those above 65 upon qualification were paid the highest pensions for a monthly amount equivalent to the minimum pension in the Chilean system. By 2000, 2,999 farmers had been admitted through the program in the Agricultural Development Institute (INDAP). By 2007, 3,574 farmers –and other 328 later that year– had been qualified, obtaining pensions equivalent to the monthly minimum wage.²²

In March 2009, 5,000 farmers were qualified as those dismissed for political reasons, ending the reparation process for farmers with 400 recognition certificates issued in Ñuble.²³

Restitution of Confiscated Property

The Government of Eduardo Frei passed a law to **restitute** (or otherwise compensate) lawful owners their property confiscated during the military dictatorship. Law 19 568 provided "the restitution or compensation for property confiscated and transferred to the State" by Executive Decrees 12, 77 and 133 in 1973, 1697 in 1977, and 2346 in 1978 (Loveman and Lira, 2001). Said law set forth processes and conditions for such restitution, considering confiscated property only (Sanhueza, Ana María, and Vanessa Bravo, 2002).

A cadastral survey on confiscated property by the Ministry of Public Property identified 258 properties (houses, apartments, buildings, and plots). Owners included political parties (114), individuals (62), legal entities (60), and trade and labor unions (22).²⁴ In addition, this ministry survey included personal property and broadcasting concessions. Each and every one was incorporated into the equity of the Department of the Treasury and allocated to public services, Armed Force units and non-profit organizations, especially those run by the wives of Commanders-in-chief. 119 properties were sold, and their owners had to be compensated for such loss. 224 restitution or compensation applications were submitted in connection with 114 properties, most of which were headquarters of political parties. Claims were filed by seven political community groups who declared themselves lawful heirs to those groups whose properties were confiscated from. Properties were returned to the Government and the opposition parties, labor and trade unions, and different people and families.

Passing this law took eight years. The opposition sustained due process of executive decrees for the Military Junta and therefore for confiscations. In spite of this, they brought into a political agreement and

22 "Discretionary pensions were granted to farmers in the province of Talca. Said measure helped a total of 80 farmers in the Maule Region, affected by Executive Decree 208 of 1973". August 6, 2007. See <http://www.elamaule.cl/admin/render/noticia/11450> (accessed on 08/07/2011).

23 "*Minagri* (Ministry of Agriculture) arranged historical reparation for farmers dismissed for political reasons by the Land Reform. Said measure was designed to certify nearly 5000 farmers as dismissed for political reasons so that they had access to benefits by the Social Security Administration Institute." 18/03/2009 Chilean Ministry of Agriculture. See http://www.infoagro.com/noticias/2009/3/5214_minagri_concreta_reparacion_historica_campesinos_e.asp (accessed on 08/12/2011).

24 Based on public information, the State completed the restitution or compensation process for more than 500 properties in 2002.

avoided formal questioning of due process. Yet, this law was enacted to retribute or compensate those affected by these measures under these executive decrees and those deemed to have “inherited” those rights. Such inheritance was a delicate matter in many cases, especially in connection with those political parties that had been dissolved and many labor and trade unions that had lost their legal status. In 2002, the process to claim 516 confiscated properties was completed, restituting or compensating their owners in order to repair any property damage caused by said confiscation as set forth by Law 19 568.

Continuation Program by Law 19 123: Searching for the Detained and Disappeared

Upon legal termination of the National Corporation for Reparation and Reconciliation in 1996, more than 1,000 people were regarded as disappeared. No more than 150 victims of those found in different places in the country had been identified. The Forensic Autopsy Agency maintained remains of nearly 100 unidentified bodies.²⁵

The Board of the Association of Families of the Detained and Disappeared (AFDD) met with authorities of the Ministry of the Interior and the Corporation before termination to insist that the Government continued to make efforts to find out the whereabouts of the detained and disappeared. The Government of Eduardo Frei believed matters pertaining to victims of human rights violations to be finalized by the previous administration. Nevertheless, former president of the Corporation for Reparation, some human rights attorneys, and families of victims let the Government know that Law 19 123 required the State to continue searching for the whereabouts and circumstances of the disappearance or death of the detained and disappeared.

Supreme Decree 1005 in 1997 provided that the Ministry of the Interior, under the authority of the Deputy Secretary of said Ministry, maintained this program for pending actions, as set forth in Law 19 123:

- a) Search for victims and determination of the circumstances of their disappearance and death.
- b) Symbolic and social integration initiatives on the basis of truth, justice, forgiveness, and reconciliation.
- c) Centralization and custody of information from the National Commission on Truth and Reconciliation and the National Corporation for Reparation and Reconciliation.

Emphasis was placed on out-of-court investigations to determine the circumstances for the disappearance of people and try to find their bodies. This work required reopening of court cases through the families. Attorneys acted in most cases as claimants, collecting data from the report by the National Commission on Truth and Reconciliation and records from out-of-court investigations. For illegal internment, the program sponsored the Association of Families of the Detained and Disappeared. For lawsuits, attorneys could take part in the proceedings on their own behalf rather than on behalf of the program, which could only work with legal status of the Ministry del Interior.²⁶

Most actions included determining the fate and whereabouts of the detained and disappeared, supporting families through different initiatives before courts of justice and developing initiatives for symbolic reparation and memory. This program ran through 2001. Their main results were related to opening court proceedings with program attorneys acting as claimants and supporting families whenever the bodies of the detained and disappeared were identified, financing burial expenses just as they did when the Corporation for Reparation and Reconciliation was in place.

25 Such delay was not successfully accounted for. There was also criticism for the lack of technical knowledge by the identification unit. This referred mainly to outdated professional procedures, resulting in misidentifications reported in 2002 and then in 2006.

26 The program did not favor civil actions against the State, and neither could program lawyers secretly favor said actions.

The Program did not publish work reports for that period. It could be said that this program continued with the tasks assigned by Law 19 123 in a limited fashion and lacked visibility.

Human Rights Program of the Ministry of the Interior

This program resulted from rearranging the previous program to meet the needs detected in the information provided by the Armed Forces by virtue of the agreement at the Roundtable Discussion on Human rights. The Government stipulated that the Human Rights Program should be incorporated into court proceedings and in-court and out-of-court investigations and followed up on lawsuits pertaining to the detained, disappeared and executed for political reasons between September 11, 1973 and March 11, 1990. The program provided logistics and documentary support to investigations conducted by special judges on regiments, underground cemeteries, and other places, as mentioned in the report by the Armed Forces. In addition, the Government stipulated that the program encouraged and disseminated cultural and symbolic actions to promote historical truth and human rights protection in society, and planned the establishment of memorial sites across the country. In 2011, the Human Rights Program was subordinate to the Ministry of the Interior and Public Security²⁷.

Enacted in December 2009, Law 20 405 created the Institute of Human Rights and authorized said program “to pursue legal actions deemed necessary for the performance of their duties, including pressing criminal charges for kidnapping or enforced disappearance and murder or summary execution. The legal role of the Human Rights Program is played along with the legal order to provide social assistance to the families of the victims and foster a culture of respect for human rights, promoting, spreading and supporting cultural and educational actions.” In other words, the main actions of the program were centered on court proceedings and symbolic and memory reparation measures.

Reparation for Victims of Political Imprisonment and Torture Recognized as Such in the Report of the Valech Commission²⁸

On December 24, 2004, Law 19 992 was published, establishing a reparation pension and granting benefits in favor of those qualified by the Commission as prisoners and victims of torture for political reasons. Victims recognized by this Commission receive an average annual pension –in Chilean pesos– of \$1,353,798 (under 70 years old), \$1,480,284 (70 to 75 years old), and \$1,549,422 (75 years old or above) (Lira, 2009).

The Pensions Law encountered pension conflict with those dismissed for political reasons, establishing an “optional bond” –a bond for three million pesos then equivalent to US \$5,000, granted one time only to victims directly affected by human rights violations who received pensions on the grounds of dismissal for political reasons under Laws 19 234, 19 582, and 19 881. Therefore, they were forced to choose one pension over the other. In addition, this law established a “bond for minors” for four million Chilean pesos equivalent to US \$6,600 for those who were born in prison or were detained with their parents and were included in the list of people recognized as torture victims by the report of the National Commission on Political Imprisonment and Torture. In 2009, Law 20 405 regarded those as direct victims and established the right to receive an annual reparation pension. Said law established a widowhood pension for the surviving spouse of the victim of torture or political imprisonment for 60% of the original pension. Victims of political imprisonment and torture could apply for housing benefits as set forth by the Ministry of Housing and Land Development.

27 For the Human Rights Program by the Ministry of the Interior and Public Security, see http://www.ddhh.gov.cl/quienes_somos.html (accessed on 08/22/2011).

28 The report of the National Commission on Political Imprisonment and Torture was known as the Valech Report after the name of its president, Sergio Valech (died in 2010).

It was expressly stated that sons, grandsons, brothers, and cousins (fourth-degree collateral relatives) of people recognized as victims be exempted from the Military Service. To implement this, they had to send a petition to the General Directorate for National Mobilization and enclose a birth certificate showing identity of their parents. Additionally, it was stipulated that criminal records be removed in case of sentences issued by military courts for offences established by certain laws.

Victim Identification: Human Rights Program by the Forensic Autopsy Agency

The forensic identification of the bodies of the detained and disappeared is the condition to satisfy the right of people to find and bury their missing relatives. Identifying the bodies of the detained and disappeared suffered many inconveniences, mostly due to the limitations of the Forensic Autopsy Agency in terms of scientific competence to perform these tasks.

The legal complaints for misidentification of 48 cases where the detained and disappeared returned to their families from 1990 onwards led to the foundation of the Forensic Autopsy Agency by the Human Rights Program in 2007. The objective was to bring to courts scientific evidence of crimes of torture, enforced disappearance, and execution for political reasons –all related to court proceedings in connection with human rights violations between 1973 and 1990.

To do this, the Blood Test Bank was established and on August 31, 2007, the Blood Test Center for Families of the Detained, Disappeared, and Executed for Political Reasons with Bodies Pending for Return was also established. The objective was to take and collect blood tests by choice, across Chile and abroad, from families of the victims to create a DNA test bank in order to identify the bodies that have not been identified yet. Based on information from the Forensic Autopsy Agency, 103 people have been identified. This number overrides previous figures, including misidentified cases.²⁹ Most bodies pending identification have been sent to different forensic laboratories at foreign universities since 2007. Thanks to their expertise, they were able to identify some of the detained and disappeared that were later returned to their families and buried as these families waited to do it for decades.³⁰

Institutions failed to attend body identification for years, ignoring that families were waiting to find and bury their relatives in order to go through a mourning process because this was not possible before confirming their death and burying their bodies. For this reason, the identification process should be considered a basic right of families, incorporated into the reparation measures to be pursued by the State in proper and efficient scientific and technological conditions.

Symbolic Reparation and Relief

That President Patricio Aylwin, upon announcing the report of the National Commission on Truth and Reconciliation in 1991, rejected human rights violations in the past and appealed to the victims for forgiveness on behalf of the Government of Chile is a symbolic act especially relevant to the country.

In addition, while implementing administrative reparations, some actions were initiated to vindicate the reputation of the victims and keep the memories of their lives and violation of their rights in symbolic events to remind society of what happened. A case in point, the Memorial Foundation of the Detained, Disappeared, and Executed for Political Reasons was created upon the request of the Association of Families of the

29 See the Forensic Identification Special Unit at: http://www.sml.cl/portal/index.php?option=com_content&task=view&id=245&Itemid=78 (accessed on 08/19/2011).

30 During the identity correction process at the beginning of August 2011, Minister Alejandro Solís identified new victims buried in *Patio 29*, General Cemetery, amounting to sixteen families who are once again uncertain about the whereabouts of their relatives. See <http://ciperchile.cl/2011/08/03/patio-29-la-doble-tragedia-de-las-familias-obligadas-a-devolver-sus-muertos/>.

Detained and Disappeared and the Association of Relatives of Executed Political Prisoners by Supreme Decree 294 of March 13, 1991, issued by the Ministry of Justice. Supported by the Government, this Foundation was in charge of building a mausoleum in the General Cemetery, in the city of Santiago, to bury the bodies of victims found. An engraved marble plaque with the names of the detained, disappeared, and executed for political reasons was erected on the plaza next to the mausoleums. Some bodies of the detained and disappeared are buried there (United Nations Covenant on Civil and Political Rights, Fourth Periodic Report of Chile, 1998).

As part of the symbolic reparation initiatives, the Ministry of Education declared, in 1996, the bodies blown up with explosives in lime kilns in Lonquén as a National Monument. Remains of fifteen bodies of the detained and disappeared were found there in 1978. Furthermore, the Minister of Public Property handed over a state property to the President of the Association of Families of the Detained and Disappeared, in the city of Santiago, headquarters of the Association *Casa de la Memoria Sola Sierra*, in honor of the deceased President of the association. Pursuing similar goals, the Ministry of Housing confiscated the lands where Villa Grimaldi originally stood to build a park and turn it into a remembrance site in memory of the victims of the National Intelligence Directorate or DINA (Lira, 2009). Villa Grimaldi has become one of the memorial monuments in the country. *Londres 38* in Santiago was another torture and disappearance camp turned into a memorial. Initiatives to build monuments in different places in the country, mausoleums in local cemeteries and to erect commemorative plaques in public places, trade and labor unions, and colleges have been widely reproduced (Lira and Loveman, 2005).

Until 2003, the Human Rights Program by the Ministry of the Interior had conducted a survey on memorials, monoliths, parks, sculptures, halls, and other public places—a total of 134. In 2009, this number doubled. In 2003, on the 12th anniversary of the submission of the Rettig Report to *La Moneda* Palace, associations of families entered into agreements to build memorials in different parts of the country. Jorge Correa, Deputy Secretary of the Interior, pointed out that “...the truth has also led to paths of reparation. Symbolic reparation plays a key role in finding the truth since it actually helps remembering the unalienable value of dignity of those who died or disappeared between September 1973 and March 1990. In other words, they were and will continue to be part of the history of Chile. At least, that way, they will never be forgotten” (Correa Sutil, 2003).

The Human Rights Program by the Ministry of the Interior supported these initiatives, including symbolic reparation works, to remember each and every single victim (Human Rights Program by the Ministry of the Interior, 2011). Memorials and remembrance sites built until 2007 were photographed and reproduced. Today, this initiative has contributed to keeping the memory of their construction alive, for many of them have been destroyed or removed (FLACSO, 2007).

The Ministry of Public Property developed a line of work between 2006 and 2010 in terms of state property and memory and promoted academic thinking on the relationship between memory and democracy to frame the political objective of these initiatives. Along these lines, the program “A Survey to Remember: a Different View of the Land” was established as part “of the actions intended by the State” to reinforce a human rights culture and consolidate democracy. The Cadastre Department of the Ministry of Public Property identified government properties where human rights violations were committed, based on information provided by the National Commission on Political Imprisonment and Torture, in order to reclaim these “sites of memory.” Public institutions running their administration between 1973 and 1990, their use at that time, and the current administrative situation of each property were all identified. It was determined that 515 sites (of the 1,132 detention centers) were government property, identified in a detailed map of each region. This survey was available at the website of the Ministry, developed as an interactive space. Authorities of the Ministry of the Government of Sebastián Piñera removed the program from the website in 2010.

The Ministry of Public Property also developed a memorial initiative in Santiago: “The path of memory.” It started in the building that used to hold the Vicariate of Solidarity at the Palace of the Archbishop in Santiago and included a tour of the property connected with human rights violations and defense of victims. This path is no longer used.

The most important initiative is the Museum of Memory and Human Rights, opened on January 11, 2010 in Santiago. The official opening statement pointed out, “the Museum of Memory and Human Rights is open to everyone in the country to make sure these events will never happen again.” Based on published project information, their heritage came from a set of documentary collections declared by UNESCO as part of the Memory of the World Program, specifically those organizations gathered at the House of Memory: Social Aid Foundation of Christian Churches (FASIC), Corporation for the Promotion and Defense of the Rights of People (CODEPU), Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE), and *Teleanalisis*. In addition, it included collections –in different formats and back-ups– from other human rights organizations in Chile and abroad, associations of victims and families, and personal collections. Such collections contained documentary files, oral and written testimony, legal documents, letters, stories, literature, written press, audio, video and radio media, feature films, historical data, and documentary photography (Museum of Memory and Human Rights, 2011).

Initiatives have also been implemented in other fields, combining symbolic memory and reparation measures and particularly contributing to political and emotional development processes related to political repression. These symbolic measures included two visits to former political prisoners on Dawson Island south of the Strait of Magellan. This was a reparation measure for prisoners in the concentration camp located southernmost Chile, on Dawson Island. On November 22, 2003, a visit to this island was arranged together with associations of former political prisoners in Punta Arenas, the Ministry of Defense, and the Navy. The Navy was in charge of the transfer, and memorial ceremonies were held to pay tribute to former political prisoners there. A second visit took place on November 2, 2006, transporting nearly 270 people on naval ships to the island and making a tour of what used to be detention camps and holding an official ceremony attended by former prisoners, naval authorities, and State authorities, including Minister of Defense Vivianne Blanlot. Naval authorities recognized what happened there and the violence against many of those who assisted the ceremony and expressed their intent that these situations would never happen again in Chile (Lira, 2009).

Along these lines, in 2007, the ship *Grumete Pérez* headed for Quiriquina Island in Talcahuano. Former political prisoners in Tomé promoted this initiative. People involved included 130 former political prisoners and naval personnel, Minister of Defense José Goñi, and Commander-in-chief of the Navy Rodolfo Codina, who pointed out that the most important contribution of that trip was to take Chileans a step closer to reconciliation.

Presidential Advisory Commission for the Qualification of the Detained, Disappeared, Executed for Political Reasons and Victims of Political Imprisonment and Torture

Victim identification was not complete under the Valech Commission, in the opinion of the association of victims. From 2005 onwards, organizations of former political prisoners filed different claims against the State to identify as victims minors detained with their mothers or those unborn, and widows of political prisoners. Moreover, they requested a new timeframe for the identification of victims of political imprisonment and torture. During the Government of President Michelle Bachelet, an agreement was reached with the opposition to reopen the Valech Commission and identify victims of political imprisonment and torture, subsequently adding any pending cases of the detained, disappeared, executed for political reasons, and victims of political violence. Reopening a term for such purposes was incorporated as a provisional article

of Law 20 405, expressly excluding any detained in protests and requiring new records of those cases for reconsideration submitted to previous commissions.

On February 13, 2010, the “Advisory Commission for the Qualification of the Detained, Disappeared, Executed for Political Reasons and Victims of Political Imprisonment and Torture between September 11, 1973 and March 10, 1990” was established as a presidential advisory body. Said commission completed its work on August 17, 2011.

They received qualification applications for 621 claims of the detained, disappeared, executed for political reasons, and victims of political violence, and 31,831 qualification applications from people who declared that they were victims of political imprisonment and torture. Filing all requests and previous cases was dated from September 11, 1973 and March 10, 1990. The number of applications submitted was beyond the expectations of lawmakers when defining the terms for the commission, which should have been extended by law for six months starting in February 2011. This Commission formed their belief in 30 cases of the former and 9,795 cases of the latter. The qualification required –by law– the involvement of State agents in reported acts and a clear political motivation. The abuse of power for other than political reasons and cases of death with uncertainty about actions by State agents were not subject to qualified.

The President of the Republic received the report and decided that the lists would be posted on the website of the Commission on August 25. Such decision was not announced, and the President decided not to inform the country about the results of the commission. Said commission was legally dissolved on the seventeenth at midnight.

No official announcement of the report led to advertising based on statements of the associations of victims, criticizing non-qualification of nearly 22,000 applications for political imprisonment and torture.³¹ Non-qualification was mostly based on the lack of background information to confirm cases reported despite the databases developed by the commission and a case-by-case investigation, as described in the report. For many cases in 1973, especially in rural areas, there was hardly any possibility to record testimonies because *Carabineros* did not submit the documents related to reported detentions, among others. For the most part, the Commission managed to make up for the lack of documents with their own investigation studies. Nevertheless, in most of these cases, records provided by deponents and information gathered by the Commission were not sufficient to call for imprisonment (Advisory Commission for the Qualification of the Detained, Disappeared, Executed for Political Reasons and Victims of Political Imprisonment and Torture, 2011).

In addition, a large number of applications were beyond mandate, including those who were detained in protests and those who were not detained but had their house violently broken into, among others – being effectively and subjectively regarded as victims, yet deprived of the law (Advisory Commission for the Qualification of the Detained, Disappeared, Executed for Political Reasons and Victims of Political Imprisonment and Torture, 2011). 223 qualified cases were submitted: 186 to the Valech Commission and 38 qualified cases to the last two commissions to identify the detained, disappeared, and executed for political reasons.

31 Qualification was also criticized for two cases of people detained by the National Intelligence Directorate (DINA) in underground detention centers, who became informers and perpetrators. One of them is serving a life sentence in Punta Peuco Prison for his involvement in the decapitation of three communist professionals. The Government criticized qualification for one of the murderers of UDI (Independent Democrat Union) Senator Jaime Guzmán, living in Argentina as political refugee, who was detained and tortured by DINA at detention camp *Londres* 38. The law failed to consider the possibility of exclusion from confirmed cases of imprisonment and torture, judging their subsequent political or criminal acts and giving the Commission no other option than to qualify them as victims for known circumstances.

To sum up, in the case of the detained, disappeared, and executed for political reasons and for the victims of political violence, this was the third qualification and reconsideration authority, amounting to 3,219 cases. For political imprisonment and torture, this was the second time for identification, except for the court of appeals in 2005, amounting to 38,254 victims. In general, features and profiles of the victims as described in the Valech Commission remained the same, except for the percentage of women, increasing from 12% to 16%. The number of people identified as victims by the State is 41,513.³²

Final Comments on Reparation Policies

The institutional framework to implement reparation measures has been diverse and, as mentioned above, these measures have been evolving over time and expanding their applicability. Nevertheless, not a single measure has been evaluated against their objectives and the perception of their beneficiaries. For some measures, sustainability has been clear and effective. For others, there has been no sustainability or appropriate institutional channels as in the case of the Presidential Advisory Commission for the Qualification of Victims (2010-2011).

Funds allocated by the State to reparation pensions for families of the detained, disappeared, and executed for political reasons, between 2000 and 2008, were then 113,000,000 dollars. Between 2005 and 2008, more than 103,000,000 dollars in bonds were granted to children of these victims to compensate them for not receiving a reparation whatsoever or receiving a partial reparation. Pensions for victims of political imprisonment and torture during that period amounted to 195,000,000 dollars. Between 1996 and 2008, the State invested more than 1,205,000,000 dollars on pensions for those dismissed for political reasons³³. This reporting method placed more emphasis on the description of what happened and costs incurred than on the impact of these measures on the lives of the victims and their families.

Justice

The victims and their families have claimed for truth and justice since 1973 and expressed their moral and political resistance to impunity, favoring legal proceedings to leave record before the courts of the facts and circumstances of detention, torture, and kidnapping of people. The most critical part was to find out the whereabouts of those who were not coming back. Legal proceedings initiated by filing remedies for the protection of constitutional rights, although results were far from successful, for no more than three remedies were accepted during the life of the Cooperation Committee for Peace, and others in the cases brought to the Vicariate of Solidarity of more than eight thousand remedies filed since 1973.

Insisting on truth and justice was an essential part of the political resistance to the military dictatorship—a cohesive element and complex aspiration. By admitting and taking responsibility of the State for finding the truth about human rights violations and for developing reparation policies, the Concert of Parties stirred resistance in sectors sympathizing with the Pinochet Administration. These sectors were threatened by their supporters and questioned about their principles and core concepts such as honor and truth, but above all, they believed that they were wrongly accused because they called themselves “heroes of the Nation” for preventing this country from “being conquered by international communism.”

In spite of this, repealing remedies for the protection of constitutional rights and rejecting other requests was no obstacle so that human rights attorneys maintained the claim for justice to the victims and challenged the Amnesty Executive Decree after 1978 every time it was applied in courts. Said executive decree provided applicability to “perpetrators of, partners in, and accessories to murders...” This wording offered the possibility of investigation, encouraging President Patricio Aylwin, at the beginning of his Administration,

32 Expenses claimed by the Commission were included in the National Budget in 2010 and 2011.

33 See the Report of Chile in 2009 to the United Nations Human Rights Council.

to address the Judiciary and recommend the investigation of what happened before granting amnesty. Such recommendation was quite controversial, facing great pressure mainly from the Army to grant amnesty “without any reason.”

Between 1994 and 1995, kidnappers and murderers of three communist professionals were tried and convicted. This crime was committed in March 1985 by members of DICOMCAR (Communications Directorate of *Carabineros* Police). In addition, the trial held in Chile for the assassination of Orlando Letelier and his secretary Ronnie Moffit in Washington 1976 by DINA (National Intelligence Directorate) agents came to an end. DINA Commanders, former general Manuel Contreras and Espinoza –masterminds of the crime– were sentenced to seven and six years in prison, respectively. They did serve time in prison.

Some sectors bet that victim claims would fade away over time. Others encouraged or waited for a political agreement to terminate legal proceedings or to apply Amnesty Executive Decree 2191 in 1978. Consecutive failed attempts to “close” the chapter on human rights discouraged new initiatives of the Government since 1996, keeping human rights matters from the immediate interest of the public opinion and raising expectations that such initiatives would eventually fade away.

Despite frustrating court results for decades, victim attorneys used every legal remedy available to throw light on the cases and convict the perpetrators.

The Arrest of Pinochet in 1998

In January 1998, upon resignation as Commander-in-chief to become senator for life, complaints were filed against Augusto Pinochet for different cases of human rights violations that took place since 1973. On March 3, 1998, on behalf of the Association of Families of the Detained and Disappeared, attorneys Nelson Caucoto and Héctor Salazar filed a complaint against Pinochet for 1,198 detained and disappeared people. Juan Guzmán was appointed as jurisdictional judge to be charge of the investigation of cases. The complaints against Pinochet amounted to 299 in 2002 for cases of the detained, disappeared, executed for political reasons and victims of torture.

Pinochet was arrested in London in 1998 at the request of Judge Baltazar Garzón for an open process in Valencia in 1996, accusing him and others of the disappearance and death of Spanish citizens in Argentina and Chile. The possibility to bring Pinochet to trial resumed conflicts of human rights violations and limitations of previous actions. All in all, many still insisted that social peace would depend on legal oblivion extended to 1990.³⁴ Lawsuits reminded the courts of the sordid history of political repression by secret organizations created by the dictatorship to face “subversion.” The judges had to connect the tangle of lies by State agents with those meant to hide thousands of crimes and offences in order to determine what happened and either grant amnesty or punish the perpetrators. Growing tension was heightened by the fact that these crimes were not to be granted amnesty, challenging impunity traditionally excused as a requirement for social peace. In addition, since 2001, Chile started to implement the reform of criminal justice –drastic amendments to proceedings of criminal justice. Nevertheless, proceedings on human rights violations were not incorporated into the new system, because they thought, among other things, that these would call for short-term resolution.

34 For the arrest of Augusto Pinochet in London on October 16, 1998, claims for dementia and cognitive impairment were sought so that he was immune from prosecution. He remained 503 days extraditable from Spain. He returned to Chile in March 2000 for humanitarian reasons, making this decision based on a diagnosis of subcortical dementia and following a political agreement in that sense between the Governments of Chile and Great Britain. For a couple of years, he remained immune from prosecution by virtue of such diagnosis. Different sorts of evidence revoked such immunity for subsequent cases. See lawsuits at http://www.memoriayjusticia.cl/espanol/sp_home.html (accessed on 07/27/2011).

Chile

Following the Roundtable Discussion on Human Rights (1999-2000), the decision of the Supreme Court to appoint nine exclusive judges and 51 special judges, at the request of the Executive Branch, to investigate 114 cases of the detained and disappeared was based on the assumption that said dedication would allow for case resolution in two or three years. At the same time, various sectors applied political pressure to set a timeframe of two years and close cases, but conditions were not favorable to set “political” deadlines. Consequently, these judges continued with the investigation to the end. Ministries and judges appointed for this task started working in the places mentioned in the report by the Air Force. One of these places was Cuesta Barriga, 55 kilometers from Santiago on Route 68 (on the way to Valparaíso). The judge could confirm that the bodies were removed. However, in Chena, inside the premises in San Bernardo Infantry School, south of Santiago, some bodies were found and sent to the Forensic Autopsy Agency for identification. In Arteaga Fort, a military construction in Colina, north of Santiago, they found bodies blown up with explosives of those detained at *La Moneda*, and some witnesses confirmed that these bodies were removed in 1978. In other places, legal investigations confirmed that bodies were removed, proving that these measures were attributable to an institutional decision to make bodies disappear.

The legal investigations showed how “perfect” crimes became a nightmare for those involved and for the Armed Forces. Disappearing bodies turned the murders into aggravated kidnapping, preventing amnesty on the grounds of interpretation still sustained by some judges, despite the fact that they were crimes against humanity. New special and exclusive judges were appointed for human rights cases. The judges in charge of investigating these cases since 2001 had sustained the criminal act of permanent kidnapping for the detained and disappeared, and aggravated murders for executions. Upon investigating the information released by the Armed Forces in January 2001, some of the judges found out that bodies were removed from the places where they were originally buried. For the first time, former members of the Army who were involved in these raids provided a detailed account of how the bodies of some of the detained were thrown out to the sea and how, years later, bodies of other detained victims were removed and thrown out to the sea too³⁵. Such revelation led to civil commotion.

At the opening of the legal year in 2004, President of the Supreme Court Marcos Libedinsky stressed how relevant human rights matters were to this Court, appointing exclusive judges since June 2001 and, later, Court of Appeals judges since October 2002 to work exclusively on human rights cases. He pointed out that it was impossible to investigate crimes by the time they occurred because they involved security institutions, their directors and members. In-depth investigation was possible only after the return of democracy. In 2004, 311 agents linked to 515 victims were prosecuted. 146 agents of the Army were prosecuted, including 21 generals and six brigadiers (Archive and Documentation Foundation of the Vicariate of Solidarity, 2004). Hernán Álvarez, former president of the Supreme Court, upon resignation of the Judiciary in 2005, justified how this body proceeded during the dictatorship, saying, “We were in a permanent state of exception, and remedies for the protection of constitutional rights did not prosper.” He added, “We could probably have done more because people appeared before the court to report arrest or disappearance, (...) but there was not much that could be done without government approval back then.” He asserted that, in his opinion, he would rather had the judiciary apologize for their actions during the military dictatorship, but “when this matter was discussed, no consensus was reached.”³⁶

Proceedings for the cases of the detained were no longer granted amnesty. The case of Miguel Ángel Sandoval in 2004 was the first case in which DINA agents were found guilty for disappearance. While the

35 Interview with a non-commissioner officer (r) of the Army, who “gives account of what happened to the 21 detained victims at *La Moneda* on September 11, 1973. He saw when they were executed, with their eyes uncovered, by a firing squad and when in 1978, their bodies were exhumed and piled on a helicopter to an unknown destination.” See www.emol.com, *El Mercurio*, “Ejecuciones y remociones: Impactante confesión de testigo militar clave” June 29, 2003. See <http://www.fasic.org/bol/bol03/bol0306.htm>.

36 *Hernán Álvarez: ‘Justicia debió pedir perdón’*, 08/09/2005. See <http://rie.cl/lanacionl/?a=38033>.

Inter-American Court of Human Rights described enforced disappearance as permanent offence, Chilean judges defined the offence as “aggravated kidnapping,” preventing amnesty because they were not able to determine when “the criminal offence” ended, considering that said offence continued to be committed (Galdámez, 2011). This situation changed the opinion of the judges and prevented the application of the Amnesty Executive Decree, despite being in force for the time being.

Nevertheless, from this date onwards, although State agents involved in human rights violations were prosecuted between 2007 and 2010, the Supreme Court issued 72 rulings pertaining to human rights violations, 48 of which were crimes of murder and kidnapping that, although imprescriptible on the basis of crimes against humanity, were eventually prescribed. By applying partial prescription, perpetrators received such short sentences that they were released, resulting in a breach of the international obligation to punish crimes against humanity and protect fundamental rights, compromising the State of Chile as a whole (Fernández, 2010).

On January 26, 2011, district attorney Beatriz Pedrals filed complaints for 726 people with no legal proceedings of their death or disappearance in Chile. Pedrals filed these complaints as a representative of the Office of Public Prosecutor in the exercise of the powers conferred to file lawsuits. This initiative of the Judiciary appeared to respond to the will of complying with the moral and legal obligation to offer equal treatment and conditions to all victims. Judge Mario Carroza was appointed to take new lawsuits for this crime, reported from mid-June 2010 onwards.

According to data from the Human Rights Program of the Ministry of the Interior and Public Security, 1,418 criminal cases were active in Chile in late February 2011 for disappearance, torture, illegal internment, or illicit association between 1973 and 1990. Most of the cases (1,393) were filed for disappeared or murdered victims. Only 24 lawsuits were filed by survivors. The Human Rights Program of the Ministry of the Interior was involved in 22.9% of the cases (325). In March 2011, the Association of Relatives of Executed Political Prisoners filed new complaints for execution for political reasons, in addition to those filed by district attorney Pedrals. These cases had been under investigation in the first instance by judge Mario Carroza, who was handling 803 complaints filed in 2011. By April 6, 2011, this judge was handling 746 lawsuits at different processing stages (Human Rights Watch, 2011).

The Human Rights Program of the Ministry of the Interior announces on a monthly basis rulings on human rights cases and relevant statistics.³⁷ Based on information from this program, between 2000 and late February 2011, 777 former security service agents were prosecuted or convicted for human rights violations (including agents with acquittal currently on appeal). 230 of the 777 agents have received a final judgment and different sentences: 162 of the 230 are not confined. By late March 2011, 68 convicts were in prison (Human Rights Watch, 2011).

Final Thoughts

“Brevity” longed for by Patricio Aylwin took longer than expected. Deadlines were extended due to the weight of the events, despite the intention and political will of the authorities and the purpose of some stakeholders, who believed that it was possible to **close** the chapter in the traditional way: legal oblivion to bury the past. The first Concert of Parties failed to achieve national reconciliation and close this chapter, and the following governments had similar chances. From the very beginning, they announced that the framework of discussion for any human rights proposal lied in truth and justice clearly in line with the values and principles established by the Government of Patricio Aylwin. Every initiative would eventually evolve into steps or stages of a process involving several generations.

37 Human Rights Program of the Ministry of the Interior. See <http://www.ddhh.gov.cl/fallosJudiciales.html>.

Nonetheless, human rights and reparation policies in Chile were defined as requirements for the political reconciliation process and framed in contradictory efforts to solve the problems of the past and at the same time prevent the conflicts of the present arising from such efforts. In a way, at some point, there were some attempts to leave problems unresolved as if time could tone down these conflicts. But these conflicts were actually heightened by delaying the implementation of pledged policies and overlooking some situations such as political imprisonment and torture, as if this would make their effects fade away. What happened in 2003 was another instance of moral and political resistance in the country to impunity of crimes perpetrated during the dictatorship. It was also clear that reparation policies implemented by the Concert of Parties were making progress despite their inconsistencies, seeking completion of initial proposals in the program in 1989, admitting that the past was unforgettable and that a large number of victims felt that what they went through was irreparable.

The profile of the victims recognized by the State of Chile confirmed that political repression was targeted against political leaders of the ousted Government, leaders and members of left-wing political parties, social organizations, trade and labor unions nationwide, in every region, province and location, linked to the Popular Unity. Rare cases dealt with random situations. Most of the detained and disappeared accounted for a specific selection giving priority to repression against leftist political parties. That is how most of the members of the Revolutionary Left Movement (MIR) disappeared in 1974 and most of the members of the Communist Party, in 1976. The figures, however, revealed that dead and missing women amounted to nearly 6 % in comparison with the total of victims, reflecting a lack of female leadership in political parties and social, trade and labor unions at the time.

The number of missing women is not what matters most. Stories of these women fill the pages of political memory. These pages were written by disappeared victims, by women searching for them –a story that keeps you turning pages through the channels of justice available to the Association, human rights attorneys, and families of the detained. Part of their stories can be found in different sites of memory and recreated with ceremonies, remembering them not only as victims of degrading repression but as the main characters of a story interrupted by death, who were trying to end the dictatorship, fighting for their rights, and aspiring of a more fair and human society.

Globalization and vast literature open new possibilities to think about the rights and social relationships of men and women, but those for women are still in dispute, not just in Chile. Exclusion and discrimination in everyday life, in the workplace and in politics are yet to be overcome.

Finally, it is important to mention that facts were acknowledged through the reconstruction of the truth of victims, from the time the first remedies for the protection of constitutional rights were filed in 1973. This truth was certainly not definite for the Commission on Truth and the Commission for the Qualification of Victims. Trials for torture and for the detained and disappeared reconstructed specific truths and their circumstances and, in some cases, revealed the final destination of some of the disappeared. Consequently, court proceedings became a deeply valued recognition and reparation solution for the victims and their families.

Fact acknowledgement and victim reparation were possible thanks to some consensus and cooperation among different political sectors. This has allowed for recognition of this truth as the legal grounds for reparation laws in Congress and accountability for the actions of some key institutions such as the Armed Forces. The ideological justification for crimes against humanity such as torture and enforced disappearance has been condemned from an ethical and political point of view by most political sectors, also rejecting the labeling of political opponents as enemies.

In addition, it has been recognized that impunity and legal oblivion are no longer acceptable as legal grounds for social peace and political reconciliation as it was in the past. Challenging the granting of amnesty to crimes against humanity has allowed for sentences on offenders since 2004 for cases of the detained and disappeared. Perpetrators have been convicted, although criminal penalties have been inconsistent, causing some legal insecurity in those involved, especially in the victims. Judges hold different opinions, especially when applying, in many cases, partial prescription, contradicting imprescriptibility required from cases of crimes against humanity.

Reinstating dignity to the victims rests not only on court proceedings but also on symbolic actions of the State, especially on those that contribute to ensuring future political and cultural conditions so that human rights will **never again** be violated or sacrificed in the name of the country. A critical look at the recent past and constant clarity on the values to develop a climate of democratic coexistence contributes to a culture of peace. Truth turned into memory, victim recognition and reparation, and clarification of human rights violations –legally construed as a matter of the past living in the present, where pending– is still a developing process. The question for political reconciliation is open like never before in the history of the country. The big change was, incidentally, to admit that although the past is still living in the present –inevitably involving separation and distance, it is no longer possible to **turn the page** and “ensure” social peace. This process requires full completion, seeking cultural and legislative safeguards so that these actions and their consequences will never happen again.

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Transitional Justice without Transition? The Colombian Experience in the Implementation of Transition Measures*

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* The title of this article evokes the title of a book on this topic that we published with some colleagues in 2006. Once more, we decided to use this title to point out that five years later, the structural conditions that limited the transition measures in Colombia still seem to be valid. (See Uprimny et al., 2006).

From a certain perspective, Colombia is presented as an exception to the regional patterns. While in many countries there is a current debate to deal with the legacy of human rights violations from the past (either from largely overcome internal conflicts or from military dictatorships that have been in decline for more than twenty years), Colombia is still experiencing a bloody armed conflict of more than 40 years of existence and which has resulted in a large number of victims of human rights violations.

Given the circumstances, unlike the situation of its peers, Colombia must guarantee, at the same time, the security of its population by deactivating the armed conflict and satisfying the rights of over ten percent of the population who has suffered the direct victimization caused by such a conflict. In this context, the tensions of a transition with justice have reached their highest level and are summarized in a very complex question: how can a situation of peace and reconciliation be guaranteed by also ensuring the respect for the rights of victims? Or in other words: in a context of latent conflict, how can an increase in the number of victims be avoided by guaranteeing the rights of millions of victims?

The answer is not simple because due to the limitations, unlike other countries, they had to embark on transitional paths towards democracy by prioritizing peace objectives to the detriment of the rights of victims; at present there are international regulatory standards that do not accept an absolute sacrifice of such rights. As a consequence, Colombia cannot seek peace first and then fulfill the rights of victims upon guaranteeing certain democratic stability. The peace agenda and the victim agenda are intrinsically related.

As a complement of this difficult tension, the implementation of transitional justice measures in the country is inserted in a historical logic of social and institutional paradoxes. These two factors largely explain why the discussion and implementation of transitional measures in Colombia are so fervently debated in the country, and why the current so-called transition process has been plagued with success, failure, stagnation, and several paradoxes, in spite of its relatively brief period of implementation.

Given these circumstances, trying to characterize the so-called transition process in Colombia is not easy. There are several interpretations of the political bets promoted by different actors of this process. The purpose of this chapter is to present, to an international audience but not highly experienced in the country's situation and in a rather schematic manner, the complex reality of the debates and the measures commonly related to the paradigm of transitional justice.

With this objective in mind, we will do a descriptive exercise of the most relevant political and contextual facts of this process, as well as the most analytical approximation aimed at explaining the trends and decisions that have steered the process to one direction or the other. Therefore, our text divides this explanation into four main sections. In the first section, we will present a very brief introduction to the historical trends that explain some of the paradoxes of the Colombian political regime. We will be explaining the recent interest in starting a transition to an old conflict embedded in the history and political culture of the country. The second section will focus on describing the main political events, both in regards to the conflict to be overcome, and the mechanisms that have been designed so far to deal with it. Therefore, we will seek to summarize the main characteristics of the conflict and the so-called transition in Colombia. The third section will explain the issues that have caused the most controversy and discussion during the process and how they have been implemented. This means that this section will present the political, regulatory, and institutional debates resulting from the transition measures, which in a few cases have polarized the country. Finally, we will conclude the chapter with an assessment of some of the lessons from the transitional experience in Colombia, both in order to think of the possible paths of the efforts in Colombia, and to think of similar contexts in other transitions.

1. The Context

The political regime of Colombia is difficult to analyze and evaluate, not only due to some ambiguous and paradoxical factors in the last few decades, but also because the situation of human rights, violence, and the Rule of law has been changing since the last decade, when the situation evolved in a complex manner and had mixed results.

If we conduct a long-term structural analysis of the Colombian political regime, we will find some paradoxes. In the last 150 years, as compared to its Latin American neighbors, except for a brief period, Colombia has not experienced a democratic rupture leading to a military dictatorship. Moreover, Colombia has a long standing and well-established tradition of respect for the independence of the Judiciary, as well as an almost unique tradition in the judicial control of laws, which was established in 1910. In 1991, a new Constitution was enacted, and it strengthened the judicial protection of human rights, promoted equality and non-discrimination, and improved participative democratic mechanisms.

From this perspective, Colombia seems to be a well-established and advanced democracy. However, if other aspects are reviewed, the reality will be quite different because of the weaknesses that drastically limit the actual validity of a democratic system in the country. On the one hand, the development of the Colombian State has been historically precarious: state institutions have not been able to have a total control of the national territory, thus making some territories to be controlled by private armed groups (Bejarano *et al.*, 2001), but this does not signal an absolute weakness of the State (García Villegas, 2009). As a consequence, Colombia has experienced a prolonged and bloody conflict for over 40 years. Various guerrilla groups have been involved in this conflict; for instance, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia - FARC*) and the Army of National Liberation (*Ejército de Liberación Nacional - ELN*), which are confronting the official Police Forces and are responsible -as seen below- for multiple gross violations of human rights and infringements of international humanitarian law¹. Other groups and flashpoints of violence have increased violence because of the involvement of self-defense and paramilitary groups, which have strong links to some sectors of the official armed forces, politicians, landowners, and drug dealers (Iepri, 2006). These groups are, in turn, accountable for hundreds of massacres and over 60,000 enforced disappearances.

Moreover, Colombia faces other forms of criminal and social violence. The combination of these types of violence has made the country have extremely high rates of homicide and kidnapping in the last 50 years,² and has caused a humanitarian crisis since the early 1980s, with tens of thousands of extrajudicial executions and enforced disappearances, and several million people have been internally displaced. Furthermore, Colombia has a persistent and drastic inequity and high poverty rates. The Gini coefficient of the country is 0.58, one of the highest in the world, and about 46% of the population lives below the poverty line, and 16% below the extreme poverty line (National Planning Department, 2011).

Given the circumstances, in some aspects Colombia is a democracy based on the principle of the Rule of Law, but in other aspects it is an authoritarian regime that violates the rights of citizens, or at least it is a precarious State that lacks the ability to or interest in protecting its citizens. Therefore, Colombia is not a consolidated democracy, but it is not a dictatorship or a failed State either. Democratic elections are regularly held for the selection of government officials, and other mechanisms for the separation of branches

1 According to Amnesty International, in the last two decades, the armed conflict has taken the lives of at least 70,000 people, most of them civilians killed outside the battlefield; 2,227 people have been unlawfully deprived of their liberty between 2004 and 2007; 4,000 people have been victims of selective deaths since 2002; seven people die or disappear per day outside the battlefield; from 8,000 and 13,000 are soldier boys and girls; and Colombia has the highest rate of victims of anti-personnel land mines in the world. See Amnesty International (2006).

2 For a general long-term review of the evolution of homicides in Colombia, see Melo (2011).

are more or less effective. Thus, political scientists and other analysts are facing problems to define this ambiguity of the Colombian political system.

In the last eight years, this ambiguous democracy developed in a complex manner, thus producing mixed results. Regarding security matters, for example, many aspects improved appreciably due to an increased presence of the armed forces across the national territory,³ the partial demobilization of the paramilitary groups and a series of important military victories of the Army over the leftist guerrillas, particularly the FARC. However, the armed confrontation with the guerrillas continued, and the so-called demobilization of the paramilitary groups has not been very successful⁴ -as it will be analyzed below - and the humanitarian crisis has persisted and, in some cases, it has worsened. As a result, violence in Colombia still is intense and brutal.

In 2006, the Constitution was amended to allow the immediate reelection of the then president, Uribe, and his authoritarian style caused some very negative effects on the validity of the Rule of Law (García Villegas and Revelo, 2009). In other words, it not only weakened the system of checks and balances established by the Constitution, but also a significant number of opposition leaders, human rights advocates, and even Supreme Court justices were subject to an unlawful intervention of their private communications and were victims of surveillance and illegal monitoring by the Department of Administrative Security (DAS), which is assigned to the Presidency of the Republic. Furthermore, over the years it was evident that the Congressional and regional elections were highly illegitimate because of the alliance between paramilitary organizations and a large number of candidates. This process has been publicly referred to as “parapolitics.”⁵

To summarize, in the last few years there were major security improvements for the population. In fact, Colombia has now more state control over its territory. But the humanitarian crisis and the armed conflict are still present, and the Rule of Law has been deteriorating (Echandía, *et al.*, 2010). In other words, during the Uribe Administration (2002-2010) Colombia had more State, but less Rule of Law. In this context, in 2010, the country elected Juan Manuel Santos as the new president with the support of the political forces allied to former President Uribe. Consequently, President Santos will supposedly keep both the policies and the style of his predecessor. Nevertheless, to continue with the paradox, President Santos has maintained some of the policies of his predecessor, but he has made major changes that might improve the validity of the Rule of Law and –as it will be analyzed below- the guarantee of the rights of the victims of human rights violations. But, as we will explain in this chapter, the actual impact of these modifications is uncertain, and it is also uncertain if they could be maintained in a highly volatile political environment such as that of Colombia.

3 Nonetheless, these advances were not absolute. During this period, there were countless human rights violations. The Database on Human Rights and Political Violence of the CINEP/PPP recorded 1,280 disappearances, 6,233 arbitrary detentions, 8,836 extrajudicial executions, and 1,502 cases of torture between 2001 and 2009 (CINEP, 2010).

4 According to the Group of Humanitarian Aid to the Demobilized, assigned to the Ministry of National Defense, between August 7, 2002 and July 31, 2011, 3,747 members of paramilitary groups were individually demobilized. The Ministry of National Defense, the Humanitarian Service Program for the Demobilized -GAHD- (2011). On the other hand, the Office of the High Commissioner for Peace of the Presidency of the Republic pointed out that as of July 2010, 31,671 members of paramilitary groups have been collectively demobilized. See High Commissioner for Peace (2010). At present, several organizations have stated that there are about 10,000 active paramilitary members. See Colombian Commission of Jurists (CCJ), cited by Verdad Abierta (2011).

5 As of September 2010, the Supreme Court of Justice conducted investigations against 44 Representatives of the Chamber and 72 Senators about these facts. Up to that date, the investigations concluded that eighteen of them were accountable for crimes such as ‘plot to commit a crime,’ electoral fraud,’ and ‘voter hindrance.’ In 95 investigations are still in process (Supreme Court of Justice, 2010). For a comprehensive review of the evolution of the so-called “parapolitics,” see the research by Corporación Nuevo Arco Iris, Arcanos No 13, (2007). See also Romero (2007).

2. The Facts

In the last few years, a transitional justice discourse has settled down; some of its mechanisms have been established; and the rights of victims have been incorporated in the political debate. For a brief explanation of the rise of this discourse, as well as the debates where such mechanisms have been designed and implemented, this section will present a brief summary of the historical background of the armed confrontation, the resulting victimization, the mechanisms, and the progress and setbacks in the early stages⁶.

2.1 Historical Background of the Armed Confrontation

In the mid-Twentieth Century, Colombia experienced a period known as “Violence,” derived from a violent confrontation between armed groups related to the main political parties: the Liberal Party and the Conservative Party. This democratic instability led to a brief and unusual military dictatorship led by General Rojas Pinilla in 1953 and which lasted until 1957, when he was overthrown, and this was the beginning of a national reconciliation process, during which liberals and conservatives reached an agreement called “National Front,” and they agreed on sharing the power of the State and taking office in an alternate manner for sixteen years. During this period, most armed resistance groups affiliated with the Liberal Party were dismantled, disarmed, and reinserted in a civilian life, but some armed groups remained; most of which became criminal gangs that were controlled by the State. Nevertheless, some of them, particularly the one led by Manuel Marulanda, evolved into a new type of guerrilla groups.

In the 1970s, three guerrilla movements rose in arms against the State: the Army of National Liberation (ELN), along with Guevarist lines; the Revolutionary Armed Forces of Colombia (FARC), founded on the basis of a communist agrarian conception, and the People’s Army of Liberation (EPL), with a Maoist orientation. Then, other groups joined, among them, in 1974, the M-19 Movement, as a result of an alleged and probable electoral fraud in 1970 against General Rojas Pinilla (Pecaut, 1987; García Villegas, 2009).

In the mid-1970s, the Colombian State sought to deal with this violence by using exception regulations. The Government at that time issued Decree 3398 of 1965, that stipulated that “every Colombian (...) not required for the mandatory service, can be used by the Government in activities and tasks that will contribute to the reestablishment of the normal situation” (art. 25). This decree authorized the Ministry of Defense to “protect, if needed, as particular property, weapons devoted to the private use of the Armed Forces” (art. 33). Under these rules, which became permanent laws in 1968, the so-called self-defense groups were created and strengthened in different regions in the country under the sponsorship of the Police Force (Inter-American Court, 2004; IACHR, 2004).

In the following two decades, the country experienced a consolidation and strengthening process of the guerrilla groups and the anti-subversive movement. On the one hand, the guerrilla movement experienced growth at times, particularly in sparsely populated regions of the country that have significant economic resources, either from coca plantations, precious mineral mining, or oil extraction.⁷

On the other hand, the self-defense paramilitary groups, initially composed of lawful sectors -such as livestock farmers or local politicians- and whose purpose was to reject the guerrilla bribes, were linked with unlawful sectors -such as drug dealers- and benefitted from the indulgence and support of the National Army (Gutiérrez, 2006). Paramilitarism increased, particularly after the negotiation efforts between the Betancur Administration (1982-1986) and the guerrilla; therefore, its growth has been linked with the resistance

6 For space limitations, this section will summarize some characterizations of these topics that we have done in more detail with other colleagues from Dejusticia in previous documents. For a more detailed version of the facts, see Saffon and Uprimny (2008); Guzmán, Sánchez and Uprimny (2010); Uprimny (2009); Sánchez (2009).

7 This growth took place after the 1970s when the guerrillas from the 1960s declined and were rather marginal.

to such peace efforts by sectors of the Army, drugs trade, and members of traditional elites, especially livestock landowners. An example of this violence is the systematic extermination of a large number of political leaders of the Patriotic Union Party, founded as a result of the peace process between the FARC and the Betancur Administration, assassinated by paramilitary groups and drug dealers, in an alliance with the security forces of the State (Dudley, 2004). This systematic extermination process of civilians linked with guerrilla groups was called the “dirty war.” This was partly promoted by paramilitary groups and a sector of the Armed Forces as the tool to deal with a tactic used with the guerrillas, known as the “combination of forms of fighting,” through which the guerrillas sought to continue fighting using legal and illegal methods. But, moreover, the dirty war was promoted as a political opposition extermination policy and as a gruesome tool of the new regional elites of the local power.

Towards the end of the 1980s, particularly after the massacre of nineteen court officials in La Rochela, the violence used by the paramilitary groups disclosed the need for a legal framework that promoted its creation (Inter-American Court of Human Rights, 2007). In 1989, the Colombian Government suspended the implementation of Decree 3398 of 1965, to prevent it from being interpreted as a legal authorization to organize armed civil groups outside the law.

But the violence did not stop, especially the violence related to the paramilitary groups, the drugs trade, and the burgeoning cartels. The most intense stage of this war took place before the presidential elections of 1990. Various presidential candidates were selectively assassinated, thus leading to a significant distress in the country. At the same time, the Government at that time attempted a peace negotiation with some guerrilla groups. As a result of these agreements, at the beginning of the 1990s, some thousands members of the M-19, the EPL, and the Quintín Lame, a small indigenous guerrilla group created in the 1980s, were demobilized as part of a democratization process that will end up with a summon for a National Constituent Assembly that led to a New Political Constitution.

In spite of the enactment of the Constitution of 1991⁸, the political violence continued throughout the 1990s and even intensified during the second half of this decade (Gutiérrez Sanín, 2011). During this decade, both paramilitary and guerrilla groups were significantly strengthened and became real armies. The FARC, for example, embarked on a sustained military advance in this decade, increased recruiting levels, and upgraded their weapons (Ávila, 2008). This helped them achieve an important military success against the Armed Forces⁹. On the other hand, the paramilitary groups increased their armed actions and chose to create a unified command organization that resulted in the United Self-Defense Forces of Colombia (AUC). At the turn of the century, the paramilitary groups had about 10,000 combatants divided into ten blocs, while the guerrillas were concentrated into 21,000 guerrilla fighters distributed among over 100 fronts (National Planning Department, 2002)¹⁰.

On December 1st, 2002, some leaders of the AUC announced their intention to negotiate the demobilization of their forces with the Administration of President Álvaro Uribe Vélez and declared a unilateral ceasing of hostilities. In the following months, there were negotiations, and an agreement was reached for a demobilization process to be concluded on December 31, 2005. On July 22, 2005 Law 975 of 2005, known as the “Justice and Peace Law,” came into force and sought to become the legal framework for the demobilization and reinsertion process. According to official records, in 2006 the initial stage of the

8 As pointed out by Francisco Gutiérrez Sanín (2011), the Constitution of 1991 was considered at that time as a “peace agreement,” not only because it was the result of the total disarmament and demobilization of several armed groups (such as the M-19 and the EPL), but also it was preceded by an intellectual climate permeated with the idea that democratization and peace were closely related.

9 In 2001, for example, the FARC kept, as “prisoners of war,” about 380 military men and police officers.

10 This figure can be contrasted with the number of paramilitaries who were later demobilized (more than 32,000), which suggests that such a demobilization involved more people than the actual number of members of these forces.

demobilization process was completed by a volunteer handover of 31,670 people who identified themselves as members of 38 blocs of the AUC¹¹.

However, the demobilization of these combatants has not resulted in the deactivation of the armed conflict and the ensuing violence. Even though the policy of security and contra insurgency of the State has struck strong military blows against the guerrillas in the last few years, these groups still have a large number of combatants, with a significant offense power and important military and political structures. According to estimates by the Observatory of the Armed Conflict of Corporación Nuevo Arco Iris, the FARC have about 11,000 fighters distributed into 64 fronts (Ávila, 2008). On the other hand, the central command of the ELN is still intact and has even won battles against the FARC in some regions and has survived the offense by the State through the partial links of some its structures with the drugs trade, in a type of “passive resistance” (Ávila and Celis, 2008).

On the other hand, the demobilization of a large number of members of the self-defense groups has not led to a ceasing of the violence perpetrated by these groups. According to the reports of the MAPP/OAS Verification Mission and the Inter-American Commission on Human Rights (IACHR), the continuity of this violence can be verified through different dynamics: (1) regrouping of the demobilized into criminal groups that exercise control over specific communities and illegal economies; (2) sectors that did not demobilize; and (3) emergence of new armed actors and strengthening of some existing actors in zones abandoned by demobilized groups.¹²

2.2 Victims of the Colombian Conflict

The repertoire of violence and intimidation mechanisms of the Colombian armed conflict has been extensive and systematic. The acts of violence perpetrated by conflict actors have translated into gross violations of human rights and infringements of the International Humanitarian Law against the civil population. Even though there is not a group that has the full support of the civil society and the authorities,¹³ some data from authorized sources allow showing the dimension of the atrocities.

According to the IACHR, this spiral of violence has led to massacres against members of the most vulnerable sectors such as indigenous groups, afro-descendant communities, and the poorest peasant population; as well as to the selective elimination of human rights advocates, justice operators, labor union and social leaders, journalists, and popularly elected candidates (IACHR, 2004). Amnesty International estimates that in the last twenty years of conflicts, about 70,000 people have been killed (Amnesty International, 2004). Moreover, violence has produced the most serious and dramatic humanitarian tragedy of the hemisphere. An estimated four and half million people have been internally displaced by violence (UNHCR, 2008). At the same time, this displacement and intimidation have resulted in the massive plundering of properties, houses, and lands of a large number of Colombians: at least 6,600 000 hectares –which would account for half the land area of Switzerland– have been plundered with violence and armed intimidation between 1980 and 2010 (Follow-up Commission, 2010).

- 11 Together with this collective demobilization process, the Colombian State has encouraged the individual demobilization of guerrilla fighters and other armed forces through the laws contained under Decree 128 of 2003. At the time this chapter was written, according to official sources, 20,182 people have been individually demobilized, besides the aforementioned 30,000 paramilitaries.
- 12 In fact, only to mention some figures of 2008, the MAPP/OAS identified situations of rearmament in 153 municipalities in a corridor that extends from the Urabá to the East, including the south of Córdoba, Bajo Cauca, the south of Bolívar, Barrancabermeja, and some neighboring municipalities, the south of Cesar, and Ocaña, in the north of Santander (MAPP/OAS, 2009).
- 13 The problem with figures in Colombia is that there is a large project to combine the methodological criteria to estimate the number of human rights violations and the infringements of the International Humanitarian Law, or a Truth Commission that is aware of these acts. Therefore, while the official figures are rejected by large sectors of the civil society because of the significant under-registration, the data provided by some social organizations are branded by the Government because they allegedly provide inflated figures. Moreover, the conflict and the gross violations of human rights occur in a context of intense “ordinary” violence that sometimes makes it difficult to distinguish the different types of violence.

Other forms of victimization and violation have been equally generalized and systematic. Therefore, for example, at the beginning of 2011 the Government admitted that 58,000 complaints of enforced disappearance have been filed, that is, more than the complaints filed after the military dictatorships of the Southern Cone. In May 2011, the national authorities reported that 22,000 dead bodies have been found and about 10,000 of them have been identified.

Moreover, in recent years, arbitrary detentions have increased. According to complaints filed by civil society organizations, from August 7, 2002 to August 6, 2004, about 6,332 were arbitrarily detained by the Colombian government (Coordination among Colombia-Europe-United States, 2008). These organizations have reported that from July 2002 to December 2007, about 932 people were victims of torture, of which 201 survived and 731 were killed. On the other hand, Colombia has the largest number of kidnappings in the world in the last few decades. From 1962 to 2003, there were 25,578 kidnappings for extortion purposes (DNP, 2004). And to make things worse, the guerrillas –especially the FARC – have constantly resorted to the use of attacks using explosives in an indiscriminate manner and to the use of antipersonnel mines. According to Handicap International, Colombia is the country with the largest number of victims of antipersonnel mines in the world: 6,238 victims from 1990 to August 2007.

The violence and discrimination against women have been serious and frequent. In a study, the IACHR explained, in detail, the circumstances that have historically exposed women to discrimination, social stereotypes, inferiority treatment, as well as the civil, political, and social consequences of their disadvantageous situation; they have been exploited and manipulated by the actors of the armed conflicts (IACHR, 2006). Women have been victims of different forms of gender violence such as sexual violence and violence used to impose guidelines of social control over their life, as well as the disproportionate effect of other forms of violence that affect not only men but also women, such as forced displacement (Constitutional Court, 2008; Guzmán, 2009). According to a report of Oxfam International, about 60% and 70% of the women have been victims of some kind of violence (physical, psychological, sexual, or political abuse). Regarding sexual violence, while it is not possible to estimate the magnitude of this crime exactly, since sexual violence at a national level presents a significant under-registration of unreported cases that account for more than 90%, sources range from 35% to 17% (Oxfam, 2009).

2.3 The Demobilization Process and the Insertion of the Discourse of Transitional Justice in Colombia

As mentioned above, in 2005, due to the negotiation process with some paramilitary groups, the Justice and Peace Law was passed to serve as the legal framework for demobilization. This law, besides governing the special criminal procedures to be used against the demobilized individuals who have perpetrated atrocious crimes,¹⁴ establishes the concept of victim¹⁵ and the scope of his/her rights. The law is characterized by the

14 To guarantee the satisfaction of the right to justice, a special criminal proceeding was designed, characterized by the speed and immediacy of results. This criminal proceeding starts when the Office of the Public Prosecutor receives the list of candidates –demobilized individuals who are under suspicion for perpetrating atrocious crimes-, the institution has the duty of investigating the acts they might be accountable for and document them. Then, their preliminary interviews are heard, and they must confess their accountability for the facts under investigation, as well as the properties they will return for reparation purposes. Then, there is verification stage in which the Office of the Public Prosecutor must make sure that the demobilized individuals did not omit any facts in which they participated or might be accountable for. Then, they are accused and charges are pressed. If the demobilized individuals accept them, the Justice and Peace Court will determine the legality of such acceptance. During this hearing, a comprehensive reparation motion is filed, in which victims must actively participate –they can do it through a legal representative- because they must state the reparation they are expecting and certify the damages. Once a reparation agreement is reached, the Court must issue a decision.

15 Law 975 of 2005 considers that the victims who are entitled to the mechanisms enshrined therein are those who were affected by members of unlawful armed groups who demobilized individually and collectively by virtue of such regulations.

significant benefits provided to the demobilized population. Those who confess their crimes and hand in their properties for the reparation of victims in spite of the type and number of crimes perpetrated will receive an alternative sentence of five to eight years in prison.¹⁶

Law 975 also created the National Commission of Reparation and Reconciliation , (CNRR), as the institutional body with a mixed composition (with representatives from official institutions and the civil society), to be in charge, among other duties, of: (i) guaranteeing the involvement of victims in judicial proceedings; (ii) establishing reparation guidelines; (iii) coordinating the return of properties and guiding the collective reparation process; (iv) supervising the reparation process; (v) serving as a verifier and guarantor of combatant demobilization; and finally (vi) contributing with historical truth. For this latter objective, the Commission decided to create the “Group of Historical Memory” (MH), composed of a group of academicians who were provided with independence to promote their studies and research.

As pointed out by Gustavo Gallón (2007), since the beginning the CNRR generated different reactions due to its ambiguous character. On the one hand, it elicited optimism, but on the other hand, it elicited strong criticism. In spite of the efforts of most of its officials, the CNRR failed to become a key political actor for the coordination of transitional efforts and the accompaniment of victims (Gallón, 2007), even though the Group of Historical Memory received an important recognition and support by society. Therefore, even though the law established an eight-year period, the victim’s law led to the premature death of the CNRR, which will cease to exist when the institutionalism proposed by Law 1448 is consolidated, which might occur by mid-2012.

The **justice and peace process** has been very controversial in the country. For some analysts close to the Government, it is an appropriate model for a peace process because it guarantees the rights of victims, without impunity. However, a significant portion of the social movement believes that it is a problematic process. Some critics and opponents consider it is a hidden impunity mechanism (Valencia Villa, 2005, and Colectivo de Abogados José Alvear Restrepo, 2006). Others have stated that in spite of considering acceptable standards, it can lead to de facto impunity due to the “limitations of its implementation mechanisms” (Uprimny and Saffon, 2007). For others, the law and its regulatory decrees are in favor of perpetrators because they do not properly guarantee the protection of the rights of victims.

The law has undergone significant changes since it was enacted. The initial proposal of the Government allowed demobilized individuals not to serve a sentence and did not include guarantees of the rights of victims. This proposal was the target of serious criticism by the civil society, human rights organizations, and the international community. The pressure allowed the law enacted in December 2005 to have a scheme different from the initially proposed scheme, according to which the demobilized individuals who perpetrated atrocious crimes could serve an alternative sentence. This body of regulations used for principles a language close to the rights of victims, but it did not foresee proper mechanisms to guarantee them. In 2006, the law was accused of being unconstitutional on several occasions. Then, there was an intervention by the Constitutional Court, which through decision C-370 it introduced major changes, such as requiring a full confession by demobilized individuals –both of their crimes and of the properties that would be used for reparation purposes- to access the benefits enshrined in their favor. This made the law adjust essentially to the relevant international standards. However, the implementation mechanisms are still poor and, consequently, the rights of victims cannot be fully satisfied (Uprimny, 2011).

16 Pursuant to data provided by the National Unit for Justice and Peace of the National Public Prosecutor’s Office, as of March 31, 2011, candidates had confessed 1,755 cases of massacres, 48,541 cases of homicide, 2,834 cases of unlawful recruitment, 4,812 cases of enforced disappearance, 9,918 cases of forced displacement, 1,797 cases of extortion, 2,016 cases of kidnapping, 86 cases of sexual violence, 636 cases of torture, 93 cases of trafficking, manufacturing, or carrying of drugs. See National Public Prosecutor’s Office (2011).

Later, the Inter-American Court of Human Rights (hereinafter, the Inter-American Court) solved various cases against Colombia, relating to crimes perpetrated by some demobilized paramilitaries (Inter-American Court, 2007). In those cases and especially in the decisions about La Rochela massacre, the representatives of the victims requested the Inter-American Court to make an explicit statement about the suitability of the Justice and Peace Law pursuant to international standards. The Inter-American Court refrained from specifically analyzing the legitimacy of the law, alleging reasonable procedural reasons,¹⁷ but in any event, in that decision the court recalled its doctrine set forth since the case of Barrios Altos of 2001, according to which, any legal arrangements are inadmissible -such as amnesty provisions, provisions on prescription -that are intended to prevent the investigation and punishment of those responsible for serious violations of human rights because they violate “non-derogable rights recognized by the International Law on Human Rights.”¹⁸

In order to implement the scheme set forth in the law and adjusted by the Constitutional Court and the limitations established by the Inter-American Court, the institutions involved carried out several institutional adaptations. The Office of the Public Prosecutor created a National Justice and Peace Unit, led by specialized prosecutors in charge of conducting the investigations against the demobilized paramilitary fronts. Moreover, Justice and Peace courts were created, and their justices are the competent authorities in charge of hearing the accusations and the comprehensive reparation issue that should be filed at the end of the criminal proceeding. The Office of the Public Prosecutor also created a Justice and Peace Unit whose main duty is to represent the interests of victims during the proceedings. The Office of the Public Prosecutor assigned some of the court prosecutors so they could intervene in these proceedings by representing the interests of society and as guarantors of human rights.

To conduct the investigation of the acts perpetrated by the demobilized paramilitary fronts, the National Unit for Justice and Peace of the National Public Prosecutor’s Office decided to adopt an investigation scheme per unlawful armed group or front. Therefore, it does not investigate individual cases or perpetrators, but the conduct, *modus operandi*, and acts of the members of the front, who must face the criminal consequences for having participated in atrocious crimes. However, six years after passing the law, the proceeding only has a final judgment that sentenced two people¹⁹.

2.4 Advances, Bottlenecks, and Setbacks of the Proceeding

One of the main criticisms against the justice and peace process has been the sluggishness of the sentences issued by the courts. Based on data provided by the National Prosecutor’s Office, at the end of 2010 the accused have confessed 17,262 cases, which will entail the filing of criminal proceedings to elucidate the accountability of 4,511 perpetrators, who were responsible for violations against 314,383 victims recorded in the database of the National Prosecutor’s Office. At this rate, prosecuting these cases will take forever, which casts doubts on the practicability of the model. Moreover, we have the fact that a minimum sentence of five years and a maximum of eight years pose the risk that the accused will end up serving alternative sentences before issuing the judgments holding them accountable.

17 The essential procedural argument of the Inter-American Court is that it is not its duty, when deciding about individual cases, to review the adaptation of regulations to the American Convention because its duty is to verify if the rights of petitioners have been violated, so it could not conduct a specific assessment of the Justice and Peace Law since this law has not been applied to possible perpetrators of the crimes studied under this decision.

18 Inter-American Court of Human Rights, Case of La Rochela Massacre, Decision of May 11, 2007, Series C No. 163, par. 294.

19 This is the sentence by the Supreme Court of Justice in the case relating to a massacre occurred in the district of Brisas, township of Mampuján, in the municipality of María La Baja, in the department of Bolívar. This decision issued the first two final sentences of eight years in prison against Edwar Cobos Téllez, aka “Diego Vecino” and Úber Enrique Bánquez Martínez, aka “Juancho Dique,” two paramilitary commanders of the extinct Bloque Héroes de los Montes de María and Frente Canal del Dique, of the United Self-Defense Units of Colombia.

Moreover, it should be pointed out that the Justice and Peace Law should not be applied to every demobilized person. The initial intention of the Government was to apply it to those combatants who were being investigated for atrocious crimes. Those who were not being investigated will be then accountable for the offense of creation of unlawful groups, which could be pardoned because the Law established a benign framework by assimilating it into a political offense.²⁰ However, the justice done by the Supreme Court and the Constitutional Court determined that a political offense was not applicable to members of paramilitary groups.

Given the circumstances, of the 32,000 collectively demobilized paramilitaries, a few more than 4,000 have been subject to the Justice and Peace Law, and justice has been done only for 10,749 resolutions by dismissal, leaving 19,000 without a solution to their legal situation. The definition of what to do to solve such a situation has not been subject to a consensus to date. Initially, a decision was made to amend the Criminal Procedural Code (Law 906 of 2004) and to allow the application of the “principle of opportunity” under certain circumstances. Therefore, the law authorized the prosecutor to suspend, interrupt, or refrain from prosecuting the demobilized paramilitaries and request hearings, either individual or collective, for the application of the principle, as long as they collaborated with justice and promised not to reoffend.

However, the Constitutional Court stated that such mechanism was also unconstitutional since it allowed the State to refuse investigating the behavior of such people, even in case of crimes against humanity. Allowing the impunity of those crimes is forbidden by the international law; therefore, the Court stated that a rule, even without mentioning the words amnesty or pardon, which leads to the same result, contravenes the Constitution. Less than a month after the decision of the Court, the Government made Congress pass a new regulatory Framework: Law 1424 of 2010 (known as the Law on the agreement of contribution to historical truth). This law is applicable to the demobilized people who were not accused of atrocious crimes and who, to take advantage of the benefits of the Law, should contribute to rebuilding the historical memory by clarifying the context in which each of them participated, the formation of an organized group outside the law and of which they were members and, in general, about all the facts or acts relating to their involvement in the group. Furthermore, the paramilitaries must pay damages and render social services to the communities where they have returned to have a civil life. As of the date when this report was written; however, this law has not been regulated and a decision was to be made to determine if the Constitutional Court would endorse it since the regulations were required by some human rights NGOs and opposition members of Congress.

Regarding reparations, there was a similar situation: even when different mechanisms have been discussed, and some of them have been collected in the laws and policies, their implementation degree is still very precarious. First, the court-granted reparations in the justice and peace proceedings are still a promise to fulfill due to the aforementioned sluggishness (Díaz and Bernal, 2009). On the other hand, while in 2008 an Administrative Individual Reparation Program was implemented through a presidential decree (Decree 1290 of 2008), the lack of clarity and publicity for the selection of recipients and the granting of solidary indemnifications of the program (PGN, 2010) is added to the strong criticism about its content and scope, which is very limited (Sánchez, 2009)²¹

20 As stated by Iván Orozco (2006), in the Colombian legal tradition a “rebel” or “political criminal” has been traditionally characterized as a combatant who is a member of a group that has risen up in arms for political reasons, a front to which the international law has granted immunity to its acts of war. Therefore, they received a benevolent treatment: punishable activities undertaken by rebels in combat were not punished as such; they were rather subsumed into the crime of rebellion. See also Sánchez (2011).

21 Pursuant to the National Prosecutor’s Office, “as of December 2009, the Administrative Reparation Committee (CRA) issued a decision about 10,593 individual administrative reparation requests, of a total of 278,334 requests. Of these 10,593 requests, all of them were favorably decided. The recipients of these requests were 26,375 people, of which 23,173 (87%) are women and 3,202 (13%) are men. In contrast, most victims, that is, of the people directly affected by crimes that are subject to admin-

2.5 The Recently Passed Victim's and Land Restitution Law

The Victim's Bill was submitted by the Santos Administration just one year after a similar bill was sunk in Congress by his predecessor. Therefore, the mere fact that the initiative was proposed by the Executive Branch was an evident signal of change. Furthermore, the discussion in Congress represented an outstanding progress since the bill achieved not only the active involvement of the governmental coalition parties and a large portion of the opposition, but also a fundamental political consensus after a period of significant polarization in the country regarding the rights of victims. Anyway, as it happens with this type of political consensus, the final draft of the Victim's and Land Restitution Law (Law 1448 of 2011), while it was considered by many national and international sectors as a historical step for the country, it is also the target of criticism, both political (by the leftist and rightist sectors) and technical-institutional.

The Victim's and Land Restitution Law is intended to provide, in a single instrument, different measures and guarantees to the victims, but it does not codify all the existing relevant regulations. Nevertheless, the law deals with several topics, which makes it both a comprehensive and ambitious law. Consequently, it has: (i) an introductory chapter about a series of general principles; (ii) a chapter on the involvement of victims in criminal proceedings; (iii) a section devoted to caring for victims and assistance actions; (iv) a chapter on reparations; (v) a chapter about the institutional arrangement that will operate the victims' care and reparation system, (vi) a chapter about special regulations for demobilized boys and girls; and (vii) a final chapter containing additional regulations about involvement and others.

In our opinion, while the law has overcome some of the debates that polarized the discussion during the Uribe Administration, it still has some problem areas. That is, the text shows some advantages but also limitations and risks in the articles. Let's analyze some of them.

Regarding the successes of this law, first they include the consensus process and the symbolic recognition it represents. At the same time, this openness allowed the correction of one of the fundamental problems of the previous bill, i.e., the discrimination against the victims of the State agents. The approved draft -with the exception of members of unlawful groups and their relatives- is based on the acknowledgment of victimization based on the facts not the agent, as it was mistakenly defended by the previous government. It also allowed the text of the law to expressly acknowledge the concept of armed conflict that, as we will see in the following section, has been a much disputed topic.

Second, the law incorporates, in general and appropriately at the level of principles, the international regulations for the rights of victims. Such principles are very important not only as a social and political recognition of the State for the victims, but also because most reparation mechanisms will be regulated by the Executive Branch, which makes it necessary to establish clear principles to guide the regulations.

Third, the law shows the intention of correcting mechanisms that are poorly working, such as administrative reparations (even though it does not leave them exposed to the regulation of the Government). Likewise, the bill is planning a proposal of an institutional design that will coordinate the comprehensive care for victims, which is intended to reduce the formalities and the access routes to the rights.

Fourth, the systematization of the rights of victims in the criminal proceedings is appropriate in general terms (even though at a technical level, the suitability of including such measures in the victim's law not in the Criminal Procedural Code might be at issue). Some of these measures are also intended to reduce the gender discrimination detected in the access to ordinary proceedings and the justice and peace proceedings.

istrative reparation, are male. The data provided by Acción Social indicate that of the 10,593 requests, 9,827 (92%) are related to cases in which the victims are men, while in the 766 remaining cases (8%), the victims are women." PGN (2010).

Finally, the law makes an important bet on the establishment of measures for each and every component of the reparation (restitution, compensation, satisfaction, rehabilitation, and non-repetition guarantees), in which the land restitution chapter stands out. The law creates a mixed system, judicial and administrative, so that people who have been dispossessed of their lands as a result of enforced displacement, can file a claim expeditiously and with some advantages, derived from the relaxation of the burden of proof and the creation of presumptions of dispossession.

Moreover, the legislative text has some limitations or drawbacks. First, even though the law abandons the problematic idea that the State grants reparations based on the principle of solidarity, its rationale is not clear. Therefore, by failing to expressly mentioning the accountability of the State, the law can lose a significant part of its strength as a symbolic measure of recognition, which is ultimately what most victims have required.

Second, the law does not deal with the issue of granting reparations without a historical explanation. The search and acknowledgment of the truth about what happened are not covered by the law, thus affecting not only the possibility of satisfying the right to truth for the victims and society at large, but also preventing undisputed victim reparation and recognition. Moreover, without an effective policy of the prosecution of the most serious cases and atrocities perpetrated during the conflict, reparation measures have an empty content. However, it is impossible to foresee if there will be a deliberate governmental intention to articulate these needs.

Third, the law does not overcome the discrimination against the victims who were members of unlawful armed groups because it establishes that those who have belonged to illegal armed groups and their relatives will not be considered victims. In this topic about who will be considered a victim, there is still debate about the people victimized by armed groups that were activated after the paramilitary demobilization (officially known as Criminal Bands or Bracrim), in the sense that if they are included in the law because the regulation says that it will not be applied to what is considered “ordinary violence,” that is, violence not related to the conflict.

Fourth, there is a complex issue: the articulation between social and political victim policy. Though theoretically and abstractly, the bill and its statement of the reasons make a distinction among humanitarian aid, social policy, and reparations,²² many specific measures tend to confuse the three aspects, especially regarding displaced people because it declares housing subsidies as reparations that are as part of a social policy.

Therefore, with all its advantages and limitation, the law poses additional risks and challenges that could only be overcome based on suitable regulations and a clear political will during its implementation. At least five challenges can be distinguished as priorities for the Government. The first challenge is the regulation of more than fifteen programs and measures that the law delegated to the Government, among them: administrative reparations, reparation measures for indigenous peoples and black communities, collective reparation, among others. The second challenge is to guarantee security to the victims who will access the mechanisms, especially land claimants. The third challenge is to guarantee an adequate participation of victims and their organizations, both in the design and implementation of the measures. The fourth challenge is to adapt the institutional structure needed to implement the law, so that it is timely, effective,

22 One of the main objectives of the proponents of the bill was to avoid a confusion that usually happens in Colombia among the state duties of comprehensive reparation, humanitarian aid, and social policy. This confusion happens because the materialization of these duties sometimes coincides in practice. However, the reparation of victims of atrocious crimes, the provision of social services to every citizen and the humanitarian aid given to the victims of disasters are autonomous duties of the State, and they have a different origin and rationale. For an academic discussion of this distinction, see Uprimny and Saffon (2007a).

respectful, and sensitive to the victims. Finally, the topic of the tax impact of the law and the investment the State should make on reparations still is a ghost prowling in the implementation of the law; the State and society must make all the necessary efforts to implement the measures set forth in the law. The symbolic effect of the passing of the law and the commitment of the Government will become negative if the law is not translated into specific and concrete measures that go beyond the disguised provision of social benefits or an empty recognition.

3. The Debates

The design, discussion, and implementation of these transition measures have stirred important and sometimes heated academic and political debates. Some of these debates are more general, about structural topics of the application or non-application of the transitional model or its orientation, while the others have focused on regulatory and institutional mechanisms and on the options of public policy to be adopted. In this section, we will present a summary of the main debates divided into two types: structural debates and debates related to regulatory and institutional arrangements.

3.1 Structural Debates

3.1.1 Characterization of the Colombian Conflict and its Political Regime²³

The first element that has caused a lot of controversy in the implementation of transitional measures in Colombia is the characterization of the armed conflict and the resulting legal and political consequences. The Colombian internal armed conflict is very complex, not only due to its specific characteristics, but also due to the elements of the context where it is developed (IEPRI, 2006). First, it is one of the longest armed conflicts in the world.²⁴ Second, as seen in the previous section, it is not a conflict between two factions –as it usually happens –; it includes several actors: the State, the guerrilla groups, and the paramilitary groups.

The latter add a unique complexity to the Colombian conflict because it deals with pro systemic actors,²⁵ who never fought against the State; on the contrary, they supported the fight against the guerrilla groups through unlawful methods. Therefore, for years the paramilitaries were not really persecuted by some State sectors; on the contrary, the State benefitted from its anti-subversive activity, and many of its agents established close links of tolerance, collaboration, and complicity with the paramilitaries, which have not only included members of the Police Forces, but also intelligence agents, local politicians, and members of Congress (Duncan, 2006; Saffon, 2006). These links with State agents, together with the links with the regional landowner elites and the drugs trade, allowed the paramilitary groups to build stronger and more important political and economic power structures than their military power. Consequently, even though in 2002 these actors started negotiations with the Colombian government, it is uncertain if such negotiation and demobilization processes will lead to an effective dismantling of the paramilitary power structures and, through this method, to the guarantee of non-recurrence of the atrocities. In fact, it is possible that these power structures will remain intact and, even, strengthened due to a legalization process.

Besides the State, the guerrilla groups and the paramilitary groups, the main role played by the drugs trade in the Colombian armed conflict should not be taken for granted (López, 2006). The funds from drugs have significantly contributed to their perpetuation since they account for an almost unlimited source of

23 A more elaborate version of these characteristics can be found in Saffon and Uprimny (2007).

24 Together with the Palestine-Israel conflict and the conflict between India and Pakistan. To this regard, see the National Commission of Reparation and Reconciliation (2006).

25 As opposed to anti-systemic actors such as the guerrilla groups. For an explanation of this difference, see Múnera (2006).

funding for the armed actors. On the other hand, due to their prolonged nature and the multiplicity and heterogeneity of its actors, there has been a discussion about the definition of the conflict: some speak about a civil war; others speak about a terrorist threat; but it can also be described as a war against society.

Besides the aforementioned characteristics inherent to the Colombian conflict, there are some unique elements of its context that makes it more complex. The first element has to do with the profound influence of the international community, in general, and the United States specifically, on the Colombian policy. This influence has led to the internationalization of the Colombian conflict, which has become more and more evident. The concern of the international community for the humanitarian crisis experienced by Colombia and, especially, the interest of the United States in an anti-drug policy,²⁶ have largely shaped the dynamics of the conflict and the legal treatment of the demobilized armed actors.

The third and last element of the context, which adds complexity to the conflict, has to do with the profound polarization of the Colombian society. This polarization has resulted in a tendency to criticizing the violence caused by one of the sides of the conflict more severely and exclusively –depending of the end of the political spectrum where the critic is found -. As a consequence of this tendency, there is not a minimum consensus on the punishment of gross violations of human rights perpetrated by all the armed actors, a consensus that is essential to achieve a long-lasting peace.²⁷

This debate has had important practical implications for the definition of the transitional mechanisms and the method to specify them. Moreover, the Uribe Administration banned the term of armed conflict to describe armed violence and prescribed the use of the concept of “terrorist threat.”²⁸ With the denial of the nature of the armed conflict, the Government sought to eliminate the political character of the confrontation, especially of the status of the leftist guerrillas. However, this modification did not eliminate other uses and rules that are directly derived from the recognition of a conflict, such as the legislation on international humanitarian law (which in Colombia is contained in the Criminal Code), or the special legislation that allows the Government to promote peace processes with armed groups. In fact, the Government promoted the recognition of the paramilitary groups as political criminals in order to facilitate decriminalization measures such as amnesty or pardon, which are reserved by the Political Constitution for political crimes.

The importance of defining the armed violence related to the rights of victims was evident in the discussion of the failed victim statute of 2008. In fact, one of the reasons why the Government convinced Congress not to pass such a bill was the fact that the existence of an armed conflict was acknowledged. And,

26 In early 2000, the US Congress approved the “Colombia Plan,” which is intended to fight against unlawful drugs and organized crime. Of the total funds of the Colombia Plan, 26.6% was allocated to institutional strengthening, 57.5% to the fight against unlawful drugs and organized crime, and the remaining 16% to economic and social reactivation (DNP, 2005).

27 As an example to illustrate this situation, as of 2007 some court decisions, the media, and the confessions of the perpetrators have revealed the cruelty of the methods used by the paramilitaries to conduct enforced disappearances, torture, kill, and hide the remains of their victims, as well as the complicity of many members of the Army, local politicians, members of Congress, and close collaborators of the then President Uribe with paramilitarism (see, among many other press references, “Juicio histórico a paramilitares,” *El Tiempo*, April 23, 2007; “Para-políticos” and “El ventilador de Mancuso,” *Revista Semana*, May 19, 2007). In spite of this, as shown by a survey by *Revista Semana* at that time, many people did not completely reject the atrocities perpetrated by paramilitaries or the close links between them and the State agents. According to this survey, the information about the cruel mechanisms used by paramilitaries to perpetrate atrocities against civilians did not affect the positive perception of people in 38% of the cases, and such a positive perception increased in 9% of the cases. Furthermore, 73% of the population believed that the Government should make more efforts to fight against the guerrilla groups than against the paramilitary groups, and 47% of the population believed that the guerrilla groups had more responsibility for the violence in the country than the rest of the armed actors. See “La gran encuesta de la parapolítica,” *Revista Semana*, May 5, 2007.

28 This happened even though the State adopted measures whose use is derived from the recognition of an internal armed conflict. Therefore, promoting the use of the concept of “terrorist threat” can be seen more as an attempt to manipulate language to achieve political returns than as a continuity of the debate about the characterization of the elements of the armed confrontation. For a thorough discussion about this topic, see Uprimny (2005; 2011).

precisely, due to the sensitiveness of the issue and the strong opposition that it caused in certain political sectors, the original text of the Victim's Bill categorically excluded the concept of conflict. Nevertheless, during the parliamentary debate, against every political forecast, President Santos himself decided to include the category of armed conflict to specify the universe of victims of the law. This caused a division in the Government's faction because former President Uribe urged not to pass that inclusion. At the end, a decision in favor of the current Government was made, and the law now explicitly acknowledges the existence of an armed confrontation, and this has been interpreted as a possible door for the definition of future approaches to explore political methods to solve the conflict with the leftist guerrillas.

3.1.2 Transitional Justice without Transition?

The Colombian armed conflict is complex. But, in spite of the demobilization process of paramilitary groups that started in 2002, such a conflict is still far from coming to an end.²⁹ In this context, it does not seem appropriate or suitable to speak of a transition from war to peace in Colombia. A complete transition is not taking place because the recent negotiations have not included all of the armed actors. Also, it is possible to say that a fragmented or partial transition regarding the paramilitary groups is taking place because even if their members have given up their arms, it seems that their economic and political organizations are still valid.³⁰

Nevertheless, the recent demobilization process led to a new chapter in the history of the Colombian armed conflict. The development of new international standards, the pressure from the public opinion, the mobilization of social sectors, and the performance of other actors such as judges and the international community, made this process to gradually become the beginning of transitional justice and, at least in the discourse, a concern for the rights of victims.³¹

Consequently, even though several social sectors and organizations of human rights believe it is wrong to talk about transitional justice in Colombia, several institutions have been formed, and the debate about public policy has included the search for truth, justice, and reparation for the victims. The reluctance is derived from various aspects, but especially, from the persistence of the armed conflict and the politicization of the process with the paramilitaries. These and other factors make it impossible to expect a real transition to a more democratic regime in Colombia (Uprimny and Saffon, 2006). Even though the process has many drawbacks and difficulties, the intervention of social organizations, the international community, and judges, has made it possible to include in the debate the rights of victims as a standard that must be met by the legal system and the political activities in the country. However, as seen in the previous section, the mechanisms that have been developed are still deficient and in some cases inadequate to guarantee these rights in a comprehensive manner.

29 At this moment, the Colombian case is also atypical in the international context. Colombia is one of the few countries where a Plan for Disarmament, Demobilization, and Reintegration (DDR) has been developed in the presence of armed violence perpetrated by unlawful armed groups -GAI- with whom peace agreements have been achieved. Moreover, this is the first time when there have been two parallel demobilizations -one collective and the other individual- and their causes differ.

30 The discussion of the magnitude of the disarmament of combatants and groups who have demobilized stems from the big difference in the official figures of demobilized combatants and surrendered arms. Pursuant to data from the MAPP/OAS, while as of 2009, 31,671 combatants have demobilized, only 18,051 arms have been returned. See CNRR (2011).

31 As pointed out by historian Mario Aguilera, amnesty and pardon have been common legal concepts. For example, this author has indicated that from 1820 to 1995, 63 pardons and 25 amnesties have been granted; most of them were registered in negotiation processes between the State and groups that were trying to seize power. From the 1980s to this day, seven amnesty or pardon laws have been passed and they have ended up in a total demobilization of about ten guerrilla groups (Sánchez, 2011). However, none of the demobilizations or peace negotiations spoke about the rights of victims as it was done after passing Law 975 of 2005.

This inclusion of the rights of victims in the negotiation policy was possible thanks to the fact that Colombian organizations of human rights have creatively “translated” those international standards into the Colombian debate, so their political and legal claims against impunity have been definitely strengthened, but they have also significantly influenced the way the public opinion deals with this issue. Never before has there been so much debate in Colombia about the rights of victims, and the discussion of the Victim’s Law is a sign of the position of this issue in the national political agenda. Moreover, that duty of local human rights groups and victim organizations was strengthened by the support for the fight against impunity by other international non-governmental organizations (such as Human Rights Watch or Amnesty International), or certain international human rights institutions (such as the Inter-American Commission on Human Rights or the UNHCHR³²) or, even certain governments, so a non insignificant transnational network of activism against the possible impunity of paramilitary crimes was formed. Particularly, the role of the human rights protection bodies of the Inter-American System should be pointed out because they have closely and continuously monitored the situation in Colombia. Moreover, the Inter-American Court of Human Rights has played a major role in the process, in the establishment of legal standards of human rights to be met by the process.

Therefore, beyond a theoretical debate to determine if transitional justice mechanisms are characteristic of the post-conflict, and to define how such post-conflict will start, initiating a massive policy to satisfy the rights of victims amid an armed conflict poses challenges and important, practical, and even tragic difficulties. For example, starting a truth and historical memory process amid a conflict faces evident barriers that, in turn, prevent the satisfaction of other rights that need that explanation, such as the persecution of those responsible in the justice system and the definition of victims who should be the recipients of the reparation policy. Moreover, to the extent that the Colombian conflict continues affecting a significant sector of the population, the universe of victims will grow every day, and so will the need for the State to guarantee humanitarian aid to a significant number of citizens. Consequently, the duty of the State is to allocate human and financial resources both to the reparation policy and the institutional reform and to humanitarian aid. This had led, in the case of Colombia, to trying to merge the two duties of the State, thus violating the right to victim reparation.

But, starting a massive land restitution and reparation process amid a conflict poses high risks for the security of victims. And unfortunately, this intuitive argument has been empirically ratified in Colombia, where the people who lead these claims, particularly at this time in which those who are claiming for land restitution are victims of attacks that have taken the lives of tens of male and female leaders. To this extent, if we want a victim policy to have some success chance in this context, it must be articulated with an aggressive policy for the protection and deactivation of risk focal points. In certain ways, the State must start implementing an institutional reform that will allow incorporating non recurrence guarantees, something that is commonly interpreted as a task performed at the end of transition processes.

3.1.3 The Verticality and Horizontality of Violence and the Risk of Excessive Punishability

The third structural topic to discuss in the case of Colombia is where and if criminal punishments can be applied in a context plagued with several violent actors, in which some of them have demobilized, but

32 In Colombia, the involvement of specialized human rights organizations and multilateral organizations has been constant and extensive. Therefore, for example, since 1996 there is an office in Colombia of the Office of the United Nations High Commissioner for Human Rights, with an accompaniment and technical support mandate that authorizes it to issue an annual report on the situation of human rights and international humanitarian law. Moreover, other bodies of the UN system have extensive delegations and mandates in the country, such as the case of the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), which acts as the resident coordinator of the system in Colombia, as well other funds and programs such as UNICEF and UN Women.

others are still part of the conflict. Mainly, the dilemmas are focused, on the one hand, on what to do with thousands of the current demobilized population and to what extent the retribution paradigm of criminal justice should be applied, and, on the other hand, there is a discussion to determine if the same mechanisms should be applied or if it is possible to access more benign frameworks that are traditionally used in the country for the reinsertion of political criminals.³³

As presented in the description of facts, some political positions have defended the thesis that the retributive paradigm of criminal justice has to be abandoned in favor of the implementation of restorative measures focused on individual and collective damages to society and victims, but it should not be focused mainly on punishment. On the other hand, the strong advocates of the campaign against the impunity of the atrocities perpetrated during the conflict defend a full prosecution of all the cases that might be catalogued as international crimes.

This political debate has been associated with an interesting theoretical debate. Some authors, like Orozco (2002, 2003, 2009), insist on the need to analyze the state of affairs to be overcome because the logic and possibilities of pardon are not the same in a transition of a stable dictatorship to a democracy, as the case of a transition from a civil war to peace. According to these approaches, it is necessary to distinguish two types of massive violation of human rights: on the one hand, the cases of dictatorships or totalitarian regimes, such as Nazism or the dictatorships of the Southern Cone, characterized by a victimization or vertical or asymmetrical barbarism, in which the distinction between perpetrators and victims is quite clear because the former exercise violence and the latter suffer from it. On the other hand, civil wars and armed conflicts, in which barbarism is more asymmetrical or horizontal, and the distinction between victims and perpetrators is less clear because each armed actor (with their respective social support bases) is at the same time a victim (since they are the target of attacks by the enemy), but also a perpetrator (because they use violence with other armed actors and their social bases). Therefore, there is a reciprocal victimization. Consequently, the figure of the “avenger” (a victim who becomes a perpetrator) plays an important role in the development of these scenarios of horizontal violence in which the concepts of victim and perpetrator sometimes tend to be confusing.

Based on this distinction, Orozco suggests the thesis that pardons are more legitimate and seem more politically viable and appropriate when there is a transition from horizontal violence to peace, which is usually a “**double transition**,” than in the case of a transition from a stable dictatorship to a democracy, which is a “**simple transition**” (2003). Even though Orozco admits that empirical evidence are far from being conclusive, he thinks it is reasonable to assume that in a double transition, based on horizontal violence or symmetrical barbarism, it is more possible (and even legitimate) to resort to forms of pardons, both for regulatory and factual reasons. On the one hand, in negotiations, the hardest sectors of the parties to a conflict will tend to forge an alliance to implement strategies to avoid a punishment for their atrocities, so the forces in favor of pardons are significant; on the other hand, these warriors -and sectors of their support bases- will tend to deem those pardons legitimate because they see them as forms of reciprocal pardon to the extent that, due to a certain lack of differentiation between victims and perpetrators, each actor sees himself or herself as a victim that forgives his/her perpetrator (the other party) and that he or she has a certain right to be forgiven.

Based on this line of reasoning, some believe that the decisions of the courts that have refused to use legal proceedings to take the 19,000 aforementioned combatants who have used a sacred vision of victims and their rights out of the limbo, and according to which any relative impunity mechanisms, even for crimes that are deemed less serious, lead to the violation of the rights of victims to truth and to the punishment of those responsible for such violations. Therefore, they believe that by following a post-conflict justice model,

33 For a review of political crimes in Colombia, see Orozco (1990) and Sánchez (2011).

criminal justice must be selective and, under such circumstances, conditional amnesties that might become justice mechanisms can be granted (Orozco, 2009).

Nevertheless, even considering the important topic of the distinction between horizontal and vertical violence, the use of a certain degree of punishment is defensible in the country. On the one hand, the atrocity of the crimes against humanity and war crimes calls into question the dominant use of restoration instruments as a dominant scheme because we would be dealing with behaviors, in principle, unforgivable. Consequently, the demand for a retributive punishment of those atrocious behaviors is not a desire for revenge, but the need to publicly condemn and exclude those behaviors from the society that they are trying to establish. As a result, the privileged use of restorative instruments in the face of crimes against humanity is very complicated.

Moreover, in Colombia it is not clear if we are dealing with a massive horizontal violence, with generalized reciprocal forms of victimization. Without excluding that such reciprocal violence exists and can be significant, in Colombia the civil population is suffering multiple victimization by different armed actors. In such a context, there are not any ethical or political reasons for victims, in particular, and the Colombian society, in general, to accept the reciprocal pardons that might be granted at the helm of the armed actors.

Finally, the restorative dimension becomes stronger and more effective when communities share some basic values that allow the request and granting of pardon to reinforce shared values and reconciliation between the offender and the victim. In transitional processes, there is supposedly certain shared vision of the past, as a result of different processes such as the successful activities of a truth commission. Therefore, in South Africa, restorative practices might have been somehow effective because they were based on the general condemnation of Apartheid, which did not have any internal or international advocates. On the other hand, when society is still divided regarding the meaning of the past that we want to overcome, the use of restorative instruments and the calls for reconciliation at any price become quite problematic, if not perverse because they become impunity instruments that tend to delegitimize victims or the social sectors who are demanding justice and are characterized as people or social groups that have not been able to overcome their feelings of revenge.

In political and practical terms, this debate is not solved yet. Quite on the contrary, it has reemerged with the explicit recognition of the armed conflict by the Government and the discussion of a possible framework of peace negotiated with the leftist guerrillas, and with the claims of unconstitutionality that are currently under process in the Court against Law 1424 of 2010.

3.2 Debates of Regulatory and Institutional Adaptation

3.2.1 The Definition of Victim

As any public policy, a victim policy should be based on a definition and identification of their universe of beneficiaries. Based on such an assessment of damages and the population concerned, it is possible to develop proper measures to correct violations and injustice. Moreover, the definition of victims in society sends a public message of fundamental significance. Therefore, it is common to see how governments have tried to adjust or adapt this definition of victim, on the one hand, to limit or restrict the universe of reparations to be granted and, on the other hand, to exclude political enemies of a specific regime from the category of victims.

Something similar has been experienced by Colombia. On the one hand, some people have defended a comprehensive definition of victim, for instance, victim organizations, human rights organizations, international observers, and project drafters. On the other hand, an opposing position believes that the concept of victims should be restricted to those people who have been victimized by actions directly perpetrated by “armed groups outside the law,” pursuant to definitions established by the Justice and Peace Law. This was the position promoted by the former government, their Caucus in Congress, some academics, and opinion columnists. This last position, besides excluding victims who were members of unlawful armed groups, strongly opposes the recognition of the victims of State agents, arguing that this would prevent the fight against leftist guerrillas and prejudice the State for possible liability lawsuits.

3.2.2 The Period to Be Covered by the Victim Policy

Another consequence of the lack of a clear definition about the nature of armed violence in Colombia is the indetermination of the specific period of violence to be overcome with the transition. In other countries, like Argentina, Brazil, Uruguay, or Chile, it has been relatively easy to agree on the dates of their human rights crisis. The beginning and end of repression are relatively clear because everything starts with something similar to a coup d'état and ends with something similar to the overthrow of a dictatorship.

But, as we analyzed, in Colombia there is no consensus about the specific start date of the human rights crisis. For some sectors, the beginning of the armed conflict and the worsening of human rights violations was April 9, 1948, the day when the assassination of a political leader led a historical period referred to as “Violence.” Others believe that the problem is more recent and started with the emergence of leftist guerrillas in the 1960s, or even more recently, with the assassinations and massacres of the 1980s. But, others believe that we have to go earlier than April 9; for example, to the massacre in the banana plantations in 1928.

This topic was in fact intensely discussed in Congress during the debate of the Victim's Law. Initially, a proposal was made to grant reparations to the victims after 1991. This date was adopted without much support and, supposedly, it was done in honor of the Constitution that was passed that year. But this “honor” turned out to be questionable because it did not take into consideration very serious cases, such as most of the genocide of the Patriotic Union and other terrible massacres, such as that of Segovia and Tres Esquinas in 1988. In the final version approved by the law, the chosen date was 1985. For some analysts it was a critical year because the peace processes with the guerrillas failed, the UP extermination began, the paramilitary groups emerged, and the M-19 occupied the Palace of Justice. However, others have criticized the exclusion of victims of abuses from the Security Statute during the Turbay Administration (that started in 1978).

Moreover, the law establishes that the land restitution is aimed at victims of dispossession as of 1991, and that non-economic reparation measures (such as truth, explanation, and satisfaction measures) will apply for every victim, no matter if the victimization took place before 1985. Consequently, the law established three different dates to determine the beginning of the conflict and victimization to be covered.

Moreover, in Colombia there has been a debate, though less important, about when to grant a reparation if the conflict is still taking place. The most restrictive position, defended by the Uribe Administration, was to take the effective date of the law as the beginning date. This position was defeated in Congress and the Victim's Law stipulates that reparation should be granted to every person who has been victimized until the last effective day of the law -which had a ten-year term- and this will lead to the reparation of victims until 2021.

3.2.3 Rationale of the Reparation Measures

There has been an additional debate in Colombia between those who believe the State, as the accountable party –either by act or omission– must acknowledge its responsibility and grant reparations to the victims accordingly, and those who believe that, since they are an armed group outside the law, the main direct perpetrators of the violations, they are the accountable party and, therefore, the reparations to be eventually granted by the State, must be granted without compromising its accountability.

This was the formula adopted in the Justice and Peace Law even though the Constitutional Court explained that the party that should first grant reparations are the perpetrators of the crimes and, as a subsidy –by virtue of the principle of solidarity– the specific group to which the perpetrators belong. Only when the funds are not sufficient to guarantee the reparation of victims, the State should play a residual role to protect the rights of victims and stipulate the amount of the indemnification in the event that the funds of the perpetrators are insufficient.³⁴

During the discussion of the victim’s bill that failed in 2008, this topic caused heated debates. On the one hand, victim organizations defended the position that the reparation program must be based on the recognition of the accountability of the State, its duty to respect and guarantee the rights protected in the national and international regulations, as the only way to dignify, guarantee, and satisfy victims. On the other hand, some supporters of former President Uribe argued that the duty of respect and guarantee cannot be extended to the point of adopting, as a general rule, that in every case of gross violations of human rights, the State is accountable. Moreover, the Government at that time argued that if it accepted the thesis of accountability, it would directly affect the State agents because the recognition of its victims would work as an automatic recognition of their criminal liability, thus violating the right of the State agents to due process.

Finally, Congress adopted a transactional formula to deal with the debate. Moreover, the victims of State agents had to receive reparation, and in order to guarantee that there would not be any legal consequences for the State or its agents, the law specifically stipulated that the granting of an administrative reparation to a victim of a State agent cannot be deemed legal evidence for people who want to go to court and it does not presume any criminal liability of the agents. Nevertheless, to avoid further debates, the law did not specify the accountability of the State. No section of the law stipulated the basis of the reparations, so the symbolic recognition stipulated by the law and which saves the State harmless from any liability becomes weaker.

4. Lessons

The reconstruction of the debates related to the implementation of transitional justice in Colombia shows that we are in the face of a dynamic and contradictory process that has not been totally controlled by anybody, but it has been the result of the interaction between the visions and perspectives, often opposing, of different actors and institutions, with unequal powers and in a turbulent context: the paramilitaries, interested in achieving impunity; the Government that has supported demobilization as an element of its security policy; the human rights and victim groups, which have fought against impunity; national and international judges, who have tried to implement the new standards of the rights of victims; the US government, especially concerned about the drugs trade; other actors of the so-called international community, etc.

That contextual fight is inserted in a regime that has been traditionally characterized by serious ambiguities and paradoxes, something that stresses some of these contradictions, but at the same time, it allows their survival. Therefore, it is not easy to easily define the transitional process in Colombia and its

34 See Constitutional Court. *Sentence C-370 of 2006*.

outcomes even though it is still early to talk about them. Nevertheless, during this five-year debate, it is now possible to point out some characteristics and to draw some lessons about this process which could be implemented in the future. Let's see some of them.

4.1 Potentialities and Risks of the Transitional Justice Discourse

At a theoretical level, there has been an intense debate about the possible definition of transitional justice because, as pointed out by its scholars, the concept itself is malleable and is based on a series of processes difficult to characterize. Such a flexibility of the concept of transitional justice, as well its potential uses, has been evident in the Colombian political practices, in which there has been an fierce fight for the appropriation of the sense of transitional justice. While some sectors have emphasized reconciliation, thus reducing transitional justice to a weak form of restorative justice, which favors the impunity of atrocious crimes, other sectors, particularly human rights and victim groups, have emphasized the demand for justice and have insisted on the idea that every transition must respect the rights of victims. Consequently, there have been different uses, but there have also been abuses of the transitional justice approaches in Colombia: some have been more democratic and in favor of the victims; others have been more authoritarian and in favor of impunity (Saffon and Uprimny, 2008).

The existence of these two uses of the discourse explains, to some degree, the paradoxical fact that, in a context where there is no transition, most political actors use the language of transitional justice even though they have different and even contradictory interests and purposes. In Colombia, in the framework of negotiations between the Government and the paramilitaries, the discourse of transitional justice is used both as a mechanism to conceal impunity and as an instrument to fight impunity.

Under these circumstances, the Colombian experience shows that the implementation of mechanisms typical of this form of justice can lead to significant democratic and emancipatory discourses, particularly for the guarantee of the right of victims of gross violations of human rights. Undoubtedly, this can prove to be very positive in contexts where there has not been a total elimination of the flashpoints of violence and violations. Nevertheless, the paradigm of transitional justice and the malleability of its own definition can be an advantage for those who are seeking to foster the impunity of present and past violations. Consequently, the acceptance of discourses, standards, and mechanisms is essential to determine, in any context, the qualities and risks of betting for the implementation of a transitional framework.

4.2 Importance of the Regulatory Standards for the Implementation of Highly Polarized Processes

An important lesson of the Colombian experience is that the legal standards of transitional justice can operate as virtuous restrictions that guide the negotiation processes and that, by doing it, they shape those purposes, thus joining opposing interests and expectations together. In spite of the debates about the content and scope of the mechanisms, something that has not been called into question in Colombia is the existence of international standards and their mandatory implementation in the country. In fact, in a very short time the discussions reached a consensus about the existence of some rights that could not be ignored during these discussions. However, something that did not achieve a fast consensus was the content and scope of those rights. Nonetheless, the first agreement significantly restricted the options of discussion and guided, so to speak, many debates related to the nature and content of some mechanisms. For example, this can be seen in the discussion of the Victim's Law, in which it was possible to reach some consensus that would have seemed impossible some time ago.

Consequently, we believe that the Colombian experience calls for a careful and suspecting use of transitional justice, which entails the defense of the existence of a minimum, but non-negotiable, content

of legal standards of the rights of victims, as virtuous restrictions that do not impose obstacles to the peace negotiations, but they rather channel them. In fact, the defense of this hard core of legal standards is important because it emphasizes the thesis that there is a regulatory matching of the peace negotiations, particularly due to the new international environment, which makes armed actors have less radical stances and be closer to consensual spaces, where every actor accepts the impossibility of overriding the rights of victims in favor of achieving peace and the need to somehow satisfy these rights.

4.3 Internal and Reflexive Discussion of Standards When Developing a Public Policy

While the human rights standards are an important contribution for the shaping of more democratic transitions based on humanitarian principles, which make them more sustainable and permanent, inserting them in national contexts is not an easy task. On the one hand, an automatic and irreflexive importation of regulatory standards might lead to the tightening of the parties and a resulting proscription of dialogue, and to very limited options to establish mechanisms to generate a transition. On the other hand, regulatory standards do not represent a finished roadmap to know how to make progress in the negotiations, reform the institutions and political culture, or find the best mechanisms and distribution channels to meet the required standards. Therefore, those standards should be adapted to the local reality and propose new regulatory and institutional frameworks to develop them because international regulatory parameters are just a contribution to the beginning of the process.

In that context, the success of Colombia lies in the fact that human rights groups were able to creatively “translate” those international standards in the Colombian debate³⁵, so they not only critically strengthened their political and legal claims against impunity, but they also significantly influenced the ability of the public opinion to start dealing with the issue.

Therefore, such international standards for the rights of victims could initially become local legal decisions because Colombia has an important tradition of judicial independence,³⁶ and after the Constitution of 1991, and largely due to the work of the Constitutional Court and based on the concept of the constitutionality bloc, the judges have been open to the international law on human rights and a growing sensitivity to the rights of victims.

This situation made courts such as the Constitutional Court and the Supreme Court of Justice to strongly defend the rights of victims and the implementation of those new international standards in the Colombian context, so they were able to modify the possible agreements that might been reached by the Government and the paramilitaries regarding impunity. The Colombian judicial independence introduced the uncertainty about the dynamics of the negotiations between the Government and the “paras,” a somehow democratic uncertainty because it also allowed specifying, through certain regulations, the scope of the rights of victims. Therefore, there has been a sort of tacit alliance between certain sectors of the Colombian Judiciary and such transnational activism networks against impunity in Colombia. Therefore, the law, applied by the judges, was able to somehow limit the impunity strategy sought by the paramilitaries, with the approval of the Government.

That translation of standards has gone farther and has produced important academic and public policy developments. In the area of reparations, for example, the Colombian debate provides the comparative transition area with valuable conceptual discussions, such as discussing the purposes of a massive reparation

35 Regarding the idea that some human rights activists are a kind of “translators” or intermediaries between the international human rights standards and the local fights, see Merry (2006). This author shows that these activists translate the abstract human rights standards in the language of the local culture, so they can be more easily incorporated in the local fights, and at the same time, those activists also contribute to building, based on local experiences and claims, those international standards.

36 Regarding the important judicial independence in Colombia, see Uprimny, García-Villegas, and Rodríguez (2006).

policy in contexts characterized by poverty and exclusion; reflections about the conceptual distinction and practical articulation between different obligations and actions of the State, such as social policies, humanitarian aid and reparations, as well as proposals for institutional development to deal with the massive processes of property restitution or to foster truth disclosure and historical memory processes in contexts that are still violent, among others. Some of these theoretical accumulations have been subject to developments oriented to true mechanisms of public policy, as seen after the establishment of the mechanisms set forth in the Victim's and Land Restitution Law.

4.4 The Significant Strength of the Victims: Transitional Justice from Below³⁷

A fourth positive experience of the Colombian process so far – and that should be undoubtedly used – is the promotion of transitional justice “*from below*,” which seeks to incorporate the voices, opinions, needs, and demands of the communities and victims that seek to exercise their right to reparations in the Colombian context. A transition process must be aimed at counteracting the exclusion of the victims of society, particularly in the public decision making. The reparation measures must be then a message of recognition for the victims by the rest of society and solidarity in the face of unfair suffering. In that context, a participative process in the area of the rights of victims is not only necessary but also desirable because it has an important reparation effect by counteracting the fragmentation and fostering and strengthening victim organizations.

As discussed throughout the text, the victims of human rights violations in Colombia suffer from a high level of social vulnerability derived not only from the different and profound effects of crimes on their victims, from the points of view of intangible assets and net worth. Moreover, the stratum and composition of this population indicate that systematic violations, especially forced displacement, have been perpetrated against social sectors that were already vulnerable and excluded, such as peasants, women, young people and children, ethnic minorities, and people with disabilities, among others. In Colombia, even though the middle and high strata of society have also been victims of armed conflict, particularly, kidnappings, it is true that most victims of atrocious crimes perpetrated under an armed conflict situation come from traditionally vulnerable and excluded populations, even though it is evident that the situation of displacement significantly worsens the vulnerability and marginalization of victims.

Moreover, historically public policies have not had effective participation mechanisms that guarantee that the opinions and perspectives of the victims will be heard in the process of developing policies and laws. However, this is not a unique characteristic of the Colombian case. It has been repeated in several processes of transitional justice in the world. All over the world, the efforts of national transformation have been fostered to the detriment of local experiences and initiatives. The logic explaining this tendency is reasonable: transitional societies usually undergo such institutional and social ruptures that the only possibility of achieving a fast transformation is through centralized measures, with a strong political support and significant financial resources. The main issue is, then, how to make sure that this kind of efforts will be achieved in a society that has democratic structures that have been weakened by conflicts. The favorite response to solve this dilemman has been to strengthen a unified and centralized public policy with universal claims.

As long as a large part of the transformation is based on the rescue of values such as national unity and the Rule of Law, it is important for democratic reconstruction policies to come from a legitimized and strong political body, which can make these agendas progress. Moreover, the construction of cohesion and civic trust largely depends on the implementation of standard measures that guarantee a minimum material

37 Regarding the concept of “*Justicia transicional desde abajo*” see McEvoy and McGregor (2008); Bell *et al.* (2007); Robins (2011); Arriaza and Arriaza (2008); Theidon (2007).

equality. Finally, a democratic transformation requires the State, as the object of international law and main guarantor of human rights to play role of respect and guarantee of such rights, which leads its institutional structures to take on a responsibility that they have been unable to fulfill in the past.

Therefore, the objectives of the centralization of policies are not insignificant. In fact, a sustainable and permanent peace in a context of respect for human rights requires certain degree of significant institutional strengthening, as well as generalized public messages addressed to the victims of violations and to society as a whole.

Nevertheless, the tendency to unloading all the expectations on the State, especially Governments, has led to a disassociation between the agenda of public policy makers, on the one hand, and the expectations and needs of the victims, on the other hand. The international experiences of transitions show a large debt regarding the participation of victims in the process of transformation and, in turn, the failure of many of these experiences is largely explained by this same lack of participation.

For years, different social scientists, victim organizations, and international agencies have stressed the deficiencies of this vision focused exclusively on the centralized power of the State. It is important to mention two examples of criticism. On the one hand, some people say that the centralization of transitional processes are naïve and, thus, limited by assuming that the discourses of the State or the bourgeoisie will be translated directly at a local level, as it is expected in the “Establishment.” A common example to explain this criticism is the ideal time to achieve peace. Critics point out that the signing of peace declarations and agreements, while they are symbolic times of social cohesion, it is naïve to think that, by themselves, they will lead, locally, to the dismantling of the conflict and to reconciliation. In general, the international experiences have tended to giving an excessive importance to the meaning of these moments of peace to the detriment of the peace achieving process and of the local efforts that really contribute to the ceasing of conflicts. Peace, according to these critics, is a process that is achieved when conflicts cease in our daily life, not when a declaration or agreement is signed.

On the other hand, according to the critics, the role of victims, even in the exercises of peace, has been marginal and, so to speak, merely procedural. In theory, and in the political discourse, justice is a right of the victims and, therefore, all the activities that seek to do justice and punish the perpetrators of violations are aimed at meeting the needs of victims. Nevertheless, the advanced criminal process, in most cases, does not take into account the voice and needs of victims. In criminal proceedings, the focus of attention is usually on the accused, not on the victim. Victims are called only when they are necessary to support the investigation as witnesses, as an additional element of evidence, but without any possibility of participating further.

Based on considerations like these, most of the critics have been disappointed, so to speak, at all those unified and institutionalized transition exercises and at the effectiveness of the foreign or “exogenous” transition formulas, even those that have been legitimized based on the discourse of international standards of human rights. On the contrary, these critics have given a significance to the local and community initiatives, both in terms of justice and the construction of peace and reconciliation (McEvoy and McGregor, 2008; Bell *et al.*, 2007).

The Colombian experience has tried – though in a shy way – to make these two approximations have a dialogue. By themselves, they seem to be incomplete and inconvenient. On the one hand, it is up to the State, *vis à vis* its constitutional and international obligations, to take coherent, coordinated, and effective actions to guarantee a democratic transition process that respects human rights standards. On the other hand, any measure or public policy in favor of the victims that is not based on deliberative and consultative processes will be disrespectful of the human rights standards, and, eventually, it will be ineffective. First,

the standards of the International Law on Human Rights are based on the principle of citizen participation in the development, adoption, and implementation of public policies. A public policy cannot claim to have a rights approach if it is not based on a transparent and participative process. Second, a democratic transition process that does not include the expectations and needs of the victims has little chance of achieving the degree of social inclusion necessary and of counterattacking the polarizations of the past. The process to build public policy proposals is understood as a process to reestablish the citizenship, empowerment, and dignification of victims.

Therefore, the experience of the Colombian case points out that it is necessary to balance the centralized efforts to achieve the transition and the democratic transformation of society, with the voices of the victims and the local efforts to build peace and achieve reconciliation.

4. As a Conclusion

In Colombia, the discussion and implementation of measures under a democratic transition process is relatively recent as compared to other countries in the continent, such as the countries of the Southern Cone or Central America. In spite of this, such measures have led to heated discussions about the practical application of transitional mechanisms in a reality such as that of Colombia, and about the best way to achieve the objectives of a democratic transition.

The discussions are based on the concept of transitional justice because due to the validity of an armed conflict that does not cease to exist, such as the Colombian case, it is ambiguous to talk about the implementation of “measures to deal with the past,” or about the term “transition.” Moreover, the features of the Colombian armed conflict –whose characterization is also a topic of discussion – make the implementation of such measures even more difficult. For example, it is important to determine the best negotiation parameters for armed groups, when they are part of different structures and with different objectives; the scope of the obligations of the State of punishing the perpetrators of violations of human rights, or the responsibility of the State for acts perpetrated by unofficial armed groups.

In spite of these debates, and because the circumstances of the conflict remain, the country has developed a series of important mechanisms associated with the framework of transitional justice, and the rights of victims are always a topic of discussion – these rights have been legally recognized – as well as the need to implement mechanisms that guarantee those rights.

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El Salvador: Transitional Justice? Traditional Impunity?

Benjamín Cuéllar Martínez

*In fact, the people who have lost their families
shut themselves in a world of suffering
and do not think it is important to express how they feel.
Or they do not trust anyone to say 'I want to talk about all this.'
So, this is one of the things we are facing: there is no confidence in the system.
Therefore, victims continue being victims.
And something worse than being victims, they are the poorest and most humble people.
(María Santos Miriam Rodríguez de Chicas)*

Introduction

The disrespect for the popular majority,¹ materialized in the systematic violation of their dignity, was both a cause and a consequence of a war that for more than eleven years shattered lives and values, infrastructure, and assets; it also devastated a society that was not inclusive or balanced at all in different areas. That reality denied equity, justice, and a political participation to the majority of the population. A radical change of such a scenario was a widespread aspiration that settled inside and outside the country at the end of the long confrontation between the then-Government and the then-insurgent Farabundo Martí National Liberation Front (FMLN).

The human dimension of the Salvadoran conflict, due to its figures and characteristics, was attested by the Truth Commission report. Its suggestive title was a true reflection of the situation: “From Madness to Hope.” The structural causes that increased governmental repression, generated guerrilla violence, and sparked off the war conflict –with its most atrocious manifestations²- represent the highest expression of the former. In such a context and for long time,³ the performance of the justice system remained “trapped with no way out” by factual powers.⁴ After “the madness,” there was “hope” to build a different El Salvador. A “common house” where everybody, without any distinctions, will live in a home built with a few “planes”⁵ where the foundations were clear.⁵

The United Nations called the set of agreements between belligerent parties “the road to peace.” It was the master key to close the door to the armed conflict and open it to the legitimate desire to achieve a safe and harmonious collective coexistence. This was very different from the precarious situation prevailing twenty years after the end of hostilities because what they were seeking was a solid and long-lasting peace based on truth and justice for the popular majorities, in every aspect of the social relationships.

Truth and justice for the victims of the violations of the International Human Rights Law and International Humanitarian Law, which were very severe and numerous. The fatal victims of such a war between 1980 and 1992 were nearly 70,000. But also, truth and justice should be applied to the perpetrators and the country. Moreover, perpetrators should recover their status as people through the collective investigation of their accountability and an impartial lawsuit, with all the due guarantees, to be pardoned, if granted by their

- 1 For Ignacio Ellacuría such a population “lives under circumstances in which they can hardly meet their basic fundamental needs” and is “marginalized with regard to the elitist minorities which, still accounting for the smallest portion of mankind, use most of the available resources for their own good.” Their destitute status does not come from “natural laws or personal or group negligence, but from historical social structures” that put it “in a strictly deprivation situation, and not a merely deficiency situation” regarding everything owed to this society as a result of its exploitation or because it is indirectly prevented from “using its labor force or its political initiative.”
- 2 Summary executions, illegal detentions, enforced disappearances, and massacres, among others.
- 3 Before the presidential, legislative, and municipal elections of 1972, the official repression was already severe. After said elections and a failed coup d’état, the situation worsened. Two important events help us understand the economic, social, and political climate which became “more and more heated”: the war against Honduras in July 1969, together with the abduction and murder in February 1971 of Ernesto Regalado –a member of the “fourteen most powerful families” in the country – perpetrated by an early guerrilla. See Cuéllar, B. (2007). El Salvador. In Due Process of Law Foundation. *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America: The Cases of Argentina, Guatemala, El Salvador, and Peru*. Mexico: Human Rights Commission of Mexico City. Pages 56-67. Available at <http://www.dplf.org/uploads/1202485080.pdf>.
- 4 “Many of these accusations of repression, intimidation, and imposition were very difficult to prove without the cooperation of the Government, the Legislative Assembly, and the Courts. Only through the calmness to be achieved over the years, we will be able to prove the level of response to such a reality.” (page 51). In Hernández-Pico, J., (et. al.). (1973). *El Salvador: Año político 1971-1972*. Publications of Universidad Centroamericana José Simeón Cañas. Guatemala: Editorial Piedra Santa.
- 5 First peace accord between the Government and the FMLN signed in Geneva on April 4, 1990. Some of the purposes of the process were: end war through political means in the short run, democratize the country, an unrestricted respect for human rights, and the reunification of society.

victims.⁶ For El Salvador, the blood that continues to be shed by the popular majorities will not decrease until society and the governmental bodies propose –once and for all– a determined and final end to impunity. If political violence was overcome two decades ago, the great challenge now is to overcome a policy that generates more violence. We are talking about the lack of punishment of crimes.

What dear Luis “Lucho” Pérez Aguirre stated in 1996: “If it is impossible to prove that impunity has no place in society because it has been possible to access the truth of what happened and do justice to create the conditions of reconciliation, such a society is doing a political harakiri; it is moving on a cliff toward a fate of ethical and social suicide”⁷ is “a perfect fit” for this irresponsible management of the “transition.”

1. The Magnitude of “Madness”

The Truth Commission⁸ investigated a relevant number of atrocities, but not all. The daunting task, the allocated human resources and materials, the investigation restrictions⁹ and their reporting period –six months after three of its members took office and¹⁰ which later increased to eight – contributed to this situation. But moreover, something crucial that was not considered nor was it solved, to build trust and security for those who suffered gross violations was the fear of the surviving victims and their certainty that something inescapable was to continue coexisting with the perpetrators in their communities while the structural military power was threatening. They had to live under a situation of pain and fear; they also had to coexist with those who were responsible. María Santos Miriam Rodríguez de Chicas summarizes this: “I remember when we started to perform all the tasks related to The Mozote; there were no witnesses at that time. Of course, we were just ending a war; all the people feared that they would be also victims.”¹¹

This condition of logical and understandable fear could have been overcome if there had been previous public manifestations among perpetrators acknowledging the facts or facilitating the search for the disappeared; however, nothing like this happened. Regarding the risks of a general pardon, exclusively social and political, Pérez Aguirre said that there should be: “... the means to overcome the vicious circle of revenge in their own hands, but never at the expense of incorporating the unrepentant enemies, with their

6 “[...] in order to achieve the goal of pardon, we must pause and weigh certain consequences which can be inferred from the knowledge of truth [...] One such consequence, perhaps the most difficult to address under the country’s current situation, is that of fulfilling the twofold requirement of justice: punishing the perpetrators and adequately compensating the victims and their families” (page 321). Betancur, B., (*et. al.*). (1993). From Madness to Hope. The 12-Year War in El Salvador. Report of the Truth Commission for El Salvador. In *Revista Estudios Centroamericanos* (ECA). XLVIII Year.

7 Pérez, L. (1996). *La impunidad impide la reconciliación nacional*. Intervention in an international seminar on impunity and its effects on democratic processes. Santiago.

8 The creation of the Truth Commission was defined on April 27, 1991, in the Mexico Agreements; in this city it was ratified on January 16, 1992, through the Final Peace Accord known as the Chapultepec Agreement.

9 Item IV of the Mexico Agreements determined that it would only investigate “serious acts of violence that have occurred since 1980 and whose impact on society urgently requires the public to know the truth.”

10 On July 12, 1992 at the United Nations, New York, before the recently appointed Secretary General: Boutros Boutros-Ghali.

11 Municipal Mayor of Perquín, Department of Morazán, from 2000 to 2012. She said, “I worked in the base ecclesial communities. I was part of the organization ‘Christian Mothers for Peace.’ We played the role of advocates of human rights of the population. We did a support work when there were detentions. We dared to talk to the military officers to see if it was possible to release them; we reported these incidents. We worked by helping communities through the International Committee of the Red Cross (ICRC), with the Archbishop; they gave us food and clothing. What was difficult was to take things there. We had to pass by the DM-4 (Military Detachment 4); we had to fight against them; we had to request authorizations. At that time, we had to find solutions. It was interesting to see how organized women were. Then, I also worked on health issues and then on literacy activities. Then, I was involved in politics in 1993. That’s why I am still here.”

hatred and injustice in the community, and doing without a serious and thorough analysis of the purposes. It would be like having a wolf in the middle of a flock of sheep.”¹²

Moreover and especially, strategic actions should have been taken to overcome the lack of confidence of the victims if they should have been reassured –because they are the most affected party with the least protagonist in the attempt to disclose the truth– that the next outcome would be justice. Second, this should have been demanded both by the United Nations –in the Human Rights Division of the ONUSAL¹³, with the strong support of the Secretary General– and by the Truth Commission, based on its mandate.¹⁴

Nevertheless, this Commission heard 2,000 direct testimonies that involved over 7,000 victims; the information from secondary sources produced over 20,000¹⁵. According to the type of facts, the result was as follows: homicides 54.71% of the total, enforced disappearances 20.67%, torture 20.70% and “others” 3.92%.¹⁶ However, as pointed out above, the efforts by this institution, temporary but essential for the success of the process and aimed at the full restoration of the dignity of the victims, fell short in the face of the brutality recorded by national and international social human rights organizations and the inter-governmental protection systems.¹⁷

This was evident when the aforementioned Commission concluded its account of the devastation by warning that “the brief chronological overview is just part of the tragic events in the recent history of that country.”¹⁸ Those “tragic events” were not the result of “rotten apples” in the military that spread panic, or “terrorist criminals” who “executed” their “enemies.” Their accountability must be quantified but, most of all, the quality of the accountability must be determined. After adding the accountability of the State agents and groups who acted with their consent and support, the balance surpassed 90% of the total. The importance of this must not be denied; however, there are still people who deny it.

Moreover, the Governments and the state institutions at that time carried the burden of having done quite the opposite of their constitutional mandate: guarantee the respect for human rights. Specifically, the Commission held the Armed Forces of El Salvador (FAES) accountable for 46.59% of the cases; the security groups 20.87%; the paramilitary organizations 16.62%; the death squadrons 7.18%; the groups of “unidentified armed men” 5.42%, and the FMLN 3.32%.

2. The Agony of “Hope”

The aforementioned “planes” that the country was planning to build started to be manipulated and distorted, especially as of March 20, 1993. There were signs pointing to that direction even though the United Nations verified the compliance with the commitments made by the parties to leave war behind and embark on a peace-making journey. But that day, five days after submitting the report of the Truth Commission in New York, the Legislative Assembly passed the General Amnesty Law for the Consolidation of Peace; on that day truth and justice were linked.¹⁹ On March 14 of that year, supported by his presidential investiture,

12 Pérez, L. Op. cit.

13 UN Observer Mission in El Salvador.

14 “The need to create confidence in the positive changes which the peace process is promoting and to assist to the transition to national reconciliation.” Subparagraph b, item IV. Mexico Agreements.

15 Betancur, B. (*et. al.*). (Op. Cit).

16 Severe injuries, extortive abduction, rape, and other gross acts of violence.

17 For a better understanding, see Cuéllar, B. (2010). El Salvador. In Due Process of Law Foundation. *Victims and Transitional Justice. Are Latin American States of Complying with International Standards?* Washington. Pages 130-134. Also available at <http://www.dplf.org/uploads/1285258696.pdf>.

18 Betancur, B. (*et. al.*). (Op. Cit.). P. 196.

19 Voted by the Nationalist Republican Alliance (ARENA), the National Reconciliation Party (PCN), and the Authentic Christian Movement (MAC).

Alfredo Cristiani asked for a comprehensive, general, and absolute amnesty for the offenders as set forth in the report. This request fell on fertile soil: Parliament responded without waiting for the population to know the contents of the report or hearing the victims.

As reinforcement of impunity and in tune with the way of conducting the alleged “deputation” of the FAES,²⁰ amnesty favored those who violated human rights, perpetrated crimes against humanity and crimes of war; it has also hindered the “path to peace.” It also closed the door to the conscious forgiveness by the victims, the acceptance of guilt by the perpetrators and dangerously kept judicial structures that, in an unsuitable use of their powers, tolerated and covered up practices of serious disrespect for individual and collective dignity.

Resorting to a specific amnesty to stop a criminal act for a specific case is possible within the framework of transitional justice provided it does not breach the International Human Rights Law and International Humanitarian Law, as it happens with “self-amnesties”²¹ and the amnesties negotiated between criminals to guarantee their impunity. Therefore, the Inter-American Court of Human Rights warned the Salvadoran State that it had to avoid using those figures; and also about “... the prescription or the establishment of measures designed to eliminate responsibility, or measures intended to prevent criminal prosecution or suppress the effects of a conviction.”²² Instead, its duty was to investigate and punish those responsible “... for gross violations of human rights such as torture, summary, extralegal, or arbitrary executions, and enforced disappearances, [...] forbidden because they contravene non-derogable rights [...]”²³.

Since the amnesty of March 20, 1993 was an affront to the victims, the State resorted to Protocol II of the Geneva Agreements to “defend” it. Six days after its approval and before the expiration of the term that Cristiani had to pass, veto, or abide by it, the Inter-American Commission on Human Rights (IACHR) tried to convince him to come to his senses and think in terms of the victims, but the decision was final from the perspective of the interest of the State and individual perpetrators.²⁴

Therefore, there was a strengthening of impunity whose solution was defined as necessary by the signatory parties to the agreements, which had also accepted to prosecute the acts investigated by the Truth Commission regardless of their perpetrators.²⁵ They also agreed, voluntarily and sovereignly, to cooperate with the Commission and observe its recommendations.²⁶ But with the amnesty officially imposed by three political parties, the surviving victims and their families were denied the right to truth and the possibility to receive decent and complete reparation for the damages they suffered. On the other hand, perpetrators were not punished either.

20 Therefore, another transitional mechanism was created in 1992: the *ad hoc* Commission to deparure the military institution, whose members, unlike those of the Truth Commission, were Salvadoran.

21 “The laws of self-amnesty lead to the defenselessness of the victims and to the perpetuation of the impunity, whereby they are manifestly incompatible with the letter and the spirit of the American Convention. These laws hinder the identification of the individuals responsible for violations of human rights, as obstacles as created to the investigation and the access to justice, preventing the victims and their relatives from knowing the truth and receiving the corresponding reparation.” Inter-American Court of Human Rights. *Case of Barrios Altos vs. Perú*. Judgment of March 14, 2011. Merits, number 41.

22 Inter-American Court of Human Rights. *Case of the Serrano Cruz Sisters vs. El Salvador*. Judgment of March 1, 2005. Merits, reparations, and costs. Number 172.

23 Inter-American Court of Human Rights. (2005).

24 IACHR. (1994). General Conclusions of the Report on the Situation of Human Rights in El Salvador. (Number 4, item II). Available at <http://www.cidh.oas.org/countryrep/ElSalvador94sp/indice.html>.

25 Chapultepec Agreement. (Number 5, chapter I).

26 They did it in the Mexico Agreement. Regarding the compliance with the conclusions and recommendations of the Truth Commission, see Cuéllar, B. (2005). *Los dos rostros de la sociedad salvadoreña*. In G., Pacheco, L., Acevedo. (Eds.). *Truth, Justice, and Reparation*. IIHR/IDEA. San José. Available at http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_395509089/IDEA-IIDH.pdf.

The other side of the coin was the failure to comply with the recommendations of the Truth Commission aimed at reforming, essentially, a justice system trapped by intimidation and corruption within the framework of a State at the service of privileged groups. With such a battered “institutionalism” accessory to the brutality, the concerns of the Commission were valid.²⁷ But the formal and actual powers decided to keep it that way, for their own benefit. Therefore, Cristiani asked to “turn such a painful page of our history and seek a better future for our country.”²⁸ Both the military leadership²⁹ and the plenary Supreme Court of Justice (CSJ)³⁰ objected the Commission and its report. The party founded by Roberto D’Abuissón³¹ also objected the Commission and defended its leader. The Nationalist Republican Alliance (ARENA), controlling the state apparatus, said that it was “turning [sic] this sad this sad page of violence and terror [...]”³². Period! So unilateral and arbitrary, with its usual prepotent and proud attitude.

Due to this attitude and particularly the opposition to justice, it did not undertake urgent substantial reforms to change the system for the sake of a peaceful El Salvador; therefore, there were cries for a reversal of amnesty and a return to the original “planes” of such a different country. Among others, four entities expressed their concerns: the Human Rights Commission of El Salvador, the Human Rights Department of the Lutheran Synod, the Human Rights Institute of the Central American University “José Simeón Cañas” (IDHUCA), and the Christian Legal Aid.

In the report by the Truth Commission –as they stated– the most outstanding recommendations are:

a judicial system and the administration of justice, especially an urgent and immediate restructuring of the Supreme Court of Justice [...] After March 15, the main problem to solve –as pointed out by the Truth Commission– is not ‘whether or not to punish the perpetrators, but if justice can be done.’ The determination regarding the individual and social pardon for those responsible for the acts had to be delayed until the establishment of the minimal conditions so that the victims made a conscious decision and exercised their legitimate right upon knowing the truth and having fulfilled their demand for justice.³³

Two small legislative factions at that time³⁴ opposed amnesty before it was approved, but they did not make a statement afterwards. The FMLN, upon becoming part of the system even though it fought against with it, through a brief communication on March 15, 1993 objected “the idea of an immediate amnesty;”³⁵ however, it conditioned its consent for the results of “the investigations about the death squadrons and [to] the compliance with all the recommendations”³⁶ of the Truth Commission. Then, it reiterated its rejection for the “hasty approval that was not based on a national consensus.”³⁷

27 “How could we understand the modus operandi of the death squadrons? The disappearance of a large number of people, the attempts against important governmental officials, Church leaders, and judges, and the fact that the people responsible for those atrocities were rarely prosecuted? The irony is that such a tangle of corruption, shyness, and weakness of the Judiciary and its investigation units hindered the effective performance of the Judiciary, even in the cases of crimes attributed to the FMLN.” (page 312). Betancur, B. (*et. al.*). (*Op. cit.*).

28 Universidad Centroamericana José Simeón Cañas. (1993). Lic. Alfredo Cristiani, President of the Republic. Address to the nation, March 18, 1993. In *Revista Estudios Centroamericanos (ECA)*. XLVIII Year. Page 484.

29 *Ibid.* Armed Forces of El Salvador, position regarding the Report of the Truth Commission. Page 485.

30 *Ibid.* Supreme Court of Justice, official response to the report and recommendations of the Truth Commission. Page 490.

31 Mastermind of the assassination of Monsignor Óscar Arnulfo Romero, according to the Truth Commission.

32 *Ibid.* Nationalist Republic Alliance (ARENA). *A la conciencia nacional e internacional*. Pages 490-491.

33 *Ibid.* Human Rights Institute of the Central American University (IDHUCA), Human Rights Commission of El Salvador, Christian Legal Aid “Monseñor Romero,” Human Rights Department of the Luther Synod. Pardon cannot be imposed by decree. Page 494.

34 Democratic Convergence (CD) and Nationalist Democratic Union (UDN).

35 Universidad Centroamericana José Simeón Cañas. (1993). *Comisión política del FMLN*. Communication. En *Revista Estudios Centroamericanos (ECA)*. (Año XLVIII). P. 491.

36 *Ibid.* FMLN political commission. Communication. Page 492.

37 *Ibid.*

The arrogant forceful position of the Government, the military officers, the leaders of the Judiciary and ARENA—in an alliance with two related political parties—was imposed on the shy stance of the FMLN, Democratic Convergence (CD), and Nationalist Democratic Union (UDN). The clearer and stronger opinion of the social organizations was not considered, and victims were not even cared for. Therefore, the situation had to be clear to those who had to be the protagonists of a transition in which the good or bad health of justice was undoubtedly at the core. The process that started in Geneva on April 4, 1990 was at a crucial stage: the decision by the signatory parties to the agreements about impunity. The clarity by one party and the hesitation by the other party relegated the victims and society even though it was definitely their responsibility.

In the end, it was a matter of power.³⁸ From that perspective, after a bad start, the following questions had to be answered and actions had to be taken: Which power would prevail in the future? The power of the so-far unpunished violating perpetrators, who had the reins in their hands or who were controlling those who had the reins? Or, the power of the victims who, regardless of their imposed marginalization, had to break in to defend their legitimate rights?

In such a scenario, at an early stage, building a different country was “uphill;” and it was a bad omen because the basic principles of the recommendations of the Truth Commission were violated, “democracy”: it was denied because the decision-making process did not include the popular majorities and because there was no dialogue or negotiation in such an exercise; “participation”: because these majorities were not considered, so the participation was neither respectful nor solidary; the “Rule of Law”: it was rejected because of the violation of the basic internal rules and evading the international duties because amnesty was approved; and the “respect for human rights”: they were the “raison d’être of these principles and the foundations of a society organized at the service of people, who were all considered free and decent.” Those four guarantees for a good implementation of the agreed-upon process were not fulfilled, so this explains what happened with such a process.³⁹

A similar fate was experienced by the efforts by the *ad hoc* Commission to depurate the FAES and the group for the investigation of illegal armed groups that had a political motivation in El Salvador⁴⁰, as the death squadrons were nicknamed. In both, recommendations were not properly followed and most were not followed at all, including the most important ones.

The *ad hoc* Commission started on May 19, 1992, based on certain criteria.⁴¹ Within three months, it had to examine the performance of 2,203 military officers until May 22, 1992; then one more was added. Such a

38 “The power elite that control the economy, politics, and mass communications [...] show no signs of budging. Why should they? Why would they expose themselves by ending the impunity that shields some of them and many others who served them well, before and during the war? Genuine democratization of the Salvadoran society, unrestricted respect for human rights, and social reconciliation—the three overarching and as-yet unrealized objectives of the Salvadoran peace process born in Geneva in April 1990—constitutes too high a risk to the interests of this sector. The peace process came about because the power elite was confronted with a countervailing power that could compel them to sit down, negotiate, and reach agreements [...] Yet this confluence of forces was not potent enough to achieve more far-reaching goals, and it gradually broke apart without leaving behind a durable counterforce to ensure full compliance with all of the commitments made.” Cuéllar, B. (2007). El Salvador. In: Due Process of Law Foundation. *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America: The Cases of Argentina, Guatemala, El Salvador, and Peru*. P. 94. Available at <http://www.dplf.org/uploads/1202485080.pdf>.

39 Betancur, B. (*et. al.*). (Op. Cit.).

40 The depuration was agreed in New York on September 25, 1991; the temporary entity that would investigate the death squadrons, following the recommendation of the Truth Commission in March 1992, was created until December 8 of that year.

41 According to item A, number 3, item I of the Chapultepec Agreement would consider “the past performance of each officer including, in particular: (1) his record of observance of the legal order, with particular emphasis on the respect for human rights;” “his professional competence,” and “his capacity to function in the new situation of peace, within the context of a democratic society, and to promote the democratization of the country, guarantee unrestricted respect for human rights and reunify the Salvadoran society.”

daunting task was performed in a very short time, without many possibilities of collecting official information, and social organizations composed of surviving victims, victims' families or activists and professionals who supported them were not able to provide accurate details of individual perpetrators. They were not in a position to contribute more due to the lack of information and resources, and due to the attitude of the formal and actual powers, among which the army remained immune and unpunished. Therefore, only 240 files were examined, that is, 10.89% of the total.

Its recommendations had to be implemented by October 22, 1992, a month after submitting the report. But this did not happen. The general Order of changes on December 31 only included routine relocations and three officers were dismissed after being accused for common crimes. Signed by the General Commander of the FAES, Cristiani, it had a "confidential addition" that proposed to Boutros-Ghali to phase the depuration until March 1994 to guarantee the "stability" of the process. Therefore, "honorable" retirements of military officers were guaranteed until the end of their service and also to guarantee an advantageous retirement.

Days after issuing the general Order of changes on April 30, 1993, also a routine order, the Minister of National Defense—General René Emilio Ponce, accused of ordering the execution of Julia Elba Ramos, her daughter Celina and six Jesuits on November 16, 1989— said that no civilian would replace him because his peers knew the military art and science. It was until July 1, 1993 that Cristiani followed some recommendations made by the *ad hoc* Commission. But the late changes in the FAES confirmed that their leaders continued to hold the power and disclosed how they would continue exercising power in the future to guarantee their impunity.

The investigation about the death squadrons was another lost opportunity in the attempt to overcome impunity. If its proposals would have been adopted with a country vision—if the Government would have adopted them and if the FMLN would have strongly required them, with the support of the ONUSAL— real progress towards peace would have been made. But, once again, the disdain for all its recommendations and the poor adoption of some of them paved the way to strengthening the different facets of criminality.⁴² No sufficient attention was paid to the dangerous mutation of those groups.⁴³

Armando Calderón Sol replaced Cristiani in 1994 and mismanaged the results of such an effort. He was succeeded by Francisco Flores in 1999 and Antonio Saca in 2004. Like Cristiani, they run for ARENA; the main opposing party was the FMLN. In the two decades during which ARENA controlled the Executive Branch and the rest of the state institutions, truth and justice remained linked by formal and factual powers. They declared so and to be coherent and consistent, they did it so. The development of the anthology was an idea of President Flores on October 18, 2002, in response to the ICHR that was demanding the compliance with the recommendations included in the reports on the merits of various cases: "The amnesty law—said—is the cornerstone of the peace accords, it is what allowed us to forgive [...] the prosecution of the war crimes would have led to another war; it would have closed the doors to the possibility of reconciliation [...] those who want to remove the cornerstone of the peace accords can take us to another severe conflict."⁴⁴

42 "We would be in the face of a mutation into more decentralized entities essentially aimed at common criminals with a high degree of organization [...] those same structures would keep their capacities intact to play, if necessary, the role of perpetrators of criminal acts that were politically motivated. The political transition process seems to leave no room for structures that might be called "classical," but many of their members as well as individuals who have a hard time to adapt to the new conditions become a target of new and powerful organized criminal groups." Universidad Centroamericana José Simeón Cañas. (1994). Report by the Joint Group for the investigation of illegal armed groups with a political motivation in El Salvador, Second part. (Number 11, item V) Conclusions and Recommendations. In *Revista Estudios Centroamericanos*. (XLIX). San Salvador. Pages 992-998.

43 Ibid., page 994.

44 Available at <http://www.uca.edu.sv/publica/proceso/proc1021.html#Derechos Humanos>.

Since it is part of the same project, it was logical for those presidents to support the “Tandona.”⁴⁵ Therefore, Flores was a special guest at the first public appearance of the Association of Veterans of El Salvador (ASVEM), in September 2003. Saca, when he was a candidate, promised to General Ponce –founder of ASVEM– that amnesty will continue to be in force; Saca, when he was the president, said that he won “to manage the future, not to go back to the past.”⁴⁶ Therefore, the perpetrator remained untouchable and confident that this would not change ... provided that ARENA would not govern.

3. A New “Hope” or a New “Illusion”?

In the face of the presidential elections of 2009, there was a new actor known inside and outside the country due to his critical journalism track record during the four ARENA administrations: Mauricio Funes. The FMLN announced his candidacy during a multitudinous event on November 11, 2007,⁴⁷ with the new campaign slogan that had a positive impact on society: “Hope is born; change is coming!” Then, the campaign became heated with the propaganda of Funes and his closest opponent –Rodrigo Ávila, from ARENA– together with the statements and public appearances of other actors.

At the Service of Whom?

In mid-2008, a controversy was unleashed after the publication of a self-named “professional sector of the FMLN.” Before this publication, such a group expressed its opinion without any problem. But on August 7, it published a text about the FAES, which questioned its existence. The senior military officers, in service and retired, reacted. The retired military officers stated collectible phrases.⁴⁸ As expected, even though it announced the candidacy of someone who did not participate in the war nor was he a member of the party, the electoral triumph of his “enemy” made them be in panic. For their peace of mind, the leaders of the FMLN undermined the authority of those who caused the commotion.⁴⁹ Therefore, on September 2, General Ponce said that he did not believe in the change of the “efemelenist” position about the fate of the FAES. A confessed admirer of Colonel Domingo Monterrosa,⁵⁰ he said he did not understand why Cristiani –after the defeat of the so-called “real socialism”– negotiated “with a shell.”⁵¹

On the following day Funes said he would support the revocation of amnesty to avoid “a climate of ungovernability [...] that would prevent us from building a future.”⁵² He said that human rights organizations would understand his position “because [...] far from contributing to reconciliation, it would rather open wounds.”⁵³

45 Promotion of military officers who led the war during the Cristiani Administration.

46 Available at <http://spanish.peopledaily.com.cn/31617/2403563.html>.

47 Breaching the Constitution, whose article 81 sets forth: “The electoral propaganda will be only allowed, even without a previous summon, four months before the date set by law for the election of the President and the Vice-President of the Republic [...]”.

48 General Mauricio Vargas –a negotiator during the agreements– said that the “countries that have abolished [the army] in one way or another have become a protectorate of a larger power;” General Orlando Zepeda, another person accused for the massacre at the UCA, said that they ended up being “weak countries that shelter themselves under the umbrella of international treaties.”

49 “A person might be our follower, but this does not mean that the FMLN would embrace those positions. The Armed Forces have not only to keep their status, they have to be reinforced.” Roberto Lorenzana, deputy and director of the proselytistic campaign. Available at http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6351&idArt=2709963&opSM=0.

50 Accused as the main perpetrator of the massacre of El Mozote. See Betancur, B., (*et. al.*). (Op. cit.). Page 264.

51 “The emerging threats we face in our current world due to international terrorism and drug trafficking require strong states and strong institutions, and strong states are the result of strong armed institutions.” Available at <http://mediolleno.com.sv/entrevistas/143/entrevista-al-general-rene-emilio-ponce>.

52 Available at http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6342&idArt=2784571.

53 Ibid.

On September 7, Ponce said he had evidence to prosecute the main leaders of the FMLN. That day, thousands of war veterans, led by the “Tandona” together with officers from other promotions, former officials and followers of ARENA, beat “drums of war” on the streets. The main event was attended by candidate Ávila, to please a passionate audience with a warlike speech against his opponent.⁵⁴ Those intimidating statements and attitudes have been recurring since the FMLN has participated in the elections, most of all in the presidential elections. But, this time, they were more evident and aggressive in view of the possibility of giving serious thought to a public policy of truth, justice, and reparation for the victims. There were people and people who blindly believed that Funes and the party who nominated him were promoting a “shrewd tactic” in order to achieve that, and after the triumph, people did not believe that the FMLN would impose it on the president.

Within that framework, Salvador Sánchez–Cerénvice-presidential candidate, signatory of the agreements and former coordinator of the party– scared away the “ghosts” who were distressing the military officers: “The FMLN–he said– like its presidential candidate will respect [sic] the Constitution of the Republic; we are going to work on the strengthening of professionalism and the permanent role of the Armed Forces and the guarantee of the defense of the country’s sovereignty.”⁵⁵ Moreover, they would follow the recommendations of the Truth Commission but without interfering with amnesty; but it made sure that it would not hinder the promotion of “a reconciliation policy by recognizing the moral and material damages to the victims.”⁵⁶

The victims emerged out of this discussion. On September 10, the Working Commission on Human Rights in Favor of the Historical Memory of El Salvador said that no decree could heal the wounds and that every national historical page must be read. “Democracy, peace and reconciliation cannot be built on the innocent blood of so many victims, the hiding of the truth, and the impunity of Salvadoran genocide,” said the Commission⁵⁷; it also rejected amnesty and the reasons why both sides were trying to keep it.⁵⁸

This was what victims said and, as usual, they were not heard effectively or affectively. In spite of this, and by a small margin,⁵⁹ the people eager for a real and much-needed change elected Funes. Among those who voted, there were many who believed that he would promote this, even more during his speech on June 1, 2009 he said: “Reinventing our country does not mean abandoning what is good and eternal; it means improving what is good and do all the things that we never done.”⁶⁰ Regarding truth, justice, and reparation for the victims in the country, as of that date the only thing that was done was denying them the satisfaction of their legitimate demands.

It was valid that, at that point there was still hope. Nevertheless, he later said that the country had to “end with the last vestiges of our victim complex because its fuels hatred, self-pity, [sic] revenge, and

54 He said, “What the candidate said about communists is variable. [...] they said they were going to revoke the amnesty law [...] abolish the Armed Forces. But today they are saying something different. How could we believe in someone who says one thing in San Miguel, [...] when he is in San Salvador [...] he says something else, and when he is in an interview, he says something else [...]?” Available at <http://archivo.elfaro.net/secciones/elecciones2009/20080915/DiscursoAvila.pdf>.

55 Available at http://amfunes.org/index.php?option=com_content&task=view&id=29&Itemid=1.

56 Ibid.

57 Available at <http://chichicaste.blogcindario.com/2008/09/01212-comision-de-trabajo-en-derechos-humanos-posicionamiento-publico-sobre-la-ley-de-amnistia.html>.

58 “Insubstantial argumentations by senior governmental officers who have sought to give a political legitimacy to the Amnesty Law of 1993, among them four presidents of the Republic from ARENA and, recently, similar statements of new presidential candidates from Arena and the FMLN, have been recurrently added to this scenario.” Ibid.

59 The FMLN obtained 1,354,000 votes (51.32%) and ARENA 1,284,588 (48.68%). The difference was just 69,412 votes (2.64%).

60 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/95-discurso-toma-de-posesi%C3%B3n-sr-mauricio-funes-presidente-de-la-rep%C3%BAblica.html>.

easy excuses.”⁶¹ He said this to those who are not obsessed with being victims, to those who are victims of gross violations of rights and of official impunity that sought to conceal them; to those who are not seeking revenge, but to complete and repairing truth, as well as a fair punishment of those who offended them and were not punished. Before this, Funes invoked Monsignor Óscar Arnulfo Romero as his teacher. A serious commitment and a clear contradiction because the martyr Archbishop was always in favor of the victims.⁶²

Honduran Commotion, Salvadoran Confusion

Almost at the end of Funes’ first month of administration, an event shocked the world: the overthrow of President Manuel Zelaya and his expulsion from the country. The shock waves of such political shake in the neighboring country reached El Salvador to make things worse, particularly regarding two key issues: bi-national trade and political pressures on the president. There were those who “justified” such backward movement in the difficult path towards Central American democratization.⁶³ With this kind of statements and the background of the electoral campaign, Funes was able to consider the risk of doing during his administration –which was just starting- something “inconvenient” for a country which officially protects criminals and corrupted people. Since the coup d’état in Honduras was not reversed, his only choice seemed to be to “govern” with a pistol pointed at his head by military officers and a straightjacket woven by capitals.

Under those circumstances, the victims of gross violations of human rights during the pre-war and post-war, of impunity during the post-war, and of its usual precarious economic and social conditions –within the framework of the world’s financial, energy, and food crises- they should continue “swimming against the tide.” However, they kept their hope for the promised “change.” Three anniversaries would be imminent. In chronological order: the twentieth anniversary of the massacre at the UCA, the eighteenth anniversary of the Chapultepec Agreement, and the thirteenth anniversary of the assassination of Monsignor Romero.

Dates and Pardon

The first anniversary was celebrated on November 16, 2009 with the traditional vigil and other activities promoted by the Jesuit community. On that day when the families of the murdered priests received the highest state decoration, President Funes mentioned memory as a need of every country. He made something clear: he is not supposed to judge murders; he is just supposed to generate a climate of understanding and truth to “leave a past of tragedy and pain behind, to start building a fair, safe, and inclusive peace.”⁶⁴ In contrast, the President of the UCA –Jesuit José María Tojeira– offered a specific institutional commitment: “Count on us to promote this task for truth, transitional formulas of justice and victim reparation and fair development that will prevent us from thinking again of violence as a solution to the problems and conflicts that might eventually emerge in our society.”⁶⁵

Two months after, eighteen years after the Chapultepec Agreement, Funes did something unprecedented in the country: asking for forgiveness for the State atrocities against the civilian population. He gave details

61 Ibid.

62 “We cannot –said Romero on July 15, 1979– work to please those at the top. Our word in the name of God, we have to say it by reporting so much injustice. There are so many ways to be an accomplice with criminal hands!” Available at <http://www.servicioskoinonia.org/romero/homilias/B/790715.html>.

63 “The coup d’état in Honduras yesterday is a clear message to those Latin American presidents who do not want to respect the constitutional order established in each country,” said economist Luis Membreño. General Humberto Corado, former Minister of National Defense, said that his Honduran peers “analyzed this with other authorities from the Honduran Government and decided that it was better to abort this process at this time than letting it to deepen [...]”.

64 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/175-condecoran-%E2%80%99Corden-jose-matias-delgado-grado-gran-cruz-plaza-de-oro%E2%80%9D-a-los-sacerdotes-jesuitas.html>.

65 Available at http://www.uca.edu.sv/web_martires/media/archivo/656c70_discursorectorenentrgaordenalmeritojosematiasdelgado1.pdf.

and acknowledged accountability. Cristiani, when questioning the report by the Truth Commission,⁶⁶ mentioned this not because victims should grant forgiveness, but to impose it together with an unacceptable and impossible oblivion. Funes said: “This forgiveness must dignify the victims, help them heal their pain and the wounds of the victims and those of the entire country. This gesture must contribute to strengthening peace, laying the foundations of national unity, and building a hopeful future.”⁶⁷ He said that reconciliation can be only achieved through justice and truth and that his intention was to read that page “to move towards the future with healed wounds, a solved past, and a peace that assumes that the spirit must leave such a painful and tragic stage behind.”⁶⁸

Then, he honored another emblematic event. Thirty years ago, on March 24, 1980, Monsignor Romero was executed. Funes attributed the assassination to a death squadron; then he also admitted that those groups “exercised terror in such a generalized manner in the civilian population during those tragic years, leaving thousands of victims.”⁶⁹ He also admitted the direct involvement of State agents in those practices and their collaboration in the execution or concealment. After admitting the legal validity of the reports by the ICHR, he asked for the forgiveness of the priest’s family, the Salvadoran population, the Catholic congregation, and all the families affected by State violence. Moreover, he offered to collaborate with justice inside and outside the country by helping to clarify the crimes perpetrated by State agents. But at the end of the event, when interviewed by a journalist, he reaffirmed his decision not to do anything to repeal amnesty.⁷⁰

The distance between the speech by Funes and his statements to the media and in light of his obligations towards the international systems of human rights was evident. As the Head of State and incumbent of the Executive Branch, he should have considered that his duties were clear in article 168 of the Constitution: enter into international treaties and conventions and submit them to the legislative approval and keep an eye on their compliance. His criticized position regarding an amnesty questioned by, among other organizations, the ICHR since 1994 was inserted in this framework.⁷¹

From Smog Upwards⁷²

During the post-war, victims had to face an unshakable official stance of resistance to demands. But in spite of the economic, logistic, and political hardships, society has been able to make progress in the litigation of some cases in the international protection systems. As an example, in the Inter-American

66 It He that it did not respond “to the desire of most Salvadorans, which is forgiveness and oblivion of every event of such a painful past.” Universidad Centroamericana José Simeón Cañas. (1993). Lic. Alfredo Cristiani, President of the Republic. Address to the Nation, March 18, 1993. In *Revista Estudios Centroamericanos (ECA)*. (Año XLVIII). San Salvador. P. 483.

67 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/92-18-aniversario-de-la-firma-de-los-acuerdos-de-paz.html>.

68 Ibid.

69 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/390-presidente-funes-pide-perd%C3%B3n-en-nombre-del-estado-salvadore%C3%B1o-por-crimen-de-monse%C3%B1or-romero.html>.

70 “[...] it is not up to me to repeal the law; it is not up to me as the Head of the Executive Branch to conduct [sic] an investigation [...] it is up to the Public Prosecutor’s Office, [...] the jurisdictional bodies, the judges of the Republic. The issue now and it is an exhortation I am making to the human rights organizations that are asking the President of the Republic to promote the repeal: such cases can be investigated even though the law has not be repealed [...] Go and ask the prosecutor why he is not filing a case and [...] the jurisdictional organizations why they are not conducting an investigation about those cases. And ask the deputies if they are thinking of repealing it or not, but do not exert such an undeserved pressure only on the Executive Branch.” Audio, Radio YSUCA.

71 The “[...] very sweeping dimensions [...] constitute a violation of the international obligations it accepted when it ratified the American Convention on Human Rights.” Available at [http://www.cidh.oas.org/countryrep/ElSalvador94sp/ii.d.compromisos.htm#La promulgación de la Ley de Amnistía y los compromisos internacionales](http://www.cidh.oas.org/countryrep/ElSalvador94sp/ii.d.compromisos.htm#La%20promulgaci%C3%B3n%20de%20la%20Ley%20de%20Amnist%C3%ADa%20y%20los%20compromisos%20internacionales).

72 Paraphrasing Roberto Cuéllar, director of the Inter-American Institute of Human Rights (IHR), who some years ago said that the Mexican governments of the Institutional Revolutionary Party (PRI) in the seventies defended human rights this way.

system, we have the massacre at the UCA.⁷³ In a hearing before the ICHR, on March 22, 2010, the State representatives admitted that for more than a decade its recommendations had not been followed. But, a disputed observation was then made: the victims could request a remedy for the protection of constitutional rights at the Constitutional Court, within the Supreme Court of Justice, due to its effectiveness to defend their right to a simple, expeditious, and effective legal remedy. Felipe González, presiding the ICHR at that time, stated that the promotion of such legal action is a duty of the State.⁷⁴

It should be mentioned that on December 23, 2003 there was a rejection of this type of remedy due to a denial of justice in this case, which was filed on November 21, 2001 after using all the possibilities of the system. The victims waited for more than two years to find out that, according to the Constitutional Court, their arguments were “mere non conformities [...] that do not transcend into the constitutional sphere.”⁷⁵ That was the “reason” to dismiss those who did not investigate the facts and did not accuse or prosecute their indirect perpetrators. In anticipation of such a decision, on November 17, 2003, another complaint for the violation of the right to judicial guarantees was filed with the ICHR.

In the aforementioned hearing in March 2010, the State representatives alleged that the investigation was the duty of the Attorney General’s Office of the Republic (FGR) and entrusted the Legislative Assembly with the topic of amnesty, knowing that President Funes has the power to repeal or adjust it to the international human rights standards and that he stated his willingness to collaborate with the justice system. Therefore, victims had to face an impossible situation: not filing an international complaint against the entire State, but against separate State bodies in the same case. Moreover the State agent stated that the enforcement of amnesty had to be examined in each specific lawsuit by virtue of the decision issued on September 26, 2000,⁷⁶ which determined the constitutionality of amnesty, but with certain exceptions.

Another evidence of the distance between the official discourse abroad and its internal practice was when on June 19, 2010 the Salvadoran Ministry of Foreign Affairs informed that the United Nations Commission on Human Rights declared March 24 as the “International day for the right to truth concerning gross human rights violations and for the dignity of victims.”⁷⁷ Such a diplomatic “hard-working and intense” endeavor, according to the official communication, compromised the Government who claimed the universal stature of Romero since the beginning.⁷⁸ Endorsing such an initiative entailed a big risk: being “light of the street and darkness at home.”

“Politically correct” speeches and positions in international forums have always been a good State “presentation card;” even more for El Salvador due to its background of genocide, authoritarian, and

73 Available at

http://www.oas.org/en/media_center/videos.asp?sCodigo=100080&videotype=&sCollectionDetVideo=15

74 González stated, “Here we are talking about the compliance with a resolution of the Commission. The petitioner made an internal attempt with a resulting decision, but the decision has not been implemented yet. Petitioners cannot be asked to carry the burden of internal proceedings once again [...]” Available at http://www.oas.org/en/media_center/videos.asp?sCodigo=10-0080&videotype=&sCollectionDetVideo=15

75 Available at <http://www.uca.edu.sv/publica/idhuca/jesuitas.html#amparo2>.

76 Amnesty was overcome during an initial hearing held at the Third Court of Peace of San Salvador on December 12, 2000. Judge Lorena Rodríguez did not grant amnesty to Cristiani and six officers of the FAES who were accused as indirect perpetrators of the massacre at the UCA for the exception of “self-amnesty,” but their case was finally dismissed due to invalidity, according to her.

77 Available at

<http://www.rree.gob.sv/index.php?/Avisos-Ciudadano/homenaje-justo-e-historico-a-monsenor-oscar-arnulfo-romero.php>.

78 Two years before his execution, which occurred on the date claimed by the Salvadoran Government before the United Nations, Romero said, “In this historical evening when there are so many intrigues, so many shadows, and so many sins, so many crimes that seemed to be concealed, so many missing people whom nobody would give account of, the Church is lighting up with its little lamp at night. Truth will shine; the Lord will come back, and there will be justice for all.” Available at <http://www.servicioskoinonia.org/romero/homilias/A/780326.html>.

criminal-defending regimes. But this is not enough due to its incoherent internal practice. So, Funes was very daring when he talked about “the full validity of human rights,” as “one of the cornerstones of the path taken by this Government.” He said this one year after he took office. In the final observations of the United Nations Commission on Human Rights for El Salvador, on October 27, 2010, they mentioned the State debt with the Romero case and all the victims.⁷⁹ Regarding the merits, nothing has been achieved even though the State officially supported –in June of that year- the aforementioned commemoration. Therefore, the policy of Funes regarding truth, justice, and reparation for the victims rested upon this emblematic figure –repeatedly mentioned as their “spiritual guide”- when it should have relied upon an articulate and coherent proposal.

Settling Debts?

Endorsing the preferential option for the poor of the martyr Archbishop,⁸⁰ on January 16, 2010, President Funes announced the creation of two national commissions: the search for the girls and boys who were victims of enforced disappearance during the internal armed conflict as a consequence of the titanic fight of the Association for the Search of Disappeared Boys and Girls (Pro-Búsqueda),⁸¹ together with the proposal for the reparation of victims, but considering the State ability to pay.

The first commission started activities until March 14, 2011, chaired by the Ombudsman for Human Rights, Óscar Luna, and composed of two Catholic prelates: Monsignor Gregorio Rosa Chávez, assistant to Romero, and priest Manuel Acosta Bonilla, representing Pro-Búsqueda⁸². Therefore, almost sixteen months of its existence were wasted and that –according to the Executive Decree for its creation- were almost two years. To that long and worrying delay we have to add the fact that, until July of that year, it did not have enough budget to operate. Under these circumstances, how could it fulfill its mandate?⁸³

Therefore, during the hearing held on May 17, 2011 at the Inter-American Court of Human Rights regarding the disappearance of four girls and two boys in the hands of the FAES, between 1981 and 1983, the victims –accompanied by Pro-Búsqueda together with the Center for Justice and International Law (CEJIL)– raised the need to reinforce such a Commission. Beyond its funding, which is also important, the complaint filed with the regional court sought to guarantee its permanence with the passing of a specific law.

Finally, for the analysis of the fight of the victims of such abhorrent practice and the obstacle of a State sensitive to words but irresponsible, we have to address the topic of information that its institutions had to provide. Ester Alvarenga, director of Pro-Búsqueda, on March 29, 2011 –within the framework of the

79 The Committee also reiterated its recommendation that the amnesty law be abrogated or amended to “make it entirely compatible with the provisions of the Convention. The State party must actively investigate all cases of human rights violations documented by the Truth Commission, particularly the assassination of Monsignor Oscar Romero.” United Nations. Human Rights Committee. 100th period of sessions. Geneva. October 11-29, 2010. Page 92. Available at http://media.gestorsutil.com/OACDH_web/369/publicaciones/docs/0867173001293141274.pdf.

80 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/92-18-aniversario-de-la-firma-de-los-acuerdos-de-paz.html>.

81 Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters vs. El Salvador. Available at http://www.corteidh.or.cr/pais.cfm?id_Pais=17.

82 Available at <http://www.pddh.gob.sv/menupress/menunoti/192-comision-nacional-de-busqueda-de-ninos-y-ninas-desaparecidos-inicia-su-trabajo>.

83 It must –among other duties– investigate cases and promote the right to truth; preserve and defend the victims’ right to an identity; inspect documentary records or files of the Executive Branch, particularly those of the military, police, and penitentiary officers; promote the reestablishment of family relationships, the coordination with public institutions and the involvement of national and international social organizations to find the girls and boys who went missing in the hands of the State and the guerrilla; request precautionary measures to guarantee the rights of victims and preserve the relevant information at risk; promote awareness and educational campaigns; promote the right to justice; and develop conclusions and recommendations.

celebration of the day of missing children – mentioned the need to submit “the military files to the National Search Commission for investigation.”⁸⁴

Such legitimate complaint can be contrasted with the statements made by General David Munguía Payés, Minister of National Defense, who said that he had received specific judicial requests that were addressed. However, he said that “the information that is not in our records cannot be provided [...] I cannot guarantee that all the expectations of some people, who believe they can find detailed records that are in our possession, are true. That is not true.”⁸⁵

The National Commission for the Reparation for the Victims of Human Rights Violations, which occurred within the context of the internal armed conflict, was created on May 5 through Executive Decree 57,⁸⁶ to submit to Funes a proposal for a program aimed at settling such a huge social debt. The Commission met for the first time on July 16, 2010. Its final report must be submitted within 90 business days after the approval of its internal regulations. Leading this Commission, the Secretariat for Social Inclusion was created and whose Secretary was Vanda Pignato, Funes’ wife; the Ombudsman could attend the meetings, or the meetings of the technical team, as an observer with a voice, but not a vote.

Besides the first Lady, other members were General Munguía Payés and Foreign Minister Hugo Martínez, together with the Minister of Health and the Minister of Finance. And the victims? Would the initiative work without their participation, but with the participation of the Minister of National Defense? Other questions were: Who and how many victims were there? How would they be recorded? Would a list of the Truth Commission be used for this recording?⁸⁷ This was a complex scenario where the victims had to be analyzed one by one, not as a “mass” where the affected parties were human beings with a name, face, and history. These people left remembrances, memories, and gaps to be filled with something else than well-structured oratory, services to be provided by the State by constitutional mandate for the development of any community –not only the affected communities – and, maybe, with a little money that due to the economic and social condition of the families, this could generate disputes, differences, and even violence.

The State decision about these issues was enshrined in article five of the aforementioned Executive Decree. Among the “elements,” as it is in the text, to guide the activities of the Commission was the opinion of the social organizations “representing” the victims; who accompany the victims but do not represent them in their entire dimension. However, that is how their exclusion was “saved.” Another “element” was the “collective nature” of the reparations. How would this be done? Particularly, when some countries with big economies, which did not include El Salvador, were not able to overcome a deep financial crisis. Then, it would have been more suitable to settle other accounts first: truth and justice.

For example, the country could improve the search for missing people because there were not only parents asking for their children; there were also boys and girls who wanted to know what happened to their parents. Moreover, there are people like Santos Ventura Reyes who was looking for his brother Francisco, who was captured and went missing on January 22, 1980 together with his university classmate José Francisco Mejía.⁸⁸

84 Available at <http://probusqueda.org.sv/2011/04/05/discurso-del-dia-de-la-ninez-desaparecida/>.

85 Statements by General Munguía Payés. Interview “Frente a frente.” November 19, 2009. Tele Corporación Salvadoreña (TCS). Channels 2, 4, and 6.

86 Official Gazette. (2010). Volume 387. May 12. Available at <http://www.diariooficial.gob.sv/diarios/do-2010/mayo/12-05-2010.pdf>.

87 Nearly 75,000 extrajudicial executions and 8,000 enforced disappearances. But, there are more victims, but based on these figures it is possible to know that about 1,7 % of the Salvadoran population was affected at that time. For example, in Mexico that percentage would account for nearly 2,000,000 inhabitants of its current population.

88 Both were detained by US marines; officials from that country declared that national Salvadoran guards surrendered them to armed civilians. Three decades after, Santos is still looking for this brother and has not forgiven or forgotten.

In December 2010, Foreign Minister Martínez admitted that it was difficult to settle the debt with the victims of gross human rights violations. A few months later, the coordinator of the Committee for the Rescue of the Historical Memory of Peace “Father Cosme Spessotto” (COREMHIPAZ), Hernán Rodríguez, said that patience ran out “because the victims are there, they are people with psychological traumas and mental illnesses, and nobody does anything to comply with the Decree and the other demands that we need as a Committee.”⁸⁹

On July 14, 2011, Martínez informed about his two-year tenure to representatives of universities and social organizations; in a half an hour he addressed general and specific issues. He even answered questions and pointed out the creation of the Human Rights Directorate. Regarding the signing and ratification of the Rome Statute, it offered to review the results of the consultation conducted by the Ministry of Foreign Affairs and report to the head, but when it was sent to the Legislative Assembly, according to the words of the Ministry, “we know there is opposition.” Therefore, there are not more possibilities; however, Funes, at the beginning of 2010, declared that it was not within his jurisdiction. About the official efforts to search for boys and girls who disappeared during the war, the Minister said that he had the presidential support, but not the resources; about the other issue, i.e., victims reparation, he did not talk.

The Rest of a Deplorable State

To this we can add the State obstacle to overcoming the impunity that protects criminals, offends victims, and deteriorates social interactions even more: the Legislative Assembly. Both amnesty and the opposition to the Rome Statute and the International Criminal Court are points of honor about which it does not change its position. Besides the president of this Body, Sigfrido Reyes, not even his party –the FMLN– endorses this fight.

Regarding the justice system, the situation is clear. At the beginning of the post-war, regardless of the agreements between the parties and the numerous recommendations, not a lot of progress was made in the radical transformation of its institutions; they remained “abducted” by the economic, military, political, and media powers that –in that order– generated the causes of the brutality, they executed it, were accomplices, and concealed it. To understand why this happened, in spite of certain advances, the victims are still excluded from such institutions, we have to evaluate the performance of the Attorney General’s Office (FGR) and of the Supreme Court of Justice and of the Office of the Ombudsman for Human Rights (PDDH).

The Role of the Attorney General of the Republic

This official is essential to overcome impunity; a good performance of his powers would contribute to the progress towards peace, announced almost two decades ago, but still longed by the popular majorities that, on a daily basis, undergo situations of insecurity and violence. However, especially from 1999 on ⁹⁰, those who hold this office did not approve a serious evaluation due to the slow and poor investigation of the crimes, the abuse of the criteria of opportunity⁹¹ and the scarce or non existent use of scientific evidence. Their inefficiency is drastically revealed in the high rates of homicides that place the country among the most violent countries in the world.

But moreover, the FGR is the guarantor of the main perpetrators of gross human rights violations, crimes of war, and crimes against humanity before and during the war. Belisario Artiga was a good example

89 Available at <http://www.migenteinforma.org/viewContent.php?id=WEB20110620194522>.

90 When new criminal and procedural criminal laws had just been enacted.

91 A prosecution recourse to request the suspension of the criminal prosecution of charges made against participants, under certain circumstances.

of this situation, while he was in this position –from November 1999 to November 2009– because he set the precedent of that practice that strengthened impunity due to his actions during the massacre at the UCA.⁹²

In September 2009, amid strong criticism against his track record,⁹³ Romeo Barahona took office. The FMLN, in 2006, rejected his appointment; three years later changed its mind. Barahona did not investigate ex officio and on a timely basis the cases of corruption at the beginning of his mandate. Why, then, should perpetrators of atrocities be prosecuted? Therefore, the practice of the former prosecutors continued. This is evident in the initial data of an investigation:⁹⁴ of the 26 cases of gross human rights violations, none of them has made any progress. There are complaints in which not even a prosecutor has been appointed; in one case⁹⁵ the record went missing and the victims had to submit a copy. Two investigations instructed by the Inter-American Court of Human Rights⁹⁶ have not made any progress during his mandate.

Change in the Judicial Leadership

The reform of the process to include the Supreme Court of Justice was essential to achieve its independence and impartiality. In that direction, by constitutional mandate, a proposal was made to incorporate the different trends of legal thinking in this Court.⁹⁷ But in practice, between 1994 and 2009, its members continued to be appointed through partisan negotiations and with the direct intervention of the Executive Branch. This action resulted in a “distribution” of quotas. The most coveted and marketed ones, obviously, have been those of the Constitutional Court. Consequently, little progress was made in the quality of the jurisprudence in this area during those three five-year periods and, thus, in the excellence of the justice done as well as in the guarantee of the respect for human rights.

But something happened and the scenario changed smoothly at the beginning. On July 16, 2009, in the Legislative Assembly, the new justice who was the president of the Supreme Court of Justice –Belarmino Jaime– and other three members of such Court⁹⁸ were sworn. Their nominations were negotiated within a framework of the usual “normality”: by the leaders of the party factions with the “facilitation” of the Presidential House.

However, since its beginnings and with its leadership, society started noticing a top collegiate entity, with the will and value of improving Salvadoran justice, both in form and substance. Gradually, it started to distance itself and make the Supreme Court distance itself from the privileges for its members and from

92 Cuéllar, B. (2010). *El Salvador*. In: Due Process of Law Foundation. *Victims and Transitional Justice. Are Latin American States of Complying with International Standards?* Washington. Pages 136-143. Also available at <http://www.dplf.org/uploads/1285258696.pdf>.

93 He was linked with the escape of Carlos Romero, a police detective accused and convicted for the homicide of a leader from the FMLN on October 25, 1993. The PDDH had serious doubts to this regard and mentioned Barahona –the then legal advisor of the National Civil Police– for having opposed to the capture of Romero. This was not investigated even though the FLMA was demanding it.

94 Human Rights Institute of University José Simeón Cañas. (2011). *Estado procesal de casos judicializados por violación a los derechos humanos relacionados con la guerra civil (1980-1992)*. Transitional Justice Program. El Salvador. An investigation under process until July 15, 2011.

95 The case of Mario Zamora, executed by a death squadron a month before Monsignor Romero. He was the Prosecutor General of the Poor and a senior leader of Christian Democracy when it was ruling together with the FAES.

96 Cases of the Serrano Cruz Sisters and Ramón Mauricio García Prieto.

97 Article 186 of the Constitution.

98 Florentín Meléndez, Sidney Blanco, and Rodolfo González. The President of the Supreme Court of Justice, Belarmino Jaime, could stop being the president and be transferred to another Court, according to article 174 of the Constitution: “The Constitutional Court shall be composed of five justices appointed by the Legislative Assembly. Its president shall be elected by said Court every time justices of the Supreme Court of Justice are to be elected [...]” The four justices end their mandate in 2018.

corrupt practices, in their different expressions and levels. It also made an exception become a rule: issue a decision based on the text of the fundamental law of the Republic and not based on private interests.

Therefore, through the exercise of its corresponding power, this Court issued rulings of unconstitutionality –without the vote of the justice inherited from its previous members – which affected the mean “certainty” and the perverse “state of affairs” in different areas of other branches. The mass media and the political parties, for example, they realized that something had been altered. Moreover, they upset other bodies of the Government. The “political class” suffered when it saw how –through the jurisprudence– open voting lists and individual candidates were established to make up the Legislative Assembly, how political parties that fraudulently and illegally were kept alive were cancelled and how arbitrary appointments of second-rank officials were also cancelled. It also decided to clarify the management of presidential funds.

To the passion and reactions generated by this real change, very far from the rhetorical change promised during the last political campaign, the evident fear of former President Cristiani was added in the light of the “threat” that the unconstitutionality of amnesty could be declared. This led to the passing of Executive Decree 743 and unleashed an institutional crisis that lasted two months. There is an “admission by a party;”⁹⁹ therefore, it is no coincidence that such decree was passed on June 2, 2011 (four days after judge Eloy Velasco –sixth of the National Hearing of Spain– decided to prosecute twenty military officers accused of the massacre at the UCA). Cristiani, ARENA, and other power groups might have become alarmed in view of the possible unconstitutionality of the Free Trade Agreement with the United States of America and of the “dollarization.”¹⁰⁰ If this is added to the fact those three issues were left “shielded” by candidate Funes, who promised not to address them as a President because the conditions were favorable to make them happen.

With the exception of the FMLN which abstained¹⁰¹ and Democratic Change (CD) that voted against, the other parties –ARENA, PCN, and Christian Democracy – combined almost all their votes to amend a couple of articles of the Judicial Organic Law, through the aforementioned Decree 743. Specifically, with the excuse of “homogenizing” the voting in the plenary Supreme Court of Justice, an amendment was made to make the Constitutional Court decide about the unconstitutionality of any rule unanimously. Funes passed it on the same day. Due to its transitional nature and upon sending it immediately to the National Printing Office for publication, after having set apart the space necessary in the Official Gazette, it guaranteed the validity of Decree 743 on that same day. Undoubtedly, an agreement to neutralize those four justices, who also faced open criticism or the conspirational silence of the rest of their peers at the Supreme Court of Justice.

Then, ARENA publicly regretted this when it found out that amnesty would not be repealed. Funes’ response was a “drug” that was worse than the “illness”: it accused the four justices of “negotiating” with Cristiani to render amnesty null and void.¹⁰² After the decree was passed, the FMLN expressed its “strong” opposition to said decree,¹⁰³ but it later changed its mind when ARENA also changed its mind and the ruling party refused to support the repeal by accusing the four justices who declared its inapplicability, of

99 Available at <http://arenaelsalvador.blogspot.com/2011/06/comunicado-oficial-coena-en-relacion-al.html>. The leadership of the FMLN, for obvious reasons, shared the same fear and opposed to reviewing and rendered amnesty null and void, but they did not declare this publicly.

100 Law on Monetary Integration or “bimonetarism,” that entered into force on January 1, 2001.

101 Orlando Arévalo, independent deputy, said during a TV interview on Channel 21 on Monday June 6 that the Secretary General of the FMLN, Medardo González, told him during the voting that his party will abstain for this reason.

102 Available at <http://www.presidencia.gob.sv/novedades/noticias/item/1199-acuerdo-institucional-para-la-independencia-y-armon%C3%ADa-de-los-%C3%B3rganos-del-estado.html>.

103 “The FMLN rejects such an amendment out of respect for the basic rules of law and to avoid submitting constitutional law to the opinion and convenience of a single person, of a single legal trend, and of the impact of the rightist faction over it. In any Constitutional Court in the world, the consent of a majority equal to 80% of the members is enough, according to the law.” Available at <http://www.contrapunto.com.sv/comunicados/el-fmln-frente-al-decreto-743>.

“contempt.”¹⁰⁴ Afterwards, the crisis worsened. Only after negotiations and agreements under a shadow, the previous situation came back when the reason of the disagreement was repealed. The lesson of all this was the role of different organizations, unions, churches, and academic entities, together with several individual expressions that defended the violated institutionalism. Since the protests against the privatization of the health system in 2003, there has not been such citizen participation.

The passing of such decree on June 2, 2011 was a political act, instead of a legal act. Due to the accumulated dissatisfaction of the formal and factual powers, within the framework of an indictment issued in Spain against four Salvadoran military officers, the purpose was to limit the performance of four justices of the Constitutional Court, which has, among others, the power to render binding decisions of everybody null and void; this is the doctrine of the “negative lawmaker” who can affect political, social, and economic interests. This was what happened since such new judicial officials joined; with their performance they started to enforce the principles of independence and impartiality. Several of their rulings “touched” the “untouchable,” thus affecting the two branches of Government –Legislative and Executive– and the political parties and other lobbying groups. Moreover, they intervened for the sake of victims regarding criminal justice by giving priority to their role in the face of other actors such as the FGR and the mass media, just to mention some examples.

Office of the Ombudsman for Human Rights

In the analysis, we cannot mention nor can we forget to mention a key entity to settle the debts regarding truth, justice, and reparation for victims: the Office of the Ombudsman for Human Rights (PDDH). Conceived within the framework of the peace accords, it was founded in 1992. It has issued reports and made recommendations to support the complaints filed by the victims during the post-war, without forgetting the victims of gross human rights violations, crimes of war, and crimes against humanity. Its outstanding role in reporting the perpetrators has not been consistent throughout its existence; it has changed according to the commitment and quality of management.

In the most crucial times of its history –when the incumbent has attempted to comply with the constitutional and legal mandate of the institution¹⁰⁵- the Office of the Ombudsman for Human Rights has been harassed by budget cuts, attempts to delegitimize its authority, and threats against its staff, among others. In spite of this, it was able to secure a relevant role in the public opinion based on the confidence and credibility levels it was able to generate.

However, within the public administration there is a poor compliance with its recommendations that allows evading the requirements of truth, justice, and reparation at the PDDH, such as the cases of Monsignor Romero and of the UCA. But, besides these emblematic cases –whose direct victims have been honored in the country and around the world¹⁰⁶- the institution has issued special reports about the anonymous population who died or survived different massacres in El Salvador, as well as the victims of enforced disappearance between 1980 and 1992.

104 “It is an act of contempt; it is attitude of contempt.” Medardo González. Available at <http://www.elfaro.net/es/201106/noticias/4544/>.

105 The Ombudsman for Human Rights must ensure the respect and guarantee of human rights, according to ordinal item one, section I of article 194 of the constitution; the PDDH must “ensure the protection, promotion, and education on Human Rights and their unrestricted validity,” according to article two of the Organic Law.

106 “I believe so. In some way, it has focused on, let’s say, strong cases, speaking in the sense that they are the most “symbolic” cases. But this has not really reached “the real people.” And this “real people” have not been listened to, even now,” as stated by María Santos Miriam Rodríguez de Chicas.

4. Where are True Hope and Real Change?

In the bottom of and inside society, because outside society it was proven with pain and frustration. But the latter should not prevail over the popular majorities that, without any kind of bargaining, deserve more than what they have achieved so far. And this is not happening. As properly stated on November 18, 1979, by Monsignor Romero, “With these people, being a pastor is not difficult. They are people who push to their service those of us who have been called to defend their rights and be their voice.” He and his followers might have been numbed by the “siren call” of the peace signatories for some time, but society was not; he might have been felt hopeful because of the campaign promise of the candidate of the “first leftist Government,” and he might have been given his most legitimate causes and his delayed aspirations.

But he never stopped encouraging the fight for truth, justice, and reparation of victims in spite of the size of the obstacles he had to face. There are local examples of tributes, cultural events, and festivals by and for the victims. There have been exhumations, and unsuccessful attempts have been made to prosecute them because the FGR is the lock that prevents us from opening that door.¹⁰⁷

Within this framework, the commendable task of Pro-Búsqueda has had a positive impact on a society that has seen how –without a lot of resources and most of all without any revenge desire– it has contributed to healing the Nation by lightening the heavy burden of the victims of forced separation from their children, siblings, and parents; of families who were dismembered and have reunited. Moreover, its generous tenacity has made the Salvadoran government create a commission to promote more reunions. Even though it does not have enough resources to do it, the efforts by an organization such as Pro-Búsqueda –made up of victims who act for themselves, without any “third-party involvement” in its cause– will continue to be an example of the ability of the victims to overcome any political or bureaucratic obstacles.¹⁰⁸

This desire that emerges from the bottom and from within led to a document that was submitted to the Funes Administration and that is titled “Content of a Policy for the Guarantee of the Rights of the Victims of Human Rights Violations,” developed by the Human Rights Task Force in Favor of the Historical Memory of El Salvador, its general objective is to “Guarantee, pursuant to the governmental obligations derived from the Constitution of the Republic and the International Human Rights Law, the rights of the victims of human rights violations in El Salvador.”

The short, medium, and long term objective is to create administrative entities within the Executive Branch to achieve it; develop and implement a State policy on material, moral, and symbolic reparations for the victims; guarantee their rights to truth and access to justice; enter into and promote the ratification of international treaties on the protection of human rights in El Salvador to which is not a State party; and demand the adaptation of internal laws to the international framework established by the International Human Rights Law in force.

We also have the Court on the Administration of Restorative Justice in El Salvador, in charge of the complaints filed by victims and the recommendations made by its members.¹⁰⁹ Some of them are the repeal

107 Available at Cuéllar, B. (2010). El Salvador. In: Due Process of Law Foundation. *Victims and Transitional Justice. Are Latin American States of Complying with International Standards?* Washington. P-p. 140-148. Also available at <http://www.dplf.org/uploads/1285258696.pdf>.

108 “The State shall adopt the measures of reparation relating to the operation of a national commission to trace the young people who disappeared when they were children during the armed conflict, with the participation of civil society [...]”. Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters vs. El Salvador. Judgment of March 1, 2005. Merits, reparations, and costs. (Item XII, Resolutions, number 7).

109 Issued during its three consecutive meetings in March 2009, April 2010, and March 2011. The places where the court met were the Chapel of Jesus Christ the Liberator at the UCA, the convent located inside the Arts Center for Peace in Suchitoto,

of amnesty, the psychosocial accompaniment of victims, their families, and communities; the creation of a scholarship program for the children who want a degree; the removal of any sign of tribute or recognition for the perpetrators of atrocities; the inclusion of the recent past of the country in the educational system; the construction of a National Memory Museum; the creation of a national fund of individual and collective reparation based expedite and accessible mechanisms without ignoring mediation and reconciliation procedures provided that they are reciprocally accepted; the verification of the compliance with the commitments made by the Salvadoran State to the UN Commission on Human Rights, the Inter-American Commission on Human Rights, and other international organizations.

Finally, as a token of so many efforts to defeat impunity and how its followers defend it, we should mention the process related to the massacre at the UCA in the National Hearing of Spain. Why is Judge Eloy Velasco judging a score of Salvadoran retired military officers? Because the internal justice system is colluding to protect those who directly implemented it. The so-called “fraudulent *res judicata*” or the “apparent *res judicata*” was the result of the failure to abide by the rules of due process and the lack of independence and impartiality of its operators.

Therefore, there is not a double trial in Spain because the principle of universality of justice is being applied, which is also recognized by the Salvadoran State in article 10 of the Criminal Code in force since 1998. El Salvador or Spain cannot apply such a principle when a justice system that does not belong to the country is judging the perpetrators of gross human rights violations as it should; otherwise, it is both a right and a duty of both States.

Judge Velasco requested the Supreme Court of Justice to send certified copies of all the court records filed in the country against those military offices; the Supreme Court was also asked to send their domiciles, notify them about the criminal complaint filed with the National Hearing, and summon them to appear before such a judicial authority. The plenary Supreme Court of Justice issued a ruling on June 17, 2010, stating that it would do anything alleging that “in case of accessing the judicial cooperation, its effects would have a negative impact on the peace making process that has been being built since the end of the internal armed conflict.” Therefore, only the addresses of the accused military officers were sent -through the president of the Supreme Court of Justice, Belarmino Jaime.

After this incident, which did not slow down the progress of universal justice, Judge Velasco said that he would prosecute them for being “responsible for eight crimes of terrorist murders and a crime against humanity or against the Law of Nations.” This was stipulated on May 30, 2011 in the indictment resulting from the aforementioned Legislative Decree 743 and the ensuing institutional crisis.

On August 7, 2011, at the end of the day, nine of those military officers sued by the universal justice ran and hid in the headquarters of Armed Forces of El Salvador. Why? Because of the panic of being arrested and extradited to Spain. Twelve days before -on July 26- Judge Velasco sent to the International Police (INTERPOL) in Spain the arrest warrants against them and proceeded to “introduce them in the corresponding System and disseminate this incident internationally for surrender/extradition.”

The Director General of the National Civil Police (PNC) –a branch of INTERPOL in El Salvador– said on July 27 of that year that he was not “in the position of saying ‘we are going to evaluate what we are going

Department of Cuscatlán, and the church in Villa de Arcatao, Department of Chalatenango, respectively. This Court is promoted by the national Coordinator of committees of victims of human rights violations during the armed conflict (CONACOVIC) and the IDHUCA, with the participation of local human rights and cultural organizations. Available at <http://es.scribd.com/doc/27066791/BSJ-LE-MONDE>.

to do.’ The Police are going to do whatever it takes [...] When the red notice is effective through the official system of the International Police, the police institution will act according to the relevant rules.”¹¹⁰

Before that, what did the Supreme Court of Justice decide? On August 24, 2011, the plenary Court -with ten votes- said that the “activated red notice [...] only means a location notice.” For the highest Salvadoran court, it was simply a matter of finding out where they were and not of capturing them. Nevertheless, within the INTERPOL system, the red notice is used “to request the arrest with a view to extradition of wanted persons and is based on an arrest warrant.” Therefore, there is no way out. Consequently, the Supreme Court of Justice ignored article 327 of the Criminal Procedural Code which states that the Civil National Police will “arrest any person, even without a court order,” if there is -among others- a red notice issued by international police institutions.”

Second, the Salvadoran Supreme Court of Justice also decided on Wednesday, August 24 that the Court did not receive from the Kingdom of Spain “a request for preventive detention with a view to extradition for the aforementioned individuals; therefore, this Court is unable to issue a ruling.” This was precisely what Judge Velasco sent to INTERPOL in Spain and then they referred it to the National Civil Police in El Salvador. Moreover, in the same ruling, the Supreme Court of Justice states that:

The ten certificates of red notice published in the automated search system of INTERPOL, which was sent to this Court by INTERPOL-El Salvador Division Head in charge of the INTERPOL-El Salvador Central National Office, through Official Communication 476/JR/BIFE/11. [...] which pursuant to the Treaty of Extradition there is no preventive detention with a view to extradition against the aforementioned individuals [...] or any other deprivation, restriction, or limitation of their ambulatory freedoms derived from the same proceeding.

Moreover, the Salvadoran court decided to be the “only competent [...] to hear and decide about extraditions in the main case as well as the accessory, subsidiary, or complementary matters and, therefore, is the only, highest, and inescapable legal-political filter in this matter.” Read carefully: legal and ... political! To end with the substance of this resolution of August 24, 2011, the Supreme Court of Justice said “that the National Civil Police cannot proceed with the arrest with a view to extradition without a court order, and no judge of the Republic can issue a preventive detention with a view to extradition without the express authorization of this Court.”

But the court order for the National Civil Police was issued by Judge Velasco; therefore, it could arrest the military officers and the Supreme Court of Justice did not have to decree a preventive detention with a view to extradition because they were being prosecuted by the legal system of that country and not by El Salvador. But the lots were cast well before. Therefore, due to their blatant disrespect for the country’s international commitments and regardless of the ways to do it, ten members of the plenary Court tried to “shield” the accused military officers to render any possibility of detention and extradition null and void. But they were not able to “disguise” their frauds with lies.

What was attitude of the Executive Branch? Its silence began to break until the second half of August even though strangers fired their guns at the Spanish Embassy early in the morning of July 30, 2011. But none of the officials explained why the National Civil Police did not capture the nine retired military officers or why the FAES protected them in the headquarters. The head of both entities, which did not do what they were supposed to do, is Mauricio Funes; he said that the Supreme Court of Justice was the entity in charge of “deciding and he, of course, would expect that it would consider all the evidence [...] So, the best final decision would be the decision adhering to the law, but especially the most suitable decision for the country and to keep the climate of political stability that we have built throughout these twenty years of validity of

110 Available at <http://www.elmundo.com.sv/nacionales-/14511-pnc-arrestaria-militares-vinculados-caso-jesuitas.html>.

(sic) the peace accords.”¹¹¹ The “most suitable,” the “most convenient,” “the climate of stability”? How do you call this? “Coherence”? Why didn’t he say the best without so much demagoguery and that they should be prosecuted without any traps or privileges?

One day after the ruling of the Supreme Court of Justice, Funes said, “There were those who said that the police was supposed to violently break into the houses of the military officers and arrest them; we could not do it because we did not have a court order, and the Court said we were right; the Court clearly said that there was no order, so the military officers had to be released [...]”¹¹² Did the Supreme Court of Justice agree with his false arguments? Before Wednesday, August 24, Funes said, “They are in a situation of arrest; they have never been refugees as it has been stated,”¹¹³ but that day the Supreme Court of Justice decided that there was no “preventive detention with a view to extradition against the aforementioned individuals [...] or any other deprivation, restriction, or limitation of their ambulatory freedoms derived from the same proceeding.” Did the Court say he was right or did it disqualify him?

Based on the previous examples of a tenacious and constant fight in favor of the victims, there is hope and there must be a change. It has been proven that regardless of the resistance by the leftist sectors, both in the Government and in the FMLN, and the rightist sectors –powers that were confronted and then became allies around specific interests such as the “stability” of the country - the claimed truth and justice are coming closer as the deserved result of the uncompromising effort of the victims.

Conclusion: From Indignation to Action

It is clear that the highest obstacle faced by the victims and the organizations that helped them achieve truth, justice, and reparation in the last two decades of the post-war is the governmental decision and attitudes towards their complaints: deny the facts and evade the compliance with its human rights obligations using different excuses and deceptive rhetorical statements. Throughout the eighteen years of existence of ARENA controlling the three branches of government, things were clear in the words and facts. During the first two years of the Funes Administration and his party, at least apparently, the former changed but in practice individual or collective victims and their supporting organizations have not changed: swimming against the tide, but swimming not drowning. But the truth is that they listened to the promises and participated in official events that were never held before, and in which the beating of breasts were present and -most of all- cynical; however, a look at reality reveals the same substance even though the form looks different.

The brief analysis included in this reflection about the key performance of the three institutions allows us to conclude that there are formal and real powers that are afraid of truth and justice. If they are unable to keep the key institutions kidnapped inside the system, as it continues to happen with the FGR, they try to neutralize them with laws and decrees –as they tried to do with the Constitutional Court– or disregard the rulings of the Ombudsman, even though they are based on one of the components of the Geneva Agreement and the cornerstone of the long awaited, but unreached so far, peace process in El Salvador: the unrestricted respect for human rights.

Settling for that would be like accepting that the sacrifice of so many good, well-intentioned, and idealistic people who devoted their life, property, and affection to building a new fair, inclusive, and harmonious El Salvador, failed. Therefore, it is worth rescuing the citizen participation in the defense of the Constitutional

111 Available at <http://www.contrapunto.com.sv/politica-nacionales/funes-se-desliga-de-caso-jesuitas>.

112 Available at <http://www.presidencia.gob.sv/novedades/discursos/declaraciones/item/1388-sobre-reconocimiento-de-palestina-como-un-estado-libre-soberano-e-independiente.html>.

113 Available at <http://www.contrapunto.com.sv/politica-nacionales/funes-satisfecho-con-decision-de-csj>.

Court because it is essential to materialize such an aspiration. This, together with the achievements of the organized victims and social entities that accompany them, makes us believe that it is possible to advance along the “path of peace” and lead the way to be followed.

The national agenda includes important and inescapable challenges to change the course of the country. On the side of the vast universe of direct victims and their families, lacerated by gross violations of their human rights, crimes of war, crimes against humanity, and the impunity that still protects the perpetrators, there are challenges -but certainly they are not the only ones- such as:

- a. Adopt and demand the compliance with “the contents of a policy to guarantee the rights of the victims of violations of human rights.”
- b. Adopt and demand the compliance with the rulings of the Court on the Administration of Restorative Justice in El Salvador.
- c. The two previous initiatives call for a repeal of an amnesty that since 1992 and in 1993 –when amnesty was imposed on society without even asking– has been rejected by the majority.¹¹⁴ The opinions at that time about the report of the Truth Commission, impunity, and the justice system are revealing.¹¹⁵ When the University Institute of Public Opinion (IUDOP) of the UCA consulted in late 2009 if people agreed or not with the gross violations of human rights during the war, 80.9% of the people answered affirmatively.¹¹⁶

Since amnesty was the excuse for not satisfying the expectations of the majority and because it has been used by the different branches of government to blackmail the country by using the false trade-off between justice or peace, it has to be repealed or substituted with a law for the recognition of the dignity of the victims of gross violations of human rights before and after the war. This is necessary and inescapable even though there are exceptions - and in every case when the judicial authorities must decide whether to enforce it or not -, in the current situation of the institutions of the governmental system, it is still a high obstacle to truth and justice.

- d. The first two initiatives also claim for the return of the records of the Truth Commission that are under the custody of the United Nations; their confidentiality is indefinite, unlike the case of Guatemala whose confidentiality expires in 2050.¹¹⁷ Why this difference even though the report proposed “the final return of these records to their legitimate owners?”¹¹⁸ That is, the victims, their families, the communities, and the Salvadorans who need this documentation to achieve truth, justice, and reparation.
- e. Within the framework of the doctrine of “national security” and the policy of “swept land,” the ultimate perpetrators of the brutality also made a profit out of the public funds; it was something logical.¹¹⁹ To

114 The University Institute of Public Opinion (IUDOP) of the UCA consulted this almost one year before its approval and obtained the following results: 47.5% disagreed, 31.1% agreed, 15.4% does not know/does not respond. See University Institute of Public Opinion. (1992). *Los salvadoreños ante acuerdos finales de paz*. San Salvador: UCA. Available at <http://www.reside.org.sv/publica/iudop/informes1a100/informe31.pdf>.

115 University Institute of Public Opinion. (1993). *La Comisión de la Verdad y el proceso electoral en la opinión pública salvadoreña*. San Salvador: (UCA). Available at <http://www.uca.edu.sv/publica/iudop/informes1a100/informe35.pdf>.

116 University Institute of Public Opinion. *Los salvadoreños y salvadoreñas evalúan la situación del país a finales de 2009*. (Tabla 57). Press release. XXIV year, n.º 6. Available at http://www.uca.edu.sv/publica/iudop/Web/2009/boletin6_2009.pdf.

117 Peterson, T. (2005). *Final Acts: A Guide to Preserving the Records of Truth Commissions*. Woodrow Wilson Center Press. Baltimore: Johns Hopkins University Press.

118 Betancur, B. (*et. al.*). (*Op. cit.*). Page 166.

119 Alberto Fujimori and Augusto Pinochet were accused and convicted for violations of human rights and corruption.

these two faces of organized crime we can add trafficking of drugs, people, human organs, vehicles, weapons, waste, and others. Where are those Salvadoran “capos”? None of the three facets of such high and well-structured crimes have been investigated; they remain unpunished and reassured, as facilitated by a kidnapped justice system. This is one of the deep causes that make the country one of the most violent countries in the world.

Therefore, we should establish the connection between impunity -strengthened by amnesty- and the current daily situation of insecurity and death largely caused by firearms and that affect particularly the popular majorities whose economic and social conditions are quite difficult. Having the entire society and the victims of the atrocities before and during the war and the post-war understand this and having them demand to overcome this is one of the most important challenges to face.¹²⁰

- f. For those who suffered the consequences of political violence and of the armed conflict, also victims of a current state system of injustice,¹²¹ it is essential to generate an organized social power capable of intervening in key issues to achieve, once and for all, the democratization and the respect for human rights. Among these matters, their key intervention in the election of suitable people to fill the positions of justices of the Supreme Court of Justice, the Attorney General of the Republic, and the Ombudsman for the Defense of Human Rights, are some of the most important ones. Moreover, there should be a regular accountability that should transcend the legal formalities, such as the case of the annual speeches before the Legislative Assembly by the incumbents of the State institutions.
- g. Because it is essential for the smooth operation of the country in general and because the aforementioned appointments depend on it, there should be a Parliament devoid of the vices that have always affected its performance such as corruption and the decisions made by the political factions based on individual interests and not on the nation’s interests. They are not doing what is set forth in article 125 of the Constitution: “Deputies represent the entire country and are not bound by any imperative mandate.” A smooth operation of the aforementioned institutions in the previous item would establish the conditions to settle the outstanding debts with truth, justice, and reparation for the victims. Therefore, another task is to demand and participate in a deep reform of the electoral system that will allow having representatives of true citizen interests in the Legislative Assembly.
- h. Finally, regarding the above, we should do a collective work that can be summarized in three words: inform, train, and transform. Inform the victims, their families, and society at large about their rights and obligations, about the mandates of State institutions at their service and about national history -especially recent history- to be aware of the lessons and learn them. Train the citizens in society and in the public administration to encourage attitudes and skills for dialogue, tolerance, peaceful conflict resolution, spirit and quality of service, fraternity, and solidarity. Transform, on this basis, a society that has been unfair and excluding so far. How? Through the most extensive dissemination possible of those values and knowledge that must be, in parallel, accompanied by another component: specific success

120 The Mayor of Perquín said that in her municipality “some families have remained quite complete. But there are many that have been disintegrated. So we can see this situation today, socially and politically speaking: a quite hard situation for people. And maybe people have been left with such an irreparable loss, with pain and suffering ... And even so, people keep on fighting to seek for justice, looking for someone who says, ‘We are here to support them, to follow that path, that process, together.’ And we also know that for those who administer justice, it is a topic they do not want to discuss; it is something they do not want to see. And what has happened is that it has been left untouched. We are experiencing the same thing: all the insecurity we experience in the country.”

121 Once again, the Mayor of Perquín said, “The justice system is not functional; but I have not seen it operate like that. Sometimes the people who administer the law are also people -not all of them because we cannot generalize- that are not there to do the job but because they fill a position or mainly because they are the best paid in the country. But there is no commitment or conviction to do really justice. They may not have whatever it takes to do justice. And, in a way they are threatened in certain small aspects. But in those facts (violations of human rights), because people are not demanding either as they should, they become complacent. And on the other hand, because the justice system does not have credibility.”

in the fight for the defense of human rights, especially those that have to do with the victims and their demands for truth, justice, and reparation.

This can only be achieved going from the indignation generated by the Salvadoran reality –that indignation in which, as stated by Miriam, the “victims are the most humble and poorest people”– the action filled with passion and imagination. Miriam herself states this clearly when she says that “Christian Mothers for Peace” she says “It continues. They are partners, women that have fought and do a job, but they have remained to look for new organized and economic alternatives; small initiatives for the development and active participation of Church, in the community and in politics of course. So, all those things are still done. And women are there working. I believe the organization has not been lost.”

Really changing reality is undoubtedly a marathon. But not the usual marathon but a relay marathon: it requires the involvement of the majority of young people whose current quality of life is deplorable due to violence, impunity, and exclusion; whose future does not foretell something good. But also, it is a future full of obstacles, and the main obstacle is a State whose institutions “operate” in favor the “high-flown” criminals regardless of the dignity of victims. Since they are kidnapped by the economic, military, partisan, and political powers, those institutions work for the common cause of amnesty and refuse to be part of the International Criminal Court.

With this formula, they protect those whom they control and kill, besides ensuring the impunity of those who tomorrow –if this situation continues– will continue controlling and killing. They were, are and –if they continue to be like that– will be accomplices of those who violate human rights, who are corrupt and traffick drugs, people, weapons, and others: the Legislative Assembly and the Executive Branch, together with the Attorney General’s Office of the Republic and the Supreme Court of Justice. Regarding the latter, Monsignor Romero made this claim, “What is the Supreme Court of Justice doing? Where is the transcendental role in a democracy of this branch of government which should be above all branches and claim justice from anybody who violates it? I believe that most of our country’s problems can find the solution there [...]”¹²².

But in spite of the perverse stubbornness of the branches of government, with their tenacious fight, victims take big steps towards the achievement of true change: the unrestricted respect for human rights, for a democratized country and a society gathered around the most legitimate aspirations. Before, country was afraid and hid; now perpetrators are the ones who are afraid of justice and hide. A day will come when that justice will not be like the snake biting the barefoot –as stated by a Salvadoran peasant to Monsignor Romero– but with death: that nobody will be able to avoid, as stated by Montesquieu.

With their pain, but especially with their dignity, victims claim to be heard. In a statement issued amid the maelstrom unleashed by the first arrest warrants against the military officers prosecuted in Spain in mid 2011, they said:

We have the right to know the truth of how and who perpetrated so many crimes against humanity, deeply injuring the dignity of countless Salvadoran surviving victims, their families, and the entire society. Thus why we demand it today! We have the right to the justice that has been denied to us for almost two decades and for those responsible for our suffering to be punished, to admit their crimes, to ask for our forgiveness so that we can decide whether or not to grant it, and that only we can grant. That’s why we are demanding this today! We have the right to reparation, which is not gift or a favor; it is an obligation of the State. That’s why we are demanding it today!

Only then we can talk about forgiveness, but never oblivion. They have tried to impose that on us but they haven’t been able to do it. It is impossible! This can be seen all the time and it is happening at present. It is

122 Available at <http://polycarpi.blogspot.com/2011/08/corte-suprema.html>.

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

denied by those who inflicted those fresh injuries upon us. Healing them can be only achieved through a lot of collective effort to use the only healing medicine: truth, justice, and reparation. On top of such social and human unsettled debt, other wounds continue to open after the war against a criminal violence that does not stop and it mainly affects the most socially excluded sectors, including most of the victims.

They ended stating that “To honor the blood shed by the victims before and during the war, the blood that was still shed and to stop such an unstoppable stream, we should urgently eradicate the causes of violence, among which –especially– we have impunity.”

So there is no way to get lost along the path to peace pointed out Miriam and the victims. And when justice in the world reveals the clumsy and obsolete resistance by the Salvadoran branches of government to the claims of the victims of gross violations of their human rights and of a country scourged by the current violence. Therefore, we should consider an essential aspect to make progress in the process that started in Geneva and that got stuck due to its perverse management: there will never be a guarantor State without a demanding society.

Guatemala: Lights and Shadows on the Road to Truth, Justice and Reparation

Mónica Leonardo

Introduction

After 26 years of democratic transition in Guatemala, and almost 15 years since the signing of the Peace Agreements and though some progress has been made, the democratic transformation foreseen in the Constitution and the peace making process has not been achieved yet.

During that period, Guatemala has neither made decisions nor implemented any measures to achieve the transition from a State controlled by the ruling elites to a modern State that responds to the needs of the Guatemalans. The economic, political, and military elites maintained and even increased their power during the internal armed conflict, and they did not modify their basic traits. Thus, the State continues to respond to the interests of those minorities while most of the population continues living in precarious conditions without the support of a democratic constitutional state or suitable institutions able to guarantee life, security, and well-being.

That *status quo* paired with corruption, influence peddling, and the use of public property for private benefit show that the political logic does not encourage the design and implementation of policies, programs, and projects for the country. This situation worsens with the violence used for the defense of the interests of minorities, particularly in the cases of groups linked to drug trafficking, weapon trafficking, human trafficking, smuggling, and other forms of organized crime.

Clearly, the space for the emergence, promotion, and achievement of initiatives in favor of the transitional justice is still totally conditioned. The failure of a transition to peace is closely related to the unwillingness of political and economic leaders and security agents to develop and implement substantial reforms of political, justice, and security systems.

Thus, during the post-conflict period, crucial institutional reforms have not been implemented yet, and little progress has been made to bring to justice the crimes perpetrated during the internal armed conflict or to comprehensively address the topic of historical memory and provide holistic reparation for human rights violations.

The lack of a serious transitional approach has caused both the impunity of the crimes that caused the conflict, and the emergence of new vicious dynamics. Guatemala continues enduring the same inequalities that caused the conflict, i.e., poverty, racism, and lack of access to land, water, education, and opportunities.

The growth and consolidation of clandestine criminal groups that emerged during the military dictatorships and the armed conflict are part of the issue that now pervades the state apparatus.

Although systematic human rights violations by the State are much less common now than during the internal armed conflict, attacks to judges, prosecutors, lawyers, witnesses, journalists still happen. These acts of violence and intimidation are not linked anymore to the highest ranks of state authorities, but rather to private dead squads whose links with the State structures give them almost total impunity. Moreover, collective acts of violence like lynching and social conflicts associated with natural resources exploitation, land expropriation, and unlawful traffic still persist.

Violence and impunity have exacerbated. Guatemala is among the most violent countries in the world with a homicide rate of 48 homicides per each 100,000 inhabitants¹, Impunity rates are also high since,

¹ Ministry of the Interior. *Gobernación traslada datos oficiales de incidencia criminal en el país* [Quoted on 06/05/2011]. Access date 10/08/2011. [Online]. Available at http://www.mingob.gob.gt/index.php?option=com_content&view=article&id=1256:gobernacion-traslada-datos-oficiales-de-incidencia-criminal-en-el-pais&catid=71:eventos&Itemid=54

according to several reports, the Office of the Public Prosecutor only investigates about 5% to 15% of the cases² and only 2% of the cases are convicted.

Neither the structural problems that caused the internal armed conflict nor the policies on truth, justice, and reparation to manage confrontation are topics for a national debate. Notwithstanding the reorganization of the elites and their political actors, every four years on occasion of the presidential elections and related negotiations, those actors continue ignoring the topic of transitional justice.

Occasionally, despite such a distressing scenario, glimmers of hope emerge, but they have not been able to contribute to take the qualitative leap forward required by the country to achieve peace. In the last years, several laws have been enacted to modernize the legal system and the crime-fighting techniques, and to foster transparency³. Therefore, the International Commission against Impunity in Guatemala⁴ (CICIG) was established, and the National Agreement for the Advancement of Security and Justice⁵ (ANASJ), a broad agreement that includes several topics from weapon control to the police reform, was furthered. Moreover, the then President Alvaro Colom appointed Helen Mack, director of the Myrna Mack Foundation, Presidential Commissioner for Police Reform⁶. Nevertheless, each of those initiatives has faced difficulties. Thus, the CICIG has not made any progress regarding criminal investigations and prosecutions as expected by the citizens, and some of its proposals have been questioned at a technical level⁷. The ANASJ has not

2 See, for instance: Myrna Mack Foundation. (2009). *Informe de Monitoreo sobre la Gestión de Casos de Muerte Violenta de Mujeres y Hombres en el Departamento de Guatemala*. [Online]. Available at <http://www.myrnamack.org.gt/index.php/analisis/148-informe-de-monitoreo-sobre-la-gestion-de-casos-de-muerte-violenta-de-mujeres-y-hombres-en-el-departamento-de-guatemala>

3 Law Against Organized Crime, Law of Access to Public Information, Nominations Commission Law, Organic Law of the National Institute of Forensic Sciences of Guatemala.

4 The precursor of the CICIG is the proposed creation of CICIACS (International Commission for the Investigation of Illegal Armed Groups and Clandestine Security Organizations), an initiative by social organizations resumed by the Alfonso Portillo Administration through an agreement entered into with the United Nations, to address the unwillingness of the Office of the Public Prosecutor and the National Civil Police to deal with those illegal groups. The creation of the CICIACS was controversial because it was vested with investigation and prosecution powers which the Constitutional Court ruled unconstitutional. In December 2006, after several years of negotiations, the Government of Guatemala and the United Nations signed an agreement to establish the International Commission Against Impunity in Guatemala. The duty of the CICIG duty is to strengthen the country's capability to dismantle the clandestine networks that use state institutions to guarantee their impunity. As an investigation and prosecution body, its mandate slightly differs from the international courts created for Rwanda, former Yugoslavia, East Timor, Sierra Leone, and Cambodia. In addition, the Commission is entitled to dismiss or punish any public servants who, in its opinion, could be corrupt or hinder its course of action, and to suggest a new law.

5 It was signed on April 15, 2009 by the President of the Republic, Alvaro Colom, the President of Congress, Roberto Alejos, the President of the Supreme Court of Justice, Eliu Higueros and the Attorney General, Amilcar Velazquez Zarate. The National Agreement comprises 101 pledges for the incorporation of security and justice measures that the State of Guatemala shall adopt. The core themes are security policies and institutions, police reform, the penitentiary system, policies and institutions for criminal investigations and investigations against impunity, administration of justice, weapon control, private security businesses and services, social communication and participation, legislative agenda, joined action pledges with the signatories of the Agreement.

The Agreement is available online at: http://www.iepades.org/acuerdo_de_seguridad_y_justicia.pdf

6 Government Agreement 361-2010 establishes the National Commission on Police Reform as part of the Executive Branch. Its mandate is to promote, propose, and monitor the compliance with the measures, strategies, plans, and programs related to the National Civil Police Reform to facilitate an ongoing process of institutional modernization to strengthen the democratic constitutional State.

7 See, for instance: Pro Justice Movement (2011). *La lucha contra la impunidad y la depuración del sistema de justicia*. Access date 08/10/2011. [On the Internet]. Available at <http://www.movimientoprojusticia.org.gt/files/PDF/lucha%20contra%20la%20impunidad%20y%20depuraci%C3%B3n%20sist%20justicia.pdf>

been properly followed up⁸, and the police reform has faced several obstacles for its strengthening as a State process⁹.

This chapter represents an effort to outline the advancements, stagnation, and obstacles to transitional justice in the last few years. Therefore, the chapter will review the most recent significant events related to the processes of truth, justice, and reparation in Guatemala. For that matter, a bibliographical review and a consultation process involving the civil society actors who have participated in transitional justice were implemented. Thus, this document renders an account of the comprehensive efforts aimed at overcoming and transcending the horrors of the internal armed conflict and related challenges.

Truth

Guatemala had made long-term efforts with truth matters. Therefore, the Commission for Historical Clarification (CEH) was established pursuant to the provisions of the Peace Agreements. The CEH would investigate the events of the past and write a recommendation report¹⁰. Once its work was done, the CEH submitted the “Guatemala: Memory of Silence” Report which encouraged the State to take a series of actions¹¹. Unfortunately, most of them have not been implemented yet. On the other hand, the Episcopal Conference of Guatemala implemented the Interdiocesan Project for the Recovery of Historical Memory (REHMI) whose contribution was the “Guatemala Never Again” Report containing recommendations for the State¹² which have also remained ignored.

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- 8 See, for instance: Foro de Organizaciones Sociales especializadas en Seguridad. (2010). *Primer Informe de Monitoreo del Acuerdo Nacional para el Avance de la Seguridad y la Justicia*. Access date 26/08/2011. [Online]. Available at http://www.iepades.org/INFORME_DE_MONITOREO_%20FOSSMAYO_2010.pdf
 - 9 For further information about the obstacles of the police reform process, see Mack, H. (2011). *Informe del estado de situación de la reforma policial*. Guatemala. Access date 19/08/2011. [Online]. Available at <http://es.scribd.com/doc/62685059/Informe-Reforma-Policial-Final-15-08>. This report points out that some of the obstacles can be easily overcome provided there is political willingness. Some others require a complex solution since they are rooted in ideological, political, historical and cultural mindsets that cause tension, rejection, and even sabotage. Moreover, a strong investment by the State and the convergence of the many institutions that should incorporate these issues in their agendas are required. All such elements have caused difficulties, and at different times, pessimism and optimism have even combined.
 - 10 Advancing Science, Serving Society. Access date 10/5/2011. [Online]. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/>.
 - 11 We should point out that the CEH suggested to take actions for the reparation, rehabilitation, and dignifying of victims. Moreover, it suggested some specific legal actions against officials responsible for the events during the conflict, especially against Army officers and members of the State security forces in those years. Furthermore, it made recommendations on the administration of justice, the role of the military and police forces, and the need to establish a new security force doctrine.
 - 12 Human Rights Office of the Archiepiscopate of Guatemala. Access date 10/7/2011. [Online.] Available at <http://www.odhag.org.gt/>. In terms of reparation measures, the REMHI recommended the material restitution, indemnity, and humanitarian care for the victims and survivors concerning health and the psychosocial and legal reparation. Regarding collective memory, it recommended to issue a statement acknowledging the accountability of the State; to tell the truth of the acts committed during the internal conflict; to pursue investigations of case and the whereabouts of the disappeared through exhumations at illegal cemeteries and the opening of military files; to dignify the victims through symbolic reparation such as monuments and ceremonies, and the return of their historical memory. In addition, the REMHI made recommendations related to the role of churches, international organizations, and the URNG. It also advised on the prevention of human rights violations, justice, and the punishment of those who are responsible, and the prevention of social and community violence. Moreover, the REHMI suggested some legislative, judicial, and social changes such as demilitarization, the exercise of freedoms in terms of the identity and culture of the Mayan peoples, and the exercise of individual and collective rights, and to find a solution to the land problem.

Consequently, there has not been any progress in policy making for the search of disappeared people. Exhumations at illegal cemeteries have been mostly carried out by civil society organizations¹³ with the advice and funding of the international community, but without any governmental efforts. Dissemination of the armed conflict history has been poor; the truth from the legal processes is limited both by legal system protocols and the few study cases targeted to establish the facts for the prosecution of the responsible parties.

Notwithstanding the State's disregard for the recommendations from the CEH and REMHI, there have been isolated initiatives and achievements concerning the right to truth in the last years.

In this regard, access to information is important in the exercise of the right to truth. Some noteworthy advances in that area have been the documentary evidence provided by the Historical Archive of the National Police and the enforcement of Law of Access to Public Information.

In 2005, during an inspection at the former National Police building, the Human Rights Ombudsman found the Historical Archive of the National Police. The documents provided useful information to explain the gross violations of human rights during the armed conflict. The Archive's¹⁴ documents have provided valuable data which help to visualize and understand how security institutions work and their inter-institutional relationships. Moreover, they provide evidentiary documentation about the National Police's activity patterns and the alleged material and the masterminds of the many crimes perpetrated during the armed conflict.

In July 2009, the management of the Historical Archive of the National Police was transferred from the Ministry of Government to the Ministry of Culture and Sports, and specifically to the General Archive of Central America rectorship. The Archive started providing information during that year, and it is now open for public unrestricted consultation.¹⁵ Furthermore, several reports have been published; for instance, "The Right to Know"¹⁶ which describes the former police's operating model to perform the tasks entrusted by the Army during the internal armed conflict, and two other publications entitled "The Authenticity of the Military Logbook in Light of the Historical Documents of the National Police."¹⁷ The Archive has provided the Office of the Public Prosecutor with documents related to some cases under investigation. On the other

13 Some of the organizations providing support for exhumations/inhumations are the Guatemalan Forensic Anthropology Foundation (FAFG), the Mutual Support Group (GAM), the Community Studies and Psychosocial Action Team (ECAP), Barefoot Doctors, the Association for Community Development and Promotion (CEIBA), the Guatemalan League for Mental Hygiene, Pro-Central American Boys and Girls (PRONICE), Mayan Saqbe' Center, Utz K'aslemal Association, Resilience Group, the National Coordinator of Widows of Guatemala (CONAVIGUA), the International Center for Human Rights Investigations (CIIDH), Biomedical and Psychosocial Research Center (CIBP), National Commission for the Search of Disappeared Children (CNBND), Departmental Collective Group for Psychosocial Care of Quiche Mayan Organizations (CODAP), Integral Development Association (ADI), Community Integral Development Association (ACODIN), the Center for Integrated Studies and Community Develo (CEIDEC), Movement of Uprooted People from the Ixil Area, Association of Community Health Services (ASECSA), National Movement of Healthcare Promoters and Midwives, Feet of the West Association, Refugee Children of the World, Departmental Network of Community Mental Health Promoters (Quiche), Association for Research and Integral Development (ASINDI-Rex We), National Association of Health Promoters and Integral Development (ANAPRODASI), the Center for the Attention of People with Disabilities of the Guatemalan Army (CADEG), and Guillermo Toriello Foundation (FGT).

14 The documents found are from 1882 to 1997 and they are composed of nearly 80 million pages.

15 On July 1, 2009, under article 24 of the Law of Access to Information, the Access to the Information Unit (UAI) of the Historical Archive of the National Police (AHPN), endorsed by the Ministry of Culture and Sports through Ministerial Agreement 1052-2009, December 30, 2009. Since May 3, 2011, the Office of Public Prosecutor has had a permanent office at the AHPN. By September 30, 2011, the Access to Information Unit of the AHPN had more than 13,000,000 documents, had addressed 5,882 injunctions for a total of 84,175 document images delivered to users, accounting for 285,973 pages.

16 Rights Ombudsman. Available at <http://www.pdh.org.gt/index.php?...19...derecho-a-saber>.

17 Secretariat for Peace (2009). *La autenticidad del Diario Militar, a la luz de los documentos históricos de la Policía Nacional. Guatemala*. Also Secretariat for Peace. (2011). *La autenticidad del Diario Militar, a la luz de los documentos históricos de la Policía Nacional. Guatemala*. The former includes 57 cases and the second edition includes 66 cases.

hand, the Law on Access to Public Information¹⁸ was enacted in September 2008. The main issues contained in that Law are the obligation of transparency, access to public information, regulations on information units, establishment of classification and declassification criteria for confidential undisclosed information, the handling of personal data, public archives, and access to information procedures, the responsibility of the Human Rights Ombudsman as the guarantor of the enforcement of this law and the corresponding sanctions for noncompliance.

Despite the advances regarding the right of the victims and the population in general, there are still several obstacles to the right to truth such as the lack of political acknowledgment and inadequate dissemination of the Historical Clarification Commission Report, the validity of military secrecy, the weaknesses of the Law on Access to Public Information, the absence of effective State actions to search for the disappeared and the State neglect of the exhumation process.

Although the Historical Clarification Commission Report is a fundamental historical document to preserve the Guatemalan's memory of the past, the document has not been officially endorsed nor disseminated by any Administration after its publication. Although the topic of the history of the internal armed conflict must be included in the National Curriculum Base,¹⁹ it is not being taught due, on the one hand, to the unavailability of teaching material, and on the other and, to the lack of trained teachers.

The restricted access to military files is one of the most serious obstacles to the right to truth. In fact, the Ministry of Defense has repeatedly refused to provide information on the Army's activities during the armed conflict in spite of court orders or the President's request for such information.

For instance, in 2007, the Second Criminal Court of First Instance²⁰ requested the Ministry of National Defense for information about the plans of the campaigns called Victoria 82, Firmeza 83, Sofia 82, and Ixil 82, but the information was partially submitted²¹ alleging that the plans had "disappeared."²² The fact that the relevant authorities from the Ministry of Defense who refused to provide the requested information and disobeyed presidential orders have not been subject to sanction and the President of the Republic has not adopted any administrative actions to ensure compliance of the Ministry of Defense is an obstacle for the enforcement of the right to truth.

In February 2008, the then newly elected President of the Republic, Alvaro Colom stated that the military files²³ would be made available to the public. The first reaction against this statement was voiced by retired General Jose Luis Quilo Ayuso from the Association of Military Veterans of Guatemala (AVEMILGUA), who argued that national security documents could not be disclosed.²⁴

18 Congress of the Republic (2008). Decree 57-2008 of September 23, 2008, in *Diario de Centro América*. (Vol. 285). Issue 45. October 23, 2008.

19 See, for instance, Ministry of Education. Available at http://www.mineduc.edu.gt/recursos/images/7/75/Curriculum_Nacional_Base_-_Formacion_inicial_de_docentes_del_nivel_primario.pdf.

20 The judge that, at that time, was in charge of the criminal proceedings for the crime of genocide against Efraim Rios Montt, Manuel Mejia Victores and Mario Lopez Fuentes.

21 Of the requested files, two were delivered: Victoria 82 and Firmeza 83.

22 Request by the Second Criminal Court of First Instance, Drug Trafficking, and Environmental Crimes of the Ministry of National Defense, January 31, 2007. Criminal Record 6665-2001.

23 During the celebration of the National Day for the Dignity of Victims, President Alvaro Colom apologized for the abuses perpetrated by the State during the internal armed conflict, and promised to make the Army files available to the public to clarify the whereabouts of the disappeared and do justice. In Alvarado, H., Rodríguez, L. (2008). *Alvaro Colom ofrece abrir archivos militares*, in *Diario Prensa Libre*. February 26, 2008.

24 *Ibid.*

During the second half of 2008, as a result of the statement made by the President, the Peace Archives Project was established to receive the files from different State departments to design a procedure to access the information contained in those records.²⁵

As promised, President Colom established the Military Archive Declassification Commission in March 2009 to review the documents from 1954 to 1996 and to facilitate public access to the Army's²⁶ archives; however, the outcomes of the initiative outcomes were very limited. Thus, during the submission of its first report in December 2010, the Commission pointed out that it had identified 11,641 documents to which 599 more were added for careful review since they were considered partially secret documents, plus 103 other documents regarded as confidential. Moreover, we should point out that the Commission claimed that it had not found the documents for the period from 1980 to 1985.²⁷ On June 20, 2001, President Colom officially opened the Military Archives Declassification Center which comprises 12,287 documents. Other 55 documents were deemed confidential claiming that they breach the Army's²⁸ operational strategy.

The consultation of those documents should comply with the guidelines of the Center. The information is in digital format, but citizens should submit a written request to access the documents of interest. Then, they have to wait for notification of the date when they will be allowed to make online consultations. In addition, those who want the information on paper should request a certification pursuant to the Law for the Access to Information.²⁹

That procedure clearly hinders an easy access to information since it demands detailed specification of the requested document, which is not feasible because the petitioner has not been able to previously browse the documentary collections or check tables of contents or databases. Therefore, accessing relevant information in the military archives is not guaranteed by any legal provision.

As stated above, the Law on Access to Public Information was finally passed in September 2008 thanks to media pressure and the public opinion demands for a more transparent use of the public treasury. Nevertheless, this law does not provide specific requirements about military secrecy or about the archives of the Ministry of Defense archives to allow the access to that information. Such situation is explained by the fact that neither the events of the past nor the human rights violations were included as debate topics. The legislation does not accurately describe the type of information that can be classified as "national secret." Therefore, the Ministry of Defense can continue unilaterally deciding which information is confidential.

Moreover, since April 2009 when the law entered into force, the progress regarding the access to public information has been slow, due to the opposition to a change in a governmental paradigm and to deficient technical training.

25 Secretariat for Peace (2008). *Informe sobre avances en el cumplimiento de los Acuerdos de Paz, 2008*. Guatemala..

26 Congress of the Republic. Government Agreement 64-2009, in *Diario de Centro América*. (Vol. 284). Number 42. March 5, 2009. Establishment of the Commission for the Declassification of Military Archives composed of seven representatives in charge of compiling and organizing the files, documents, proceedings, and any other information from 1954-1996. The Commission was extended by six more months by Government Agreement 2 2010, and it was extended again by six months by Government Decree 203-2010 in July 2010. See Government Agreement 2-2010, in *Diario de Centro América*. (Vol. 288). Number 65 of January 8, 2010, and Government Agreement Number 203-2010, in *Diario de Centro América*. (Vol. 284). Number 68. July 9, 2010.

27 Asier, A. (2010). *Archivos militares de los años 80-85 no aparecen*. In: El Periodico. December 14, 2010.

28 Calderon, R. (2011). *Ciudadanos tendrán acceso a 12 287 archivos militares desclasificados*, in *Diario de Centro América*. June 21, 2011. Access date 17/08/2011. [Online]. Available at <http://www.dca.gob.gt/es/20110621/Nacionales/1515/Ciudadanos-tendr%C3%A1n-acceso-a-12287-archivos-militares-desclasificados.htm>

29 Ramirez, A. *Gobierno abre más de 12 mil archivos militares*, in *Diario Prensa Libre*. June 20, 2011. [Online]. Available at http://www.prensalibre.com/noticias/politica/archivos-desclasificacion-militares-ejercito_0_502749916.html

Another issue that has further limited the right to truth is that the State has not advanced effective measures to search for the disappeared. Since the State of Guatemala is primarily held accountable for nearly 40,000 enforced disappearances perpetrated during the internal armed conflict, it has the obligation of clarifying the victims' whereabouts. The State's unwillingness to cooperate in the search for direct victims represents a serious violation of the right of victims, their relatives, and the Guatemalan society to know the truth of what happened during the internal army conflict. .

Although the Inter-American Court of Human Rights³⁰ instructed the creation of a unified registry of disappeared people, the Congress of the Republic has not passed a law to establish the Commission for the Search of the Disappeared. Its establishment could allow taking specific steps towards the creation of a unified data registry of the disappeared, give information to the relatives, and return the victims' remains. Likewise, that Commission could assist in finding evidence to start investigations and legal proceedings against those responsible for the crimes as well as reparation measures for the people affected.

We should point out that the "Law for the Commission for the Search for Victims of Enforced Disappearance and other Forms of Disappearance"³¹ is still pending approval by the Congress³². The initiative represents "a measure to enforce the rights of the victims of gross violations, and particularly, of their right to truth."³³ This Commission would create a national registry of disappeared people. It would have a 15-year mandate and it would work in the development and implementation of search mechanisms, studies, and case follow-up.

Exhumations are emotionally and spiritually valuable for the victim's relatives. The remains recovery allows families to bury their loved ones according to their cultural and spiritual beliefs and, moreover to visit their graves³⁴. Moreover, exhumations also pave the way to start criminal proceedings against the perpetrators of the crimes. Finally, exhumations also foster a favorable environment for society to understand the events that led to the internal armed conflicts.³⁵ Civil society's³⁶ forensic anthropology organizations have conducted 1,200 exhumations at illegal graveyards and mass graves.

30 Inter-American Court of Human Rights. *Molina Theissen vs. Guatemala Case (Reparation and costs)*. Sentence of July 3, 2004. C Series Number 108.

31 Congress of the Republic. Bill 3590. Guatemala, January 18, 2007. Since 2006, a group of human rights and victims or victims' family organizations have worked on a bill specifically focused on the approval of the Commission for the Search for Victims of Enforced Disappearances and other Types of Disappearance. With the support of the Office of the United Nations High Commissioner for Human Rights, the International Committee of the Red Cross, the Human Rights Ombudsman's Office, the organizations submitted the bill to the Congress of the Republic by the end of that year.

32 During the legislative period of 2004-2008, lawmakers Myrna Ponce (FRG) and Victor Sales (URNG) submitted Bill 3590 to create the Commission to Search for the Disappeared which received a favorable opinion from the Public Finances and Currency Commission thanks, largely, to the extensive lobbying by social organizations. The Bill is still awaiting the opinion of the legislative and constitutional matters commission.

33 Bill 3590.

34 During the exhumation/inhumation process, after the forensic-anthropological work has concluded, and before or during the inhumation stage, the victim's relatives, the communities and supporting organizations prepare commemorative plaques and monuments for their loved ones to close their mourning process. Most of the time, the plaques are placed where the remains are inhumated prior to the ceremony according to their beliefs and customs.

35 Most of the exhumation cases are neither documented nor reported by either the CEH or REMHI. One example is that out of 579 exhumations in the department of Quiché, only 85 answered to the testimonies collected by REMHI or CEH. In Reyes, A. (et al.). (2009). *Mapeo de iniciativas nacionales e internacionales*, in *Reconciliación Social. Posguerra en Guatemala (1997-2008)*. Guatemala.

36 Ibid.

Although most exhumations have been conducted in rural³⁷ areas, since March 1, 2010, experts from the Guatemalan Forensic Anthropology Foundation (FAFG) started working at La Verbena Cemetery in Guatemala City to search for 900 missing people during the armed conflict.³⁸

Another obstacle to the right of truth is that the State does not take responsibility for DNA tests and it is only the FAFG which carries them out. Social and technical-forensic organizations have been given little support and job protection. The State neither provides financial resources nor does it offer appropriate protection measures to technicians, experts, victims and witnesses. Victims and organizations constantly have trouble with the exhumation authorization procedure. Furthermore, although exhumations provide evidence, the Public Prosecutor's Office does not open the corresponding ex officio criminal investigation.

Since 2004, the National Day for the Dignity of Victims of the Internal Armed Conflict³⁹ is celebrated on February 25. Although the purpose of this celebration is honoring, acknowledging, and dignifying the memory of those persons who were the victims of violence during the armed conflict, and their relatives, the memorial celebrations are superfluous and meaningless for the victims contradicting the tribute initial objective since social participation spaces and an effective support to the victim's memory initiatives beyond some specific cases have not been provided.

Therefore, to comprehensively guarantee the right of truth, the State of Guatemala must take more assertive actions to ensure the dissemination of the events that occurred during the internal armed conflict, to help relatives of victims of enforced disappearance find out about the whereabouts of their loved ones, and to preserve and systematize the police archives, and to make military files accessible.

Justice

Over the years after CEH, legal proceedings continue facing investigation and impunity obstacles. Regarding justice matters, it is worth pointing out that, particularly, during 2010 and 2011, the Public Prosecutor's Office increased efforts towards the criminal prosecution of emblematic cases of human rights violations which occurred during the internal armed conflict. It kept it open to plaintiffs and victims of such cases. Similarly, the courts were open-minded regarding the evidence and legal arguments that were put forward, and they convicted several people who were accountable for the crimes committed during the internal armed conflict.

For that matter, the declaration of enforced disappearance as a permanent crime by the Constitutional Court on July 7, 2009 pursuant to international standards is noteworthy. It was adopted by the Court of Criminal Trials, Drug-trafficking, and Environmental Crime of Chimaltenango on August 30, 2009 for its first conviction of a crime⁴⁰ of enforced disappearance. This was a conviction related to the case of the Choatulum village in the municipality of San Martín Jilotepeque, Chimaltenango. Between September 1982 and October 1984, Alejo Culajay Hic, Santiado Sutuj, Encarnación López López, Filomena López Chajchaguin, Mario Augusto Tay Cajti and Lorenzo Avila were victims of enforced disappearances perpetrated by the then Military Commissioner⁴¹ and other Army officers and civilian patrols.

37 *Ibid.* Approximately, 90% of the exhumations are carried out in rural areas: Chimaltenango, Baja Verapaz, Alta Verapaz, and Huehuetenango which are regions of indigenous concentration where the CEH has reported the highest rate of human rights violations during the internal armed conflict.

38 Herrera, O. *Exhumaciones en La Verbena iniciarán el lunes*, in *El Periodico*. February 27, 2010. [Online]. Available at <http://www.elperiodico.com.gt/es/20100227/pais/139817/>.

39 According to Decree 6-2004 of the Congress of the Republic.

40 Center for Human Rights Legal Action. Available at http://www.caldh.org/images/pdf/choatulum/sentenciadesaparicion_forzada.pdf

41 Felipe Cusanero Coj.

Some aspects of this first conviction for a case of enforced disappearance are particularly remarkable. A positive achievement was that the Court accepted as admissible evidence the Guatemala Never Again Report, the Memory of Silence Report, and the Inter-American Commission of Human Rights Report which were issued in the eighties.

On the other hand, the conviction expressly acknowledges the Mayan's core belief in the active bond between the living and the dead, and the need for a burial as well as the implications of enforced disappearance within their cultural context: "For the Mayans, this situation is particularly important for the core relevance of the active bond between the living and the dead in the Mayan culture. The lack of a sacred place is a serious concern that is mentioned in testimonies by many Mayan communities."

The sentence addresses the right to truth, collective memory, and non-repetition by pointing out the important role of truth and memory within a society. It states that the "right to truth, from its collective dimension, is the direct realization of a democratic social rule of law since its exercise allows everybody to know how degenerate can human beings become either by using the public force or criminal groups of terror." The Court also stated:

The victims have the right to know, but also the duty to know what happened in our country to get back on track and strengthen the minimum necessary conditions required by a truly democratic society because of an effective exercise of the fundamental rights. (...) Behind those demands for access to investigation of human rights violations, of course, are not only the demands for justice for the victims and their relatives but also those of the State and the civil society's for the adoption of effective measures to prevent the occurrence of such acts in the future."

Finally, the Court stated "...the right to truth as a collective inalienable legal right."

In December 2009, the First Sentencing Court of Chiquimula handed down the second conviction for the crime of enforced disappearance in Guatemala. The perpetrators, including an army colonel and three military commissioners⁴² were sentenced to 53 years in prison each. This was the first conviction of an army member for this crime. In addition, the Court decided to reclassify the offence of kidnapping as a crime of enforced disappearance, and urged the Public Prosecutor's Office to investigate the chain of command, including the role of the former Ministry of Defense⁴³ and the former Chief of the Combined⁴⁴ Armed Forces as well as other members of the Army who carried out activities in the military base in Zacapa en 1981.

In 2010, two former police officers of the extinct National Police⁴⁵ were found guilty and sentenced for the enforced disappearance of student and union leader Fernando Garcia in 1984. They were each sentenced to 40 years in prison. This case established enforced disappearance as a crime against humanity. The three sentences have been valuable tools to bring to justice all enforced disappearance cases pending prosecution.

Special mention should be particularly given to the role that the victims and human rights organizations have played in the promotion of justice. Several organizations have closely followed the legal proceedings of gross crimes of the past and have contributed evidence to clarify the cases. Thus, the legal achievements have been possible thanks to the effort and work of the victims and human rights organizations that provide accompaniment and support.

42 Marco Antonio Sanchez, Jose Domingo Rios Martinez, Gabriel Alvarez Ramos and Salomon Maldonado Rios

43 Angel Anibal Guevara

44 Benedicto Lucas Garcia

45 Hector Roderico Ramirez Rios and Abrahan Lancerio Gomez

Furthermore, Guatemalan victims and social organizations continue using the Inter-American System of Human Rights to focus international attention on human rights issues. The system has been effective to prosecute the State for human rights violations during the internal armed conflict.

Another important case is the recent massacre in the small village of *Dos Erres* on December 7, 1982. During a special session held in La Paz, Bolivia in July 2009⁴⁶, the Inter-American Court of Human Rights found out that the obligation to provide justice had not been honored. As a result of the ruling, the authorities accused a former *Kaibiles* soldier for his participation in the massacre. His conviction was facilitated by his extradition by the Government of the United States, after standing for trial for lying on a naturalization application in that country.⁴⁷

In September 2010, the Public Prosecutor's Office requested the Court for High Risk Crimes to open criminal proceedings against three former military officers for their participation in the massacre. On August 2, 2011, the Court of High Risk found the seventeen former soldiers guilty of the massacre at the *Dos Erres* village in the Department of Peten on December 7, 1982.⁴⁸ Manuel Pop Sun, Reyes Collin Gualip, and Daniel Martínez Méndez, former *Kaibiles*, were sentenced to 6,060 years in prison for participating in the massacre. The militaries were sentenced to 30 years each for the killing of each of the 201 victims plus 30 additional years for the crimes against humanity. However, as validated by the Court they will only serve 50 years each since it is the maximum time a convict serves in accordance with the Guatemalan Criminal Code. Nevertheless, the Court pointed out that the conviction was a tribute to the victims.

Furthermore, the issuance of General Proceedings for the Investigation and Criminal Prosecution of Gross Violations of Human Rights during the internal armed conflict⁴⁹ was central to showing how important the transitional justice topic is for the Public Prosecutor's Office. The purpose and objective of the Proceedings is to provide prosecutors with a tool to conduct investigations by implementing political-criminal, methodological, and legal guidelines. Additionally, it establishes definitions, constitutional and international principles, an investigation methodology, management planning, legal assessment of the facts, and interpretation of the types of criminal offences.

However, despite these important breakthroughs, most of the violations perpetrated during the internal armed conflict still remain unpunished. Regarding justice matters, factual conditions and limitations particularly to the detriment of the victims have been practical obstacles for their participation.

Obviously, many obstacles that have favored impunity for the crimes committed during the internal armed conflict have not been overcome. Foremost among them are the unwillingness of the criminal justice system to investigate, prosecute, and judge the crimes of the past; the limited resources for criminal prosecution of the crimes committed during the internal armed conflict; malicious litigation, i.e., the abuse of procedures to delay and obstruct criminal proceedings; the limited independence of the judiciary and the prosecution system; the racism that still prevails within the criminal justice system; the inadequate

46 Inter-American Court of Human Rights. *The Massacre at Dos Erres vs. Guatemala Case. Preliminary Objection, Fund, Reparations and Costs*. Sentence of November 24, 2009. C Series Number 211.

47 See (Online). Available at <http://noticias.com.gt/nacionales/20110511-ex-kaibil-implicado-en-masacre-sera-deportado-de-los-estados-unidos.html>

48 During the massacre, the *kaibiles* executed acts of extreme cruelty against the population even against boys and girls. They raped women and girls at the beginning, during, and after the massacre; they subjected people to torture during interrogations before murdering them; they used weapons, grenades, and blunt instruments to murder people. The exhumations carried out between 1994 and 1995 allowed the identification of at least 171 people although witnesses and victims' relatives reported more than 201 murdered people.

49 Public Prosecutor's Office. (2011). *La Instrucción general para la investigación y persecución penal de las graves violaciones a los derechos humanos cometidas durante el conflicto armado interno*. Guatemala.

protection of witnesses and justice operators; the threats against them; errors in performance assessment and disciplinary measures for officials who work for the criminal justice system⁵⁰, lack of full support to the Inter-American System of Human Rights.

In that sense, the Public Prosecutor's Office has neither started *motu proprio* investigations nor has it prosecuted any State officials or agencies for their unwillingness to support the investigations like the Ministry of Defense which has repeatedly refused to provide information related to the Army's activities during the internal armed conflict.

On the other hand, the National Civil Police does not have a special investigation unit for gross crimes resulting from the armed conflict. Consequently, its criminal investigation system is deficient.⁵¹

The Judicial Body and the Constitutional Court issue rulings very slowly thus delaying trials for months and even years. Moreover, they disregard the international humanitarian law and human rights in force in Guatemala. For instance, during the debate by the National Hearing of Spain⁵² to discuss the validity of the universal jurisdiction, the Guatemalan Courts did not accept the victim's arguments. On December 12, 2007, the Constitutional Court ruled against the international criteria for criminal prosecution and proceedings of gross violations of human rights⁵³ as recorded in case file No. 3380-2007.

In that ruling, the Constitutional Court rejected the universal jurisdiction principle invoked by the Spanish Constitutional Court for the investigation and prosecution of acts of genocide in Guatemala. In so doing, the Constitutional Court not only ignored that, under international customary law and traditional international law, genocide is regarded a crime that any government should investigate and prosecute, but also that the international agreements on human rights matters ratified by Guatemala established the obligation to collaborate in the prosecution and sanction of the perpetrated violations.⁵⁴

Concerning this resolution, Amnesty International pointed out that "the CC's⁵⁵ verdict reasserts the impunity that prevails in Guatemala which is disguised with inadmissible legal remedies. Besides, it has guaranteed that alleged perpetrators of gross crimes will be neither deported to any third States nor locally prosecuted."⁵⁶

Three years after the decision of the Constitutional Court that dismissed the National Hearing of Spain request for the provisional detention for extradition purposes of several people accused of genocide and crimes against humanity, there are not any records of convictions of those cases in the Guatemalan Courts.

50 Since officials are not subject to controls to keep them in their positions, they are not interested enough in carrying out in-depth investigations and imposing sentences in accordance with the legal rules.

51 For a description of the situation, see Myrna Mack Foundation. (2009) *Impunidad, Estigma y Género: Estudio de procesos penales por muerte violenta en el departamento de Guatemala (2005-2007)*. Documento para el debate. Myrna Mack Foundation. Guatemala.

52 In that case, the Fifth Court of Criminal Sentencing, Drug Trafficking, and Environmental Crimes ordered preventive detention of Angel Anibal Guevara Rodriguez, Oscar Humberto Mejia Victores, German Chupina Barahona, and Pedro Garcia Arredondo, before the official extradition requested by Spain for the crimes of terrorism, homicide, and illegal detention.

53 For an analysis of the technical relevance of this verdict, see Office of the United Nations High Commissioner for Human Rights (2011). *Tendencias jurisprudenciales de la Corte de Constitucionalidad de Guatemala en materia de derechos humanos*. Access date 30/08/2011. [Online]. Available at <http://www.oacnudh.org.gt/documentos/publicaciones/Tendencias%20jurisprudenciales.pdf>

54 Remember that Guatemala has the international obligation to prosecute and punish the crime of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide.

55 It refers to the Constitutional Court.

56 International Amnesty. (2008). *Guatemala; The Refusal to Grant the Extraditions Requested by Spain for Crimes under International Law* (. Access date 7/07/2011. [Online.] Available at www.amnesty.org

Undoubtedly, this situation compromises Guatemala's international responsibility under the principle of *aut dedere aut judicare*.⁵⁷

On the other hand, the criminal justice system has invested few resources and capabilities in the investigation of gross violations during the internal armed conflict. Therefore, the lack of physical access to the legal institutions and the inadequate coverage in rural areas is evident. Indigenous populations which are mostly settled in rural areas do not have easy access to the institutions because these are usually located in urban areas. Although the proximity of legal institutions and population areas do not necessarily guarantee real access to justice, distance, however, does pose physical access limitations considering that commuting entails expenditures that some people cannot afford, and all the less when they are very poor.

Moreover, the Historical Clarification Unit of the Public Prosecutor's Office of Human Rights is centralized in the capital city although most of the victims live in rural areas. In addition, the Unit does not have bilingual staff or interpreters even though most of the victims are indigenous and many of them do not speak Spanish.

The Historical Clarification Unit does not have enough staff in comparison to the number of cases under its responsibility. Moreover, the staff has not been sufficiently trained to keep up with their work.

Other obstacles in the fight against impunity are malicious litigation and delays. The few cases that have advanced through the legal process in comparison to the huge number of violent crimes and human rights violations recorded during the internal armed conflict are delayed by legal appeals aimed to obstructing justice.

One of them is the remedy for the protection of constitutional rights. The extensive and abusive use of a remedy for the protection of constitutional rights is a dilatory tactic to delay the progress of the proceedings. Although the remedy for the protection of constitutional rights is a fundamental provision to protect human rights, it has been excessively and perniciously used to the detriment of the criminal proceedings as a mechanism to curb impunity.⁵⁸ Lawyers also file other types of appeals such as challenge, reversal, amnesty, unconstitutionality, appeals against sentences; all of them are intended to maliciously delay criminal procedures for the noncompliance with the court deadlines.

Moreover, in several proceedings, a petition to avail oneself of the National Reconciliation Law⁵⁹ has been accepted even though it does not apply in most cases and it is only used to delay the criminal proceedings. Regarding the enforcement of the National Reconciliation Law, in practice, discretion has characterized the interpretation of political crimes and related common crimes whose distinction is relevant for the benefits that this law provides for. The most immediate precedent is the judgment issued in case file 3380-2007 of the

57 Latin expression meaning "extradite or judge" used in International Law.

58 Sierra, J. (2004). *Propuestas para reducir los efectos dilatorios que provoca el abuso del amparo judicial*. Guatemala.

59 The National Reconciliation Law, Decree 145-96 of the Congress of the Republic, set up its application limits by specifically pointing out: accomplices who are entitled to request amnesty benefits, the application requirements, the court with jurisdiction to hear it, the special procedure that should be applied whenever it is invoked in a particular case and the crimes which are susceptible to be subject to its application, listed as political, which damage the legally protected rights exclusively affecting the State. Likewise, this law expressly states the crimes in which requesting the exemption of criminal liability is not appropriate, that is, the crimes of genocide, enforced disappearance, and torture. The National Reconciliation Law is not limitative in itself in relation to limits of its application, as stated, but it is also restricted by other factors. Thus, for instance, the international commitments of the Guatemalan State through the approval and ratification of international instruments in human rights matters which incorporate the obligation to investigate and prosecute human rights violations without any obstacle that might cause impunity, and Article 27 of the Vienna Convention that establishes that States may not invoke the provisions of their internal law as justification for their failure to perform a treaty.

Constitutional Court which ruled in favor of defending those people accused of participating in extrajudicial executions arguing that, among other things, the alleged facts are related to political crimes.⁶⁰

It is important to point out that although the National Reconciliation Law is part of the Guatemalan legislation, it contains the provision that extinguishes criminal responsibility for political crimes and related common crimes, the same legal entity establishes the exception to the enforcement of the legal extinction of criminal action for the crimes of genocide, torture, and enforced disappearance, and also for crimes with no statute of limitation or those which do not admit extinguishment in accordance with the internal law or any international treaties ratified by Guatemala.

The attacks against legal independence and prosecution autonomy in cases of human rights violations during the internal armed conflict are another obstacle to achieving justice. Congressional and Executive manipulation of appointments is one of the factors affecting the independence of the Judiciary and the Constitutional Court and the autonomy of the Public Prosecutor's Office.

Congress has the authority to appoint justices to the Supreme Court of Justice and the Appeals Court and half the members of the Council of the Public Prosecutor's Office. It also decides on budget allocation for these institutions. The President of the Republic is responsible for the appointment or dismissal of the Attorney General. Although the selection processes for these positions are based on a list of candidates proposed by a Nominations Committee,⁶¹ vicious acts still affect the authorities' independence and autonomy.

According to the procedure pursuant to the Law of Nominating Commissions, this regulation, which was first enforced in 2009 for the election of justices of the Supreme Court of Justice and the Appeals Court, provided citizens with the opportunity to finger-pointing the candidates. Thanks to that, the infiltration of power groups⁶² and their mechanisms to affect the appointments were made public. Likewise, the permeability to external influences and the resultant absence of legal independence was also evident.

During this process, the control mechanisms provided in the Law of Nominating Commissions were ineffective since the technically formulated vetoes by civil society organizations to the election of some candidates were disregarded. Therefore, the CICIG raised objections against eight justice candidates to the Supreme Court of Justice;⁶³ however, the Congress of the Republic appointed six of them.

As a result of the remedy for the protection of constitutional rights granted by the Constitutional Court which stipulated the revision of that nomination⁶⁴ on October 7, 2009, Congress voted again and substituted three of the elected justices to the Supreme Court of Justice who had been harshly questioned. In addition, Congress provided the Public Prosecutor's Office with all the available information.⁶⁵

60 See footnote 56.

61 Since 2009, these are governed by the Law on Nominating Commissions that is aimed at developing the constitutional and legal regulations that creates them, and establish enforceability, publicity, objectivity and transparency as its guiding principles.

62 See, for instance, the points raised by the International Commission against Impunity in Guatemala against some candidates for justices, in CICIG. (2009). CICIG. (2009). *La Corte Suprema de Justicia 2009: Los Magistrados no idóneos para representar a Guatemala*. Access date 12/10/2011. [Online].

Available at <http://cicig.org/uploads/documents/Presentacion%20candidatos%20a%20CSJ%20Octubre%2009.pdf>

63 International Commission against Impunity in Guatemala. (2009). *Informe proceso de elección de magistrados a la Corte Suprema de Justicia y Cortes de Apelaciones y otros tribunales colegiados de igual categoría*. Guatemala.

64 Resolution issued in file 3690-2009, submitted to the Constitutional Court.

65 For further information about the weaknesses in judicial independence matters, see Myrna Mack Foundation. (2010). *Challenges Desafíos a la independencia y transparencia del Organismo Judicial en Guatemala*. Myrna Mack Foundation. Guatemala.

For the election of the Attorney General and the Chief of the Public Prosecutor's Office, the CICIG and other social organizations suggested to exclude candidates who caused concern regarding their independence from political parties and lobbying groups or those who had been part of any illegal or clandestine security organizations.⁶⁶

That Nominations Commission appointed six candidates as part of the list that was sent to the President of the Republic who, on May 25, 2010 elected Conrado Arnulfo Reyes Sagastume as Attorney General.⁶⁷ According to the CICIG, Reyes Sagastume included in his team people who were linked to illegal groups and clandestine security systems. His appointment was contested causing the Constitutional Court to annul the process and carry out a new⁶⁸ one. As a result, Dr. Claudia Paz y Paz Bailey⁶⁹ was elected.

Some other obstacles to justice are harassment, threats, and attacks against justice operators. Similarly, the Office for the Protection of Witnesses and People Subject to Trial Proceedings of the Public Prosecutor's Office does not offer appropriated protection measures and lacks the resources and capability to fulfill that task.

The persistence of racism within the criminal justice system is reflected by the fact that legal proceedings are in Spanish. This is a limitation to the exercise of the right to legal guarantees and legal protection in one's own language. Some actions have been promoted in the last years to overcome the linguistic barrier within the legal proceedings such as hiring interpreters. However, they have not been enough.⁷⁰ Such persistence is also reflected in the discriminatory attitudes towards justice operators.

The lack of mechanisms to assess performance and an effective disciplinary system are also obstacles to justice. For instance, concerning case management by the Public Prosecutor's Office, a monitoring process⁷¹ was conducted in 2008. It revealed several organizational dynamics like the failure to fulfill inspection duties and control of the work performed by the Prosecutor's offices, administrative and institutional leadership weaknesses. Moreover, it also showed that prosecutors relied upon personal criteria in case management due to the lack of supervision and discipline mechanisms. In addition, there was an outdated file control that has even caused the lost of files.⁷²

Concerning this topic, the United Nations Special Rapporteur on the Independence of Judges and Lawyers recommended to the State of Guatemala that the assessment process of the performance of the judges should be transparent to avoid bias allegations.⁷³

Finally, another obstacle to justice is that the Inter-American Systems of Human Rights has not been given full endorsement. For instance, in August 2010 the Constitutional Court definitely revoked the

66 International Commission against Impunity in Guatemala. (2010). *Informe de la Comisión Internacional contra la Impunidad con ocasión de la elección de Fiscal General y Jefe del Ministerio Público*. Guatemala.

67 International Commission against Impunity in Guatemala. (2010). *Tercer año de labores*. Resumen Ejecutivo. Guatemala.

68 *Ibid.*

69 Paz y Paz was, at that point, a prominent figure of the human rights movement in Guatemala.

70 For further information, see ASIES. (2008). *Proceso de Fortalecimiento del Sistema de Justicia: avances y debilidades*. (5th Study of the Justice System). Guatemala.

71 Myrna Mack Foundation. (2009). Guatemala. This monitoring included the Crimes Against Life Prosecution Unit and Municipal Prosecution Units of the Department of Guatemala, with the exception of the Villa Canales Prosecution Unit between January 2006 and June 2008.

72 See a) *Ibid.* b) Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, October 1, 2009. c) Impunity Watch. (2008). *Investigation Report "Recognising the Past Challenges in the Combat of Impunity in Guatemala."*

73 Report of the Special Rapporteur on the Independence of Judges and Lawyers. Mission to Guatemala. (2009). United Nations Document A/HRC/11/41/Add.3, May 27, 2009. Paragraph 27.

resolution issued by the Criminal Chamber of the Supreme Court of Justice in December 2009 recognizing the self-executing character of the sentence issued by the Inter-American Court of Human Rights in February 2002. In that case, US lawyer and activist Jennifer Harbury, Efraín Bamaca's widow, whose enforced disappearance was the subject matter of that criminal proceeding, along with several human rights organizations unsuccessfully requested the Constitutional Court to revoke the resolution that ordered that revocation.

However, the State of Guatemala did not implement the decisions by the Inter-American Court of Human Rights to overcome legal or practical obstacles that prevent crime investigation, prosecution, and sanction and, consequently, the case was closed. That created significant gaps in the fight against impunity for human rights violations during the internal armed conflict.

To sum up, to make progress in the fight against impunity and the attainment of justice, certain conditions and limitations related to the weaknesses of the Guatemalan legal system should be overcome. Some of them are investigation weaknesses, delays in the criminal proceedings due to multiple remedies for the protection of constitutional rights, appeals, and the slowness and negligence to address enforcement demands for the National Reconciliation Law. In addition, the external pressure from individuals and groups interested in keeping impunity for the crimes during the internal armed conflict through harassment, threats, and attacks against the victims, their relatives, and justice operators should be removed. Finally, the international obligations of the State of Guatemala should be honored.

Reparation

The State of Guatemala does not have a reparation policy in place, something that is reflected in the constant changes that the National Reparations Commission and the National Reparations Program have undergone. The first National Reparations Commission (CNR) was established on July 16, 2003 according to Government Agreement 258-2003. What might be called the second CNR (2004) was established when Oscar Berger became President of the Republic. This CNR increased the number of its members to six representatives from state institutions and seven from civil society organizations according to Government Agreement 188-2004. The third CNR (2005-2007) was established according to Government Agreement 619-2005. This CNR was given a new organizational structure which excluded civil society representation and reduced the number of representatives of state institutions to five. At this point, economic reparation became a priority. In 2006, a group of independent victim's organizations requested the Human Rights Ombudsman to investigate the National Reparations Program. Then, the fourth CNR (2008) was established during the Alvaro Colom Administration and it is composed of five governmental representatives.⁷⁴

Housing,⁷⁵ economic reparation,⁷⁶ and tribute ceremonies⁷⁷ are some of the positive reparation measures for the victims of the internal armed conflict.

74 A delegate of the President of the Republic, the Minister of Public Finance, the Secretary of Planning and Programming of the Presidency (SEGEPLAN), the Secretary of Peace of the Presidency (SEPAZ), and the President of the Presidential Coordinating Commission of the Executive Policies on Human Rights (COPREDEH).

75 For instance, in 2010, within the framework of the cooperation agreement entered into by FONAPAZ, the Secretariat for Peace and the National Reparations Program that includes the construction of 2,372 houses, 342 houses were delivered.

76 For instance, in 2010, Q.32,354,666.66 were paid.

77 For instance, in 2010, tributes included "Women and Memory" during the International Women's Day and the 28 years of the Massacre of Cuarto Pueblo, Ixcán.

Within the framework of the inter-institutional cooperation agreement entered by the National Fund for Peace (FONAPAZ), the Secretariat for Peace,⁷⁸ and the National Reparations Program on June 22, 2009 and amended in November 2009, and it included the design, provision of materials and construction of 2,372 houses in the amount of Q.90,271,479. By November 2010, 456 houses mainly located in Quiche, Solola, Peten, and Suchitepequez⁷⁹ had been already delivered.

In 2009, economic reparation in the amount of de Q.77,051,649 were paid to 3,725 people. In 2010, the National Reparations Program invested Q.32,762,324.16. It was distributed among 1,505 beneficiaries⁸⁰ from sixteen municipalities from the western plateau.

However, an adequate legislation to strengthen and stabilize the State's reparations policy still needs advancement. Inter-institutional continuity and coordination and the total incorporation of international reparations standards including those related to gender and no discrimination have to be guaranteed.

Until now, the National Reparations Program created at the request of the Commission of Historical Clarification has failed to develop and implement a comprehensive reparations policy for the victims and their relatives. The program is restricted to providing monetary payments to the survivors and the victims' relatives, but the Program has not even been truly successful at least in that area. Since the beginning, the creation the program and financial resource allocation lacked political will. Structuring the program was also problematic because it encouraged confrontations between the victims and victim's organizations.⁸¹

Some obstacles to reparation in Guatemala are its distortion as a link to justice measures, the lack of cultural relevance, the National Reparations Program's institutional weakness, organizational instability, bureaucratization, and the lack of comprehensive reparation measures.

The National Reparations Program filed 10,118 cases to the Public Prosecutor's Office,⁸² in 2008 and 2009, and in 2010, it filed 4,075 complaints.⁸³ Such large number of cases will only overcrowd the prosecution office, which, in turn, will slow or hinder the resolution of those cases and those that had been previously filed.

Although the National Reparations Program acknowledges respect for cultural identity as one the principles for reparation matters, it evidently does not thoroughly understand the meaning of that principle. For instance, in 2009, the National Reparations Program considered the printing, recording, and distribution of an ethnographic research on Garifuna⁸⁴ music as moral symbolic reparation. Although those initiatives are meritorious, establishing them within the context of reparation for the internal armed conflict is difficult especially considering that the Garifuna people were not victims of political violence and repression.

78 The Secretariat for Peace is under the supervision of the Executive branch. It was created in 1997 under Article 9 of the National Reconciliation Law (145-96) by Legislative Decree 17-1997. The Secretariat is aimed at ensuring the compliance with the Peace Agreements covenants by the Executive bodies and their policies. That decree was substituted by Government Agreement 115-2001 that defines the Secretariat as "a body to provide support, counsel, and coordination for the compliance with governmental commitments under the Peace Agreements."

79 Secretariat for Peace. (2010). *2010 Report. Avances sobre el cumplimiento de los Acuerdos de Paz*. Guatemala.

80 *Ibid.*

81 Ideas presented by Helen Mack, President of the Myrna Mack Foundation, during the panel "The Impact of Transitional Justice on the Construction and Consolidation of Democracy," during the regional conference "The Legacy of Truth: The Impact of Transitional Justice on the Construction of Democracy in Latin America." Bogota, Colombia, June 19-21, 2007.

82 Secretariat for Peace. (2009). *Informe 2009. Avances sobre el Cumplimiento de los Acuerdos de Paz: 13º Aniversario de la Firma de los Acuerdos de Paz*. Guatemala.

83 Secretariat for. (2010). *Informe 2010. Avances sobre el cumplimiento de los Acuerdos de Paz*. Guatemala.

84 Secretariat for Peace. (2009). *Informe 2009. Avances sobre el cumplimiento de los Acuerdos de Paz: 13º Aniversario de la Firma de los Acuerdos de Paz*. Guatemala.

The National Reparations Program's institutional weakness is the result of a fragile legal basis and budgetary shortcomings⁸⁵ which limit the implementation of a more comprehensive reparation policy.

Regarding budget matters, the National Reparations Program was given Q.270,000,000 and Q.220,000,000⁸⁶ in 2008, 2009, and 2010, whereas the budget allocated by the end of the fiscal year only amounted to Q.164,978,519.26, Q.95,628,002.75 y Q.37,039,954.75, respectively.⁸⁷ According to that information, the National Reparations Program is not able to design projects or perform activities aimed at using the allocated resources.

The current regulation to the National Reparations Program prevents and hinders the development of its work; as provided in a government agreement, the President of the Republic is entitled to modify the program at any time with no need to consult or request authorization from any other state body. Since its creation in 2003, the creation agreement of the National Reparations Program has undergone three substantial amendments which have contributed to its legal instability.

The lack of a comprehensive reparations policy in Guatemala can be explained by the fact that Congress has not yet passed the laws to provide that policy with some foundation. Consequently, the National Reparations Program operates alone instead of relying upon the effective coordination of initiatives among ministries, secretariats, funds of the Executive Branch, and local governments.

There have also been accusations related to the null budget allocation of the National Reparations Program.⁸⁸ Thus, it has been stated that during the first quarter of 2010, no budget allocations were made; therefore, none of the victims were paid at least once. Conversely, Q.3,600,000 were allocated for Program management and coordination. Such a situation might be explained by the lack of clear objectives regarding the reparation orientation which does not allow the Program to allocate resources to activities.

Frequent turnover is another obstacle to the structuring process of the Commission. The staff working for the Program is also frequently changed. Consequently, the National Reparations Commission according to Government Agreement 619-2005 amended its structure to include the participation of representatives of civil society organizations. Besides, it only left five state organization representatives. The officials from the Secretariat for Peace and the National Reparations Program who wanted to limit the program to a check issuer hindered its management. As previously mentioned, the fourth National Reparations Commission established during the Alvaro Colom Administration is still composed of five State representatives.

After constant modifications, the result was a transition from the National Reparations Program which was managed almost exclusively by representatives of civil society organizations like Rosalina Tuyuc until 2004, to the creation of the political governing body of the Program, that is, the National Reparations Commission which is exclusively composed of representatives of the Executive Branch. Due to the lack of representatives of victims' organizations in the Advisory Board, reparation measures and policy design have not included the opinion of the victims.

Alternatively, a high staff turnover prevents the building of trust relationships between the victims and their organizations, which is particularly important in rape cases. Besides, it hinders the strengthening of the capabilities within the Program and interferes in the improvement of performance that comes from accumulated knowledge and lessons learned from experience. The Program does not have any staff

85 Secretariat for Peace. (2010). *Informe 2010. Avances sobre el cumplimiento de los Acuerdos de Paz*. Guatemala.

86 In 2009 and 2010.

87 Secretariat for Peace. (2010). *Informe 2010. Avances sobre el cumplimiento de los Acuerdos de Paz*. Guatemala.

88 Resolution by the Mutual Support Group. Guatemala, March 25, 2010.

specialized in psychosocial reparation, memorials, or exhumations. Furthermore, constant staff rotation does not encourage specialization. In addition, the staff is hired according to state budget line No.029 which violates the labor rights of people working for the National Reparations Program by denying them job stability.⁸⁹ It jeopardizes the feasibility of establishing a continuity mechanism for the Program's⁹⁰ medium and long term strategies.

The bureaucratization of the National Reparations Program is another obstacle to reparation. Actually, the Program does not take responsibility for the burden of proof, instead, victims are urged to demonstrate their condition by gathering documentation to proof their cases and gain approval for reparation. In December 2010, the National Reparations Program reported the registration of 70,404 victims.⁹¹

Similarly, the Program has not encouraged efficient coordination with local governments and the National Register of People (RENAP) to expedite the procedures that victims and organizations have to follow. In addition, the Program grants precedence to provisions of Civil Law regarding the principles of the Public Administration which are simple, fast, and formalism-free. That increases the risk of revictimization of the target population requesting economic reparation.⁹²

Although the National Reparations Program's mandate is to provide comprehensive reparation measures, the truth is that it has been limited to providing individual economic reparation. Moreover, the payment, after the completion of lengthy paperwork, is similar to other direct cash payment programs such as the compensation given to former Civil Defense Patrols (PAC) to whom the Government has made monetary payments since 2003 for services rendered during the internal armed conflict, as well as the "My Family is Making Progress,"⁹³ conditional cash transfer program created by the Alvaro Colom Administration. Economic reparation as a restitution mechanism is not questioned here; however, we should pay attention to the fact that its implementation, as an exclusive measure, is troublesome.

Psychosocial and rehabilitation reparation measures have not been provided by the State yet. For example, although the Ministry of Public Health and Social Assistance implemented a protocol to provide mental health care to the population who has been a victim of human rights violations and political violence during the internal armed conflict,⁹⁴ and it is supposed to become a tool to strengthen human resources in the provision of comprehensive psychosocial care both from institutions and the health system network, the results in that area are scarce.⁹⁵

Concomitantly, institutionalism neither promotes public psychological attention initiatives nor fosters coordination and dialogue opportunities among communities, social organizations and state institutions. At a state level, neither does it identify the Ministry of Health and Public Social Assistance strategy to strengthen mental health staff nor its territorial coverage and qualification of that mandate.⁹⁶

89 Solís, M. E. (2008). El Resarcimiento: Una deuda más pendiente con las mujeres en Guatemala, in *Sin tregua: Políticas de reparación para mujeres víctimas de violencia sexual durante dictaduras y conflictos armados*. Regional Center on Human Rights and Gender Justice.

90 The employees hired in this area are not considered public servants; therefore, they cannot be held liable nor can the State be held liable in a solidary manner, if they do not fulfill their duties properly.

91 Secretariat for Peace. (2010). Informe 2010. Avances sobre el cumplimiento de los Acuerdos de Paz. Guatemala.

92 UNDP and PCON-GIZ. (2007). Report on the Joint Assessment of the National Reparations Program and Support Programs to the PNR. Guatemala.

93 See My Family is Making Progress, at: www.mifamiliaprograsa.gob.gt.

94 Available at the Ministry of Public Health and Social Assistance: <http://mcpas.emaginacion.net/images/files/Salud%20Mental/Violencia%20Politica.pdf>.

95 Inter-American Court of Human Rights. *Case of Plan de Sanchez Massacre vs. Guatemala*. Supervision of compliance with the judgment February 21, 2011. [Online]. Available at http://www.corteidh.or.cr/docs/supervisiones/sanchez_21_02_11.pdf

96 Reyes, A. (et al.) (2009). Mapping of National and International Initiatives, in *Social Reconciliation. Postwar in Guatemala (1997-2008)*. Guatemala.

Therefore, the National Reparations Program does not have a comprehensive reparation strategy that includes the psychosocial perspective. Therefore, work should be focused on building new social relationships within frameworks that acknowledge the present condition of each community, including, if relevant, the victim-victimizer relationship that still takes place in many communities.

Gender is another topic that needs to be also addressed. Most feminist organizations that are currently focused on violence against women (domestic, sexual, and violent deaths) have not considered the reparations issue a priority and have failed to link it to human right violations against women during the internal armed conflict.

On the other hand, victim's organizations give priority to the search for justice for the disappeared or murdered relatives, and indigenous women organizations include topics such as widowhood, land access, and the demand for recognition by the State of the acts of genocide against the Mayan communities. Therefore, violence against women is included but almost concealed in more general⁹⁷ ethnic and political issues.

Consequently, the initiatives to obtain reparations for women have had to face several particular obstacles. First, the State's unwillingness to compensate the victims in general; second, the existing differences among civil society organizations; third, the minimization, by the political actors, of the magnitude of the human rights violations against women during the conflict; and, finally, the fear and social embarrassment experienced by women who have been the victims of violence and, in particular, sexual violence that prevents them from reporting those crimes.⁹⁸

Therefore, the main obstacle to the right to reparation is that the State of Guatemala does not have a comprehensive transitional justice policy. Moreover, the National Reparations Program is separated from the government structure; then, reparations have been limited to specific actions aimed at the victims but they can hardly be linked to the rights to reparation, truth, justice, and non-repetition. This contradicts the commitments of the State and of the victims who have the tendency to perceive reparation as a more comprehensive task.

Conclusion

Some conclusions may be drawn from the issues discussed in this chapter. In Guatemala, during the last four years, important progress has been made in the promotion of the rights of the victims of the internal armed conflict victim to truth, justice, and reparation. Some of the main achievements related to the right to truth are the creation of the Historical Archive of the National Police, the exhumations conducted by civil society organizations, the initiative to create a victim's registry, and a regulation to the access to public information and archives. Regarding justice, the first convictions for enforced disappearance and the work of social organizations which accompany the criminal proceedings are signs of progress. As to reparation, some victims have been given economic compensation.

Nevertheless, beyond those important though isolated achievements, the processes of political transition and reconciliation in Guatemala have not made any progress at all. There is not a public policy aimed at acknowledging the past and transforming the current political and social relations. A state with the same excluding attitudes of the past governs today threatening the process and fostering a social relations framework far removed from the provisions of the Peace Agreements signed in 1996 between the URNG

97 Paz y Paz, C. (2010). Guatemala: *Género y reparaciones para las violaciones de derechos humanos*, in R., Rubio-Marín. (Ed.) *¿Y qué fue de las mujeres? Género y reparaciones de violaciones de derechos humanos*. International Center for Transitional Justice. Bogota.

98 *Ibid.*

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

and the Government and which are no longer a political benchmark for the country. Access to military archives is not available either; criminal prosecution of cases from the past is still very limited and the continuity of the actions depends largely on keeping the current Attorney General in place; the National Reparations Program has lost direction and it is more disintegrated than ever; therefore, not only has it had little impact on the concerned communities but, in many cases, it has also been counterproductive.

Along with those structural weaknesses that have become an obstacle for a comprehensive tackling of truth, justice, and reparation policies, the State of Guatemala is a victim of threats and attacks from the drug trafficking and organized crime which have contributed to increasing violence and impunity.

Accordingly, a dialogue between the State and the society should be pursued to encourage understanding and to find a better approach to deal with social conflicts and those problems that caused the internal armed conflict and which have not been solved yet. Although the new types of violence are pushing to new dynamics, peace agreements should become the platform for any effort aimed at promoting a better social coexistence. Thus, encouraging compliance with those agreements is relevant to foster the reconciliation process and meet the victims' demands for truth, justice, and reparation.

Shared Memories: The Truth Commissions of Paraguay and Ecuador

Alejandro Valencia Villa

Only going backwards can you advance towards the future
Augusto Roa Bastos, Vigilia del Almirante

Only through the deed of truth can death be annulled
Hermann Broch, La muerte de Virgilio

The Truth and Justice Commission of Paraguay (hereinafter the “CVJ of Paraguay” or “the Commission”) and the Truth Commission of Ecuador (hereinafter the “CV of Ecuador” or “the Commission”) are the last official truth commissions in South America. The violations of human rights in South America in the last few years have not had a lot exposure at an international level or even in the American continent, thus the relevance of these initiatives under the present dynamics of the so-called transitional justice.

Paraguay has had one of the longest and most repressive unipersonal military dictatorships in the Americas; Alfredo Stroessner stayed in power for about 35 years (1954–1989). He used totalitarian methods that neglected the rights of tens of thousands of Paraguayans. Ecuador has not escaped from governmental violence either, and particularly during the León Febres Cordero Administration (1984–1988), who was elected by popular vote, there was a climate of political persecution against opponents, and gross violations of human rights also took place during this period.

In a strict sense of the word, both countries did not have an internal armed conflict. However, in Paraguay, the end of the seventies witnessed the development of armed resistance groups such as *Movimiento 14 de Mayo* and *Frente Unido de Liberación Nacional* (FULNA), and in Ecuador, the mid-eighties witnessed the creation of the armed group called *Alfaro Vive Carajo* (AVC); however, none of these organizations was able to develop hostility that could allow classifying their actions as a non international armed conflict. Both countries experienced a persistent political persecution and repression model, with the subsequent violation of the most fundamental human rights in a general and systematic manner, including crimes against humanity, as determined by both commissions.

This chapter will point out the most relevant findings and conclusions by both truth commissions. The following pages will predominantly be of a descriptive nature, particularly because their final reports are so recent that their results are just becoming visible, and within such a short time, it has been impossible to conduct a more critical and thorough assessment. The first part presents a brief description of the political contexts that were under analysis by both commissions. The second part presents the composition, mandate, and characteristics of each commission, as well as some similarities and differences in their composition and work. The third part points out and describes some of the most significant findings of the final reports. The fourth part will briefly present the relationship between the impacts of both commissions in the face of the international human rights protection system. Finally, there will be a review of the situation in Paraguay and Ecuador after the submission of their final reports.

The Paraguayan Context¹

Since the independence of Paraguay, two phenomena have traumatically characterized its history. First, we have the War of the Triple Alliance against Uruguay, Argentina, and Brazil, in which a large part of the territory was lost. Then, we have the Chaco War against Bolivia between 1932 and 1935, and the revolution in February 1936 that marked the start of the military hegemony in Paraguay. General Alfredo Stroessner, taking advantage of the serious internal confrontation in the ruling party, i.e., the Colorado Party, led a coup d'état on May 4, 1954.

The Stroessner dictatorship lasted for 35 years thanks to what was known as the granitic unit among his government, the Armed Forces, and the Colorado Party. For eight consecutive presidential elections, Stroessner ran as the single candidate of the Colorado Party, a party that controlled the entire state bureaucracy, including the Armed Forces. The elections took place under a state of siege and without any guarantees for

¹ To learn about the Paraguayan context, read paragraphs 1 to 19 of the conclusions and chapter II, and the characteristics of the Stroessner regime in volume I of the final report of the CVJ: www.verdadyjusticia-dp.gov.py.

a political opposition. In an international context dominated by the Cold War and the Doctrine of National Security, the communist party was not only forbidden but also persecuted, and any attempts to criticize the regime failed.

Stronism elevated the terrorism of the State to a form of a totalitarian government and as a permanent policy. This control on the entire Paraguayan society produced a systematic and general situation of violations of human rights for 35 years. If people were not in favor of the regime, they were against it.

Arbitrary detention and torture were among the most common violations, but there were also cases of enforced disappearance and extrajudicial execution, and thousands of Paraguayans were forced into exile. Conclusion 35 of the Final Report of the CVJ reads:

One of the most important differences between the Paraguayan repressive model and those of other countries in the region is that there were not clandestine military or police structures different from or parallel to the official and public structures of the Paraguayan State. The different structures of the political, military, and political apparatus perpetrated gross violations of human rights characterized by high visibility and advertising. There were not clandestine torture and detention centers; therefore, well-known police, military, governmental, and civil bodies were used.

The repressive apparatus perpetrated gross violations of human rights against low-income, peasant, and worker population sectors, and it was also responsible for a brutal and unique persecution of the members of clandestine and forbidden organizations, both political and armed, which were members of the communist party, community leaders, other political opponents, and even soldiers who were not aligned with the regime.

Even though the transition process in Paraguay started in 1989 with the overthrow of Stroessner, it was characterized by a strong confrontation between the democratic sectors and the authoritarian atavism. In spite of the attempts to dismantle the legal system of the dictatorship, particularly with the enactment of a new Constitution in 1992 and with the ratification of the international instruments of the universal and Inter-American basic human rights systems, the changes in the country's reality were quite slow and without a political alienation from the past. The Colorado Party stayed in power until 2008, and it was until the victory of Fernando Lugo in the presidential elections and when he came to power in August of that year that the country started its true transitional process. Even though the Stroessner dictatorship ended twenty years ago, its effects are still so strong and permanent that Paraguay is gradually shuffling off the "spoils system" and authoritarian culture and the State is taking on its responsibility for the guarantees and respect of its citizens. After the dictatorship was overthrown, small attempts were made to provide some reparation to the victims, and the final report of the CVJ is an example of these first attempts by the Paraguayan society to be accountable for its past.

The Ecuadorian Context²

In August 1984, León Febres Cordero was elected President of the Republic of Ecuador by popular vote, and he represented the rightist sectors. His regime imposed a neoliberal economic model and an authoritarian government that was permanently confronting the sectors that disagreed with his political project. His violent discourse was always aimed at attacking the opposition, particularly the leftist sectors. To repress the social movements, the Government used especially the police forces and intelligence services by creating, with the support from the private sector, the flying squadrons of the police forces, which together with the paramilitary groups, repressed the student demonstrations and the labor strikes and evicted a large part of the population.

² Regarding the Ecuadorian context, see the section on the socio-economic and political context in the executive summary and the first section of volume II of the Final Report of the CV at www.coverdad.org.ec.

During his administration, the Alfaro Vive Carajo (AVC) organization took several armed propaganda actions (such as the taking of the mass media, painting of walls, and theft of the sword and a bust of the historical leader Alfaro Vive, among others) and used company and bank robberies and abduction as a funding method. The response of the State to these actions by AVC was the disregard of the legal and constitutional systems, thus conducting extrajudicial executions, arbitrary detentions, torture, and rapes. The Government intentionally overstated the danger of this armed organization and continued persecuting the false rebels even though the politically most important members of AVC were in prison or had been killed. Therefore, his administration justified the persecution of other social and political leftist leaders, established a climate of terror, and gave an authoritarian power to the Police and the Armed Forces.

This Government had an excluding conception of human rights, which were reserved for those who, according to the regime, respected the established order. Torture was institutionalized among the different police bodies, particularly the Criminal Investigation Service (SIC) and some military headquarters. Besides torture, there were extrajudicial executions, deaths under military or police custody, and other abuses of power and authority, and in some cases, the enforced disappearance of people.

After the Febres Cordero Administration, between 1988 and 2007, the neoliberal model continued to be implemented and worsened the living conditions of most Ecuadorians, thus causing significant social unrest and decomposition. The crisis and the political instability were a persistent trend in those years. From 1995-1997 to the elections in 2006, the political crisis of the dominant elites worsened, which was evident with the fall of the three presidents elected in those years: Abdalá Bucaram (1996-1997), Jamil Mahuad (1998-2000), and Lucio Gutiérrez (2002-2005).

The different administrations used the National Security Law to declare a state of emergency to keep what they called “the order and peace of the Republic.” The labor strikes, the indigenous revolts, the provincial strikes, the student demonstrations, and other forms of movements used by the people to file their claims, were considered threats to the security of the State or, even, criminal situations.

The excluding conceptions of human rights prevailing in the León Febres Cordero Administration for alleged drug dealers, criminals, and “terrorists” continued prevailing during the 1988-2007 period, thus producing gross violations of human rights such as extrajudicial executions, enforced disappearances, and torture. The implementation of the neoliberal model brought the consequence of the deteriorating living conditions, as well as an increase and emergence of new criminal behaviors of a transnational nature, which developed hand in hand with globalization, such as drug trafficking, human trafficking, abductions, international vehicle theft, etc. To deal with such problems that had basically structural origins, the Administration used repressive methods, the toughening of sentences, and even social clean-up operations by executing groups who were not punished. This situation took place particularly in some areas in the country such as the provinces near the border with Colombia.

Most violations of human rights by police or military groups have not been punished nor have they been sued or sentenced. Impunity has been possible thanks to the special jurisdictions that allowed police officers and soldiers to be judged in their own courts, in which they were generally declared innocent. Moreover, a sense of unity has been maintained, and it has been the main obstacle to finding the truth, doing justice, and compensating the victims.

Composition, Mandate, and Characteristics of the Truth and Justice Commission of Paraguay³

The CVJ was a major achievement of the civil society and the Paraguayan State. Its creation responded to the demand for associations of victims of the dictatorship and for human rights organizations when the Stroessner regime came to an end. This ended with an agreement with the National Parliament and the Executive Branch, which allowed the sanction of Law 2225/03.

Even though the law that created the CVJ was enacted on October 6, 2003, it formally came into force on July 20, 2004 due to budgetary reasons. And even though eighteen months of work, extendable to six additional months, were originally anticipated, the mandate was extended for twenty-four additional months. The CVJ finally submitted its report on August 28, 2008.

The mandate of the CVJ focused on cases of violations of human rights, particularly enforced disappearances, torture, exile, and other gross violations from May 1954 (the month when Alfredo Stroessner came to power in Paraguay) to October 2003 (the month when the law was enacted). Article 2 of the law established the following duties and objectives for the CVJ:

- a) Analyze and investigate political, social, and cultural conditions, as well as the behaviors of the different institutions of the State and other organizations that contribute to the gross violations of human rights.
- b) Help relevant bodies explain the violations of human rights by state and semi-state agents.
- c) Preserve the memories and testimonies of the victims by trying to determine the whereabouts and situation of the population affected by such violations and identify the aggressors as much as possible.
- d) Preserve the evidence of human rights violations.
- e) Provide all the evidence to the Executive Branch so that the legal system takes immediate action to protect the rights of victims and prevent the impunity of those accountable for such violations.
- f) Contribute to an official explanation of the truth, which entails making the State morally and politically accountable.
- g) Contribute to the explanation of the relationship between human rights and governmental, national, and international authoritarian policies.
- h) Recommend courses of action and institutional, legal, and educational reforms and others, as a guarantee of prevention so that they are processed through legislative, political, or administrative initiatives.
- i) Develop victim reparation and claim proposals which will be the basis of the actions to be taken.
- j) Develop a final official report about all the investigations and proposals developed during the period under study.

The CVJ was composed of nine commissioners: one representative of the Catholic Church, which chaired the commission, a representative of the Legislative Branch, three representatives of dictatorship victim organizations, and three representatives of the civil society. The general coordination of the CVJ was assigned to a commissioner who was in charge of the different subject matters and work areas. The former, aimed at investigations, were composed of the testimony, enforced disappearance, and extrajudicial execution, torture, and exile unit, and of the investigations of the repressive system; the latter were composed of different areas: laws, health, communication, education, and institutional relationships. Moreover, there was an administrative staff, an investigation coordinator, and some national and international consultants, but the size of this staff was small as compared to other commissions.

The CVJ was based in Asunción and had other regional branches in cities such as San Ignacio de Misiones, Caaguazú, Caacupé, and Alto Paraná, which were focused primarily on the testimonies of the

³ For some characteristics and activities promoted by the CVJ, see “Comisión de Verdad y Justicia, Memoria de Gestión, 2004–2008,” Asunción, 2008.

victims. One of the CVJ campaigns was: “2,000 testimonies for history,” a figure that was surpassed at the end of its mandate.

Under the slogan, “Whoever forgets repeats,” the CVJ held six public and two international hearings. The first three national hearings were held in the cities of Asunción, San Juan Bautista de Misiones, and Caaguazú, respectively, in order to listen to the victims of the Stroessner dictatorship. The international hearings were held in the Argentine cities of Buenos Aires and Posadas; one was aimed at dignifying the thousands of Paraguayans who were in exile in such a country, and the other at documenting the Paraguayan exile in the Argentine border. The last two hearings were focused on topics and were held in Asunción, and dealt with topics such as “women and children during the Stroessner dictatorship” and “indigenous peoples and dictatorship.” An important consequence of the public hearing in Buenos Aires was the removal of the Paraguayan ambassador, Orlando Fiorotto Sánchez, when he was accused of betrayal and persecution of opponents during the Stroessner dictatorship.

Composition, Mandate, and Characteristics of the Truth Commission of Ecuador⁴

The claims by the victim organizations from Ecuador were solved through the creation of the CV, through Executive Decree 305 of May 3, 2007, thanks to the political will of President Rafael Correa, and whose duty was to “investigate, explain and prevent the impunity of violent actions and human rights violations that took place between 1984 and 1988 and other periods.”⁵ The objectives of the Commission, in accordance with Article 2 of the Executive Order were to:

- a) Conduct a thorough independent investigation of human rights violations that took place between 1984 and 1988, and other special cases, such as the so-called Fybeca case, as well as their causes and circumstances.
- b) Ask for a declassification of the confidential or natural security files of the State.
- c) Encourage the recognition of the victims of such violations and design reparation policies.
- d) Recommend any necessary legal and institutional reforms, as well as effective tools to prevent and punish human rights violations.
- e) Determine the existence of possible evidence of social, criminal, and administrative liabilities to submit them to the relevant authorities.

The CV of Ecuador started operations on January 14, 2008. Even though it was planned for nine months and extendable for three additional months, it was extended on three other occasions through executive decrees, and the date for the submission of the final report was set on June 7, 2010 in Quito.

The Commission was composed of four commissioners and a support committee composed of five members; three of them were victims and victims’ relatives. The CV had an executive secretariat and a professional interdisciplinary investigation team based in the city of Quito, besides national and international consultants and a technical administrative team. These professionals frequently travelled across the country to hear the testimonies made by the victims of human rights violations.

A Comparison between the Two Commissions

The CVJ of Paraguay and the CV of Ecuador shared some similar aspects regarding their mandates, methodologies, and outcomes that should be briefly reviewed. Some strengths, weaknesses, obstacles, and unpublished contributions are also worth mentioning.

4 For the characteristics of the CV, see the introduction of the Final Report of the CV.

5 Executive Decree No. 305, May 3, 2002. Article 1.

Arbitrary detention and torture were among the most common human rights violations in Paraguay and Ecuador during the regimes of Stroessner and Febres Cordero, as stated in the final reports of both truth commissions. The mandate of the violations that should be analyzed by each of them has a lot of coincidences because it is focused on the most fundamental rights, including the rights to life, personal and sexual integrity, and personal freedom. Therefore, they focused their investigations on extrajudicial executions, enforced disappearance, arbitrary detention, torture, and other cruel, inhuman or degrading treatment or punishment, and sexual violence.

Both commissions conducted thorough investigations. The CVJ of Paraguay investigated not only the violations during the Stroessner dictatorship (1954–1989), but also it had the mandate to study the violations that took place between 1990 and 2003, though with less significant results due to a lack of testimonies heard by the Commission with regards to such a period. The CV of Ecuador investigated not only the violations during the León Febres Cordero Administration (1984–1988), but also the violations between 1985 and 2008. To a certain extent, the extension of the periods beyond Stroessner and Febres Cordero might be due to the need to investigate new forms of violence that took place years later, as an extension of those repressive Governments, and a need to point out the institutional reforms and policies that were allowing such new violations of human rights.

In Paraguay, the mandate extended beyond the Stroessner dictatorship, mainly due to the demand of the National Union of Ethical Citizens Movement (Partido Unión Nacional de Ciudadanos Éticos-UNACE), which was chaired by General (r) Lino Oviedo, who demanded the investigation of the events known as the “Paraguayan March.”⁶ In Ecuador, the extension of its mandate only prevented the investigative and analytical efforts from focusing on the Febres Cordero Administration, but it also resulted in an incomplete and superficial examination of other presidential periods.

Even though in practice, the CVJ of Paraguay was mainly focused on the human rights violations by the Stroessner dictatorship, investigating the transitional years was always difficult and its approach was quite poor and incomplete. Volume VII, which presents some paradigmatic cases, has a section titled “Democratic Transition Progress,” with just 30 pages and which superficially deals with some events related to the situation of human rights during those years. On the other hand, the CV of Ecuador dealt with 51 cases that took place after the Febres Cordero Administration; however, even though most cases might illustrate the dynamics of each presidential period, their number is not representative as compared to the number of actual violations.

A unique characteristic of the composition of both commissions was not only that all the commissioners were nationals of their countries, but also most of them were victims. The CVJ of Paraguay had three commissioners who expressly represented victim organizations, besides other commissioners who were also direct victims of the Stroessner dictatorship, and other officials of these commissions were victims’ children. In the CV of Ecuador, one of the four commissioners was a victim and three members of the support committee were also victims. This victim situation in both commissions was not present in other similar experiences in Latin America. Such a unique situation added commitment to the work since the demand for the respect of the victims’ human rights was more evident.

6 The “Paraguayan March” was a political crisis that took place after the assassination of the then-Vice-President Luis María Argaña, on March 23, 1999. The opposition initially blamed the president, Raúl Cubas Grau and the political leader Lino Oviedo. The death of Argaña provoked a series of demonstrations by opponents and followers of Oviedo and the Cubas Administration, and ended with the massacre during the Paraguayan March when seven demonstrators who were opponents of the Government at that time died, and this led to the resignation of President Cubas.

However, this situation raised some concern and rejection by some opponent sectors regarding the independence and impartiality of their work. A weighted assessment of this aspect can be made based on their final reports. Explaining past human right violations entails a commitment to the dignity of the victims and to an affected society, and such a mission it is not and cannot be neutral. Telling the truth in the face of political violence means taking sides with humiliated and offended parties. These commissions, and their members, were always on the victims' side because they heard their testimonies and their claims and provided opportunities for a dialogue and participation, but such opportunities did not limit the independence of their tasks.

Each commission had strengths that largely determined the outcomes. Both commissions learned from the experiences of other truth commissions in Latin America and did not start from scratch when they implemented their mandates. From start to finish, both had governmental assistance. I should mention the presidential support to the CV of Ecuador, both in terms of funds and support to implement its mandate. The commitment by the international community, through embassies and cooperation agencies in the granting of funds, was more significant in the case of Paraguay; the CV of Ecuador was funded almost entirely with governmental resources.

The personal support of President Rafael Correa of Ecuador to the activities of the CV can be contrasted with the apathy of the Nicanor Duarte Administration of Paraguay, for the implementation of the CV mandate. These attitudes were also the target of criticism. As in other countries, the attitude by those who felt affected by the revelations of the Commission made them restrict their impact. In the case of Ecuador, it unfoundedly accused the Final Report of the CV of seeking to discredit the political opponents of President Correa, inherited from León Febres Cordero. On the other hand, the apathy by the Duarte Administration toward the CVJ of Paraguay could be explained because it was a Government of the Colorado Party, to which Strossner belonged, and which could only be defeated until the Paraguayan presidential elections of April 20, 2008, which elected Fernando Lugo. President Lugo, during an emotional event two weeks after his inauguration, formally received the Final Report of the CVJ, and since his Administration and in many aspects; there has been a true transition in Paraguay. Some of these aspects include the design and implementation of a governmental policy based on the respect and guarantee of human rights.

In comparison to their two most recent predecessors in the continent, i.e., Guatemala and Peru, these two truth commissions had fewer resources. The investigation teams from Paraguay and Ecuador were small and staffed with young professionals, something that is somehow reflected in the fact that the case analysis does not have the depth of other truth commissions. Even though the staff of the CV of Ecuador made frequent trips outside Quito, this Commission did not have any branch outside its headquarters, and both commissions did not conduct massive and permanent promotion campaigns like those conducted elsewhere. The low work profile, in both cases, is illustrated with the modest contribution of resources by the international community and, even, with a profound unawareness, in many places, of the fact that both countries ventured into a transitional justice initiative based on the truth commissions.

The number of testimonies heard by both commissions is different and has to do with the different effects of political violence in both countries: 2,059 in Paraguay and 659 in Ecuador. This difference is explained not only by the type of violations and their impact, but also by the unique implementation of the commissions' mandate. A partial but objective explanation of the Ecuadorian case was the lack of branches outside Quito for this purpose, as well as the modest promotion campaign by the commission itself. Furthermore, in the Ecuadorian case, the attitudes towards the human rights violations during such a period included concealment, silence, and isolation of the victims. In both countries the most frequent violations were arbitrary detention and torture, and there was a significant number of survivors, which made it possible to document the different periods in a more coherent and thorough manner.

The CV of Ecuador was able to declassify more than 300,000 governmental documents (particularly from the National Security Council, the Ministry of Defense, and the National Police) and heard some documentary complaints by the Ecumenical Commission of Human Rights (CEDHU) of Ecuador; nevertheless, it did not have the previous databases, such as the Paraguayan case. The CVJ of Paraguay took into account other sources of information different from and previous to its own in order to identify the victims. First, the official data on the detentions by the police in Asunción are stored in the Center of Documentation and Archives for the Defense of Human Rights of the Supreme Court of Justice of Paraguay, known as the *archives of terror*, discovered in 1993. Second, there were lists of people who were indemnified by the Ombudsman Office and who were recognized as victims of human rights violations after 1989. Moreover, there was information of the archives of NGOs such as Committee of Churches for Emergency Aid (*Comité de Iglesias para Ayuda de Emergencias*, CIPAE) and Antonio Guash Center of Paraguayan Studies (*Centro de Estudios Paraguayos Antonio Guasch*, CEPAG).

The CVJ of Paraguay and the CV of Ecuador also shared some obstacles to the investigations. The truth by the perpetrators of human rights violations is still an unresolved matter in Latin America. Since the foundation of the CEH of Guatemala, the truth commissions have tried to disclose the structures responsible for human rights violations and how they operated. In spite of the efforts by the CVJ of Paraguay to characterize the repressive machinery and the efforts of the CV of Ecuador to find out the main military and police structures involved in the human rights violations, the corresponding pages of their final reports contained limited analyses that clearly disclosed the actions of these police and military groups. Even though Paraguay had valuable documents kept in the archives of terror, and even though the Ecuadorian government declassified, expressly for the CV, about 300,000 pages of police and military units during the León Febres Cordero Administration, the reconstruction of the structure of such repressive machinery, as well as its *modus operandi*, was not an easy task.

Moreover, little information that could have been valuable was provided by the members of such units. Even though the CVJ of Paraguay had some witnesses who worked for the Government during the Stroessner dictatorship and even though 61 alleged perpetrators of human rights violations appeared in front of the CV of Ecuador, their testimonies were not key statements to clearly disclose the actions of the perpetrators. Anyway, it is worth mentioning that both made valuable efforts in this search. Particularly, the CV of Ecuador held two public summons for a meeting with the alleged perpetrators. On April 6, 2009, 211 people were summoned, and on May 21 of that year, 84 more were summoned, but only 61 attended.

Another outstanding aspect was the participation of the civil society and of the human rights organizations in both commissions. Precisely as an obstacle resulting from the Stroessner dictatorship, the human rights movement from Paraguay is much more recent and, thus, is not strong enough nor does it have the accumulated experience of its peers in other parts of Latin America. The CVJ of Paraguay has always had the support of these organizations, especially because three commissioners represented its perspective; something similar happened with the CV of Ecuador, whose chairman also chaired one of the most traditional human rights organizations. However, it should be pointed out that during the work process, most of these organizations did not have an active and participative attitude towards the corresponding truth commissions.

A case in point in Paraguay was the contribution of the Committee of Churches for Emergency Aid (CIPAE), the Coordinator of Human Rights of Paraguay (CODEHUPY), the Coordinating Table titled “Historical Memory and Archives of Repression,” and in the case of Ecuador, the role of the Ecumenical Commission of Human Rights (CEDHU). Maybe because they had a respectful attitude and guaranteed a more objective and independent work, non-governmental human rights organizations, in both countries, played the role of spectators and not of a leading spokesperson. They had a low profile and, particularly in the case of Ecuador, they had little dialogue with the CV. Therefore, they did not take advantage of the

unique opportunity to purposefully contribute to the explanation of past violations and, probably, their involvement in the implementation of the commissions' recommendations was limited.

The role of victim organizations was different from the role played by human rights organizations. In both countries, victim organizations encouraged the creation of both commissions. That is why maybe both had commissioners who were victims of human rights violations, as well as the General Coordinator of the CVJ of Paraguay and several members of the support committee of the CV of Ecuador. The participation of such organizations was essential, especially to encourage a large number of people to make a statement before the commissions. I should particularly mention the National Movement of Victims of the Stroessner Dictatorship (MNV) and the Association of Relatives of Disappeared Detainees of Paraguay (FADDAPY) and the Ecuadorian Committee against Impunity (CENIMPU).

A drawback related to the track record of victim and human rights organizations in both countries and which was evident in both truth commissions has been the psycho-social approach in the past - and at present - used for the victims of human rights violations. Ecuador and Paraguay do not have a track record in the training of staff specialized in victim management, nor do they have special programs, except for some small committed organizations. This is an unresolved matter in both countries and it is one of the most urgent tasks. The two final reports provide significant recommendations to close the gap, particularly rehabilitation actions.

Both commissions had the possibility of prosecution during their mandates; i.e., they could file lawsuits in competent national courts, but each commission chose a different venue. Both the CVJ of Paraguay and the Peruvian Truth and Reconciliation Commission filed some complaints against alleged perpetrators, but the outcome was not satisfactory since no court decision was made against the prosecuted people. Maybe, one of the most outstanding results regarding these complaints was that they urged the Paraguayan Government to become a party to the UN Convention on Imprescriptibility of Crimes of War and Against Humanity, moreover, some types of criminal classifications were interpreted more attuned to the notion of torture according to the international law on human rights. The current General Directorate of Truth, Justice, and Reparation of the Ombudsman Office of Paraguay (hereinafter DGVJR-DP) is monitoring these complaints and has filed others with the Office of Public Prosecutor.

On the other hand, the CV of Ecuador decided not to file any complaint during its mandate. However, it submitted a general prosecution strategy in Ecuador and at an international level regarding the facts under investigation to the Attorney General's Office, once the Final Report was published. This strategy was called "Elements for the prosecution of cases of human rights violations and crimes against humanity," a document that was complemented with a detailed analysis of the evidence collected for about 40 cases, so that they can be assessed by the Ecuadorian legal authorities. The filing of these cases, with the prosecution criteria, made the Attorney General's Office to create a Specialized Unit of the Truth Commission, through Resolution 49-2010.

Even though the Office of Public Prosecutor of both countries had the last say regarding these investigations, the lawsuit proposal in Ecuador is more strategic than in Paraguay. The public prosecutors from both countries are indebted with the victims and they are expected to fulfill their right to justice, as the best guarantee to prevent violations from repeating.

During its mandate, the CV of Ecuador was entrusted with investigating a human rights violation case besides the 1984–2008 period: the investigation of the Bosco Wisuma case, a professor of the Shuar ethnic group, who died on September 30, 2009 as a consequence of a confrontation with members of the National Police during a demonstration against a water bill in the city of Macas, capital of the province of Morona

Santiago,. Since there were immediate reactions by different sectors, blaming the assassination on both the police and the indigenous groups, the Government ruled that the CV should conduct an independent and impartial investigation. Under its sponsorship, a forensic and ballistic appraisal concluded that Wisuma died as a consequence of a lead bullet that did not come from the Police ammunitions, but it could have been shot by either the police or the indigenous people. This investigation was unusual because the truth commissions were created to clarify past cases, not current cases, something that should be investigated by the Attorney General's Office of the Republic of Ecuador.

One of the most unique outcomes of the CVJ of Paraguay, which is part of the non repetition actions, was the creation of an optional course called "Authoritarianism in the recent history of Paraguay" as part of the curriculum of the Ministry of Education and Culture aimed at third-cycle elementary school students, so that the young students and the future generations could become aware of the events during the Stroessner military regime. This optional course was included in the school curriculum in 2008, besides the publication of a book about this same topic; this course is still promoted by the Ministry of Education and the DGVJR-DP.

The Final Report of the Truth and Justice Commission of Paraguay

One of the 2,059 victims of human rights violations who came to the CVJ of Paraguay stated the following:

One of the recommendations you can give, I am already sixty years old... is to help and try to avoid the return of the dictatorship; I would be willing, so that people will never forget what happened because the past events were very serious! If we were at least aware of what happened. I am even listening to people say that 'they lived better under the dictatorship,' but I cannot live better if I do not have the freedom we did not have at that time. Therefore, I tell people not to forget everything that happened on those days.

This testimony made by Norberto Acosta Lugo, a Paraguayan arbitrarily detained in Asunción in 1976 and brutally tortured at the Investigation Unit of the National Police, summarizes the message by the Final Report of the Truth and Justice Commission of "Anivehaguaoiko," a Guaraní phrase meaning "so that it does not repeat."

The figures in the reports are self-evident. It is estimated that during the Stroessner regime there were at least 20,090 direct victims of the following human rights violations: 19,862 people were arbitrarily or illegally detained, 18,772 were tortured, 58 were extrajudicially executed, 337 disappeared, and 3,470 were exiled. Practically no one who was detained escaped torture and almost every victim was subject to a gross violation. Of the victims recorded by the la CVJ, 86 % (17,277 people) were at least subject to one form of physical torture, and 83% (16,675 people) were subject at least to one form of psychological torture. On the other hand, 18,772 were tortured, and this accounts for 94.5% of those who were unlawfully deprived of their liberty. Many people suffered more than one violation, and it should be taken into account that these figures show a large under-registration of exile and other forms of human rights violations against women and girls and of sexual violence. The CVJ considered that there were indirect victims, i.e., about 107,987 people, relatives, or acquaintances of direct victims who suffered the serious negative consequences of the events, or the violations of their rights as a result of some of those violations. It should be taken into consideration that the average population of Paraguay, during the period under study, was 2,500,000 inhabitants (1,300,000 in 1950 and 4,100,000 in 1992), which shows the level of impact.

The most frequent torture was beating with and without an instrument, and the humiliating situations and the mistreatment at detention centers included: poor nutrition, isolation, and unhealthy conditions. The

signs of the brutal beatings suffered by most victims are still present to this day. Almost half the victims were subject to death threats; something that reiterates the policy of the Government of fueling terror and anxiety in the civil population, without any respect for their rights or physical and psychological integrity. The use of certain highly intense torture techniques regarding pain or physical or psychological suffering (such as the use of electricity or a cattle prod, a basin, hanging or extreme body positions, witness third-party torture) affected about one of four detained people. Torture was the most serious and extensive instrument of social control during the dictatorship, and brutal methods were used and perpetrators were trained in making torture an exhibition of power and an attempt to destroy victims.

Being part of a social sector, for instance agricultural leagues, student movements, opposition parties, or armed movements, as well as the emerging organizations of the United National Liberation Front (*Frente Unido de Liberación Nacional*, FULNA) or the Military Political Organization (*Organización Político Militar*, OPM), was the determinant to become a victim of human rights violations. The suspicion was raised in every social sector that did not show an acceptance of the regime. The unlawful deprivation of liberty and torture mainly affected the members of political parties and of social movements, particularly peasant organizations. The largest number of enforced disappearances and extrajudicial executions was among members of armed groups.

The CVJ was able to identify, by first and last name, 423 victims of these violations, which accounts for 336 victims of enforced disappearances, 59 extrajudicial executions, and 28 cases that could not be convicted due to their characterization.

Many women suffered human rights violations that were not generally visible. This happened occasionally because women talked more about the pain and violations of their partners, children, or relatives. In other cases, some forms of violence against women were unfairly characterized not by the cruelty and disdain of the perpetrators, but of a stigma of victims, i.e., sexual violence. Nevertheless, the study by the CVJ showed that women were permanent victims of human rights violations during the dictatorship because they were related to other people, members of communities that were attacked, or leaders and members of organizations.

Human rights violations lasted throughout the Stroessner regime and across every department of the country. They did not only affect a large number of individual victims, but also entire communities. During the seventies, peasant communities were violently repressed, particularly those linked with Christian Agricultural Leagues. There were communities that were entirely devastated, such as a case of San Isidro de Jejuí (a department of San Pedro) in February 1975, and others were seriously affected by collective attacks, such as the communities of Costa Rosado (department of Caaguazú), Acaray (department of Alto Paraná), Simbrón (department of Paraguari) Sangre de Drago (department of Misiones), and Pueblo de Dios (department de Caaguazú), among others. Such communities represented experiences of non violent resistance to the dictatorship under a Christian movement that promoted, through economic self-management, awareness, alternative education, and political self-organization. Furthermore, during this regime, there was a lack of respect for the human dignity of indigenous groups, and there were gross violations of their human rights, such as the attacks by civilians and soldiers against communities of indigenous groups such as Aché, Ayoreo, Maskoy, and Toba Qom, including extrajudicial executions of adults and even children and elders, as well as rapes of women.

Human rights violations were also accompanied by the loss of property and land, which were illegally seized and assigned. The CVJ studied rural land assignments and the transfers and the respective title deeds granted by the governmental bodies in charge of agricultural reform; from 1954 to 1989 and from 1989 to 2003, in order to determine if the assignments and the granting of title deeds were in conformity with the

applicable laws and if they had the current legally required budgets at the time of assignment. The CVJ investigated the granting of public lands in primary and secondary documentary sources and found some irregularities that made them null and void. A recommendation was made to the State to promote any relevant legal actions and the compensation for damages.

The CVJ held the State accountable for these human rights violations during the Stroessner regime, particularly the Executive Branch which was unipersonally exercised by the President of the Republic, the National Police, and the Armed Forces, as well as the public administration. It also held the Legislative Branch accountable for the Central Electoral Board and the Judiciary, particularly the Supreme Court of Justice. The personal accountability of Alfredo Stroessner Matiauda, the members of the Police Force, the Armed Forces, the ministers, and other public servants were particularly pointed out. Some members of Parliament, who were members of the Supreme Court of Justice, first-instance judges, and members of appellate courts were also held accountable.

The CVJ also held the National Republic Association (Colorado Party) accountable for human rights violations, but with the exception of the Popular Colorado Movement (Mopoco) and the Republican National Association of Exile and Resistance (ANRER) due to their dissent and resistance to the dictatorship. Likewise, individuals who acted with the support and tolerance of the State agents, particularly leaders of the Colorado party, the militia, urban guards or activists who participated with or without a police or military uniform, were also held accountable. The CVJ also established the personal and institutional accountability of some private businessmen and business organizations, some members of the media, particularly the press from the party in power, leaders of the Catholic Church, particularly in the first decade of the dictatorship, and leaders of other religious groups.

It also established the accountability of some US administrations, some Brazilian governments, and the cooperation of the repressive systems linked with the Condor Operation (promoted by the governments of the military dictatorships of Argentina, Uruguay, and of Augusto Pinochet in Chile) for the human rights violations during the Stroessner dictatorship.

The report has eight volumes. The first volume contains the conclusions, recommendations and descriptions of the Stroessner regime; it also points out the historical causes of the coup d'état of 1954 and the characteristics of the political regime of the totalitarian dictatorship.

The second volume presents the main human rights violations; the violations that the CVJ focused on are: arbitrary detentions and unlawful deprivation of liberty, torture and other cruel, inhuman, or degrading treatment or punishment; enforced disappearances, and extrajudicial executions, and exile.

The third volume deals with human rights violations by some specific groups under a vulnerable or risky situation and that have frequently become invisible: violations of women's human rights and violations of the rights of children, boys, girls, and adolescents, and some violations of the rights of indigenous peoples. The fourth volume deals with illegally obtained lands; the CVJ studied the assignments of rural lands and the title deeds granted by the governmental bodies in charge of agricultural reform from 1954 to 1989 and from 1989 to 2003.

The fifth volume analyzed the consequences of human rights violations and the experience of victims; it also studied the characteristics of repression from a psycho-social point of view, and the impact of terror on collective behavior. The consequence of torture, exile, enforced disappearances or executions, sexual violence, and the attacks of communities posed a challenge for the recognition and reparation policies for victims and the reconstruction of the social fabric.

The sixth volume is focused on the accountability for human rights violations; it describes the repressive system and includes a list of the main authorities, both civil and military, who were pointed at during the testimonies as alleged perpetrators of human rights violations, as well as other people who were frequently reported by the victims.

The seventh volume studies some paradigmatic cases and their consequences; such cases were selected in terms of the different periods of the dictatorship and showed the variety of victims and repressive actions against social movements, political groups, and emerging armed organizations.

The last volume includes supplementary documents, a list of the victims, disappearance records, photographic documents of detention centers and statistical charts.

The victims' rights to truth, justice, and reparation, after the overthrow of the Stroessner regime, have not been properly protected in accordance with the severity of the violations and damages. The measures taken by the Paraguayan government concerning satisfaction, restitution, rehabilitation, compensation and assurances of non-repetition, have not been sufficient. Therefore, the CVJ, seeking full and effective reparation, made 178 recommendations. These recommendations represent a program to improve the respect and guarantee of human rights and a necessary reform of the Paraguayan State to get rid of the dictatorship inheritance and for an effective enforcement of justice. These actions should be aimed at the articulation of a reparation policy and the validity of the protection of human rights in the next few years.

The Final Report of the Truth Commission of Ecuador

(Before) ... I was happy, optimistic, always positive, and full of energy. Even though during that awful year, a very important part of «myself» was destroyed, in spite of having less trust in myself and others, a worsening health, having been deprived «of what I was able to build » during the years of my greatest creative and productive potential, they destroyed the most important part of «my life » and of «my world ». ... For years, I was not able to talk about it. Since I know it is not easy to do it, I would like to talk not only on my behalf, but on behalf of those who were forced to experience torture and its consequences ... without any possibility to say anything about it.

This testimony made by Miryam Muñoz, who was a civil official of the Ministry of Defense, and who was detained on August 27, 1984, and tortured at the premises of the Conocoto Battalion of Military Intelligence in Quito, and accused of an alleged relationship with Alfaro Vive Carajo, summarizes the purpose of the report: speaking on behalf of the victims who suffered severe human rights violations by the Ecuadorian government. Oblivion is not only the antithesis of memory, but also of justice.

The CV of Ecuador was created at the request of a group of victims of human rights violations, who were asking the State for an adequate satisfaction of the rights to truth, justice, and reparation. In Ecuador, during its recent past, there have been abuses against human dignity perpetrated by State agents. In particular, the León Febres Cordero Administration designed and implemented a governmental policy which was systematically and comprehensively accountable for deprivation of liberty, extrajudicial executions, and enforced disappearances. Moreover, during the subsequent governments between 1988 and 2008, other cases of human rights violations were reported.

During the 1984-2008 period, the Commission was not able to state that 456 people, in 118 cases, were direct victims of the 831 identified human rights violations: 269 victims of deprivation of liberty, 365 of torture, 86 of sexual violence, 17 of enforced disappearance, 26 attempts against the right to life, and 68 of extrajudicial executions.

Based on the number of human rights violations, the most frequent violations included torture and unlawful deprivation of liberty, followed by sexual violence, extrajudicial executions, attempts against the right to life, and enforced disappearances. The relationship between unlawful deprivation of liberty and torture is predominant, and these violations took place in a sequence of cases.

Sexual violence affected 18% of the total victims, especially under arbitrary detentions and as a form of torture. Enforced disappearance, hiding the whereabouts and the situation of the victim, was in some cases temporal and helped other state agents perpetrate other human rights violations against the victim. Extrajudicial executions took place in different situations; besides the death that resulted from the torture practices, and death resulted also from an excessive use of force even though there was not any deliberate intention of the state agent to provoke it and, on the contrary, it happened as a consequence of the beating, wounds, or other means deliberately used or, even, by the direct will of putting an end to the victim's life.

The largest number of violations took place during the León Febres Cordero Administration, accounting for 68% of the victims, that is, 311 people. In the speeches of President León Febres Cordero, human rights were not a significant topic and they lacked content and validity. The criminalization of political enemies proved that human dignity was a precarious value during his Administration.

The strategy used by the León Febres Cordero regime to dismantle the insurgent groups in the country – annihilate the leaders and suppress the political opposition – was based on the use of special structures, both from the Police and the Armed Forces. Based on these mechanisms, the Government managed privileged information about the political opposition and manipulated the information of the State for its own benefit. The use of pseudonyms, clandestine detention and torture centers inside police or military premises, security booths, among others, disclosed the clear intention of leaving no trace of the actual perpetrator or the mastermind of the acts, exonerating the State agents, and establishing impunity.

In 94 of the 118 cases (80% of the total), the Commission identified the alleged perpetrators involved in the human rights violations under investigation. When the traces made it possible, the immediate supervisors or highest authorities of the departments where the cases took place were also held accountable. Of the 459 identified alleged perpetrators, 49.6% accounted for active and passive officers and members of the National Police, 28.3% active and passive members of the three branches of the Armed Forces, 10% governmental authorities, 5.4% court officers, and 5.9% authorities or agents from foreign governments. This identification did not have any legal consequence since the Commission did not have any jurisdictional authority. Instead, this should help the Office of the Public Prosecutor, competent international organizations, or other Governments to conduct the necessary accountability investigation.

In Ecuador, during the León Febres Cordero Administration, many crimes against humanity were perpetrated against the Ecuadorian civil population. The CV conducted a thorough investigation of the human rights violations against members of the Alfaro Vive Carajo organization and former commando groups of the Taura Airbase. In both cases, it was possible to confirm the concurrence of elements that allowed classifying the cases as crimes against humanity. There was a general and systematic attack against these population groups, and the perpetrators acted with full knowledge of the context and the scope of their behavior.

During this Administration, there was a clear persecution of any political opposition manifestation. Alfaro Vive Carajo was an organization that decided to rise up in arms and tried to develop a guerrilla war, but it was so relentlessly persecuted by the Febres Cordero regime that the crimes perpetrated against its members do not have a word to describe them but crimes against humanity. All its leaders were practically victims of extrajudicial executions and its members were detained and tortured in a systematic and general manner. A similar case was that of the commando groups of the Taura Airbase, which after kidnapping

President Febres Cordero for one day and guaranteeing that they would respect his rights, they were subject to arbitrary detentions, torture, and other cruel, inhuman or degrading treatment or punishment; they were subject to a military criminal trial and sentenced without respecting the minimal judicial guarantees. These two cases, though different, showed that this Administration designed and implemented a governmental policy that sought to annihilate or submit everyone who might be considered a political enemy.

The fact that the Commission was focused on the analysis and investigation of these two collective cases does not rule out the existence of other crimes against humanity committed against the civil population of Ecuador in the same period or later. Two cases were chosen, i.e., Alfaro Vive Carajo and the former commando groups of Taura, because of the impact they had on the recent history of Ecuador and its population.

In the case of the former members of Alfaro Vive Carajo, the CV represented an opportunity to get rid of ostracism and social marginalization within a political fragmentation context. It was also an excellent opportunity to rebuild the social relationships fractured by violence, as well as a better insertion in the country even when the medium-term effects are still to be assessed.

The report is composed of five volumes. The first volume includes five sections on the investigation methodology and process, the legal framework, a description of the human rights violations, sexual violence, a gender approach, and the psycho-social impact of the human rights violations in Ecuador. The second volume deals with crimes against humanity and contains four sections: the socio-economic and political context, the main military and police structures involved in human rights violations in Ecuador; an analysis of the violence portrayed in the repressive speeches of León Febres Cordero and his Administration, and human rights violations that are deemed crimes against humanity.

The third volume, focused on accounts of cases during the 1984–1988 period, contains 67 reports of human rights violations perpetrated during the Febres Cordero Administration. The fourth volume analyzes the cases of the 1989–2008 period and contains 51 accounts, including two cases deemed special due to their unique impact: Sucumbíos (province in the Colombian border, a case containing the versions integrated into a single account of multiple victims of human rights violations between 2000 and 2008), and Colope (a case on the detention and torture of seventeen members of Alfaro Vive Carajo, in the province of Esmeraldas in 1983), as well as 36 documentary cases that were within the jurisdiction of the Commission.

The last volume, besides the conclusions and recommendations, includes an alphabetical list and records of 458 alleged perpetrators and their level of involvement in the cases under investigation, an alphabetical list and records of 459 victims of human rights violations investigated by the Commission, and the text of a bill in favor of victims as one of the most significant recommendations. Furthermore, an executive summary including the topics analyzed in the first three volumes, including the conclusions and recommendations, was published in a single volume⁷.

Some Comparisons between the Final Reports

The articulation and classification of the recommendations in both reports follow the parameters of the current doctrine in terms of reparations as set forth in the international law on human rights. These two truth commissions were created after 2005, a year when the United Nations endorsed two major instruments on this topic: the Set of Principles for the protection and promotion of human rights through action to combat

⁷ Another summary of the Final Report of the CV can be reviewed in: Bahamonde, C. (2010). Breve descripción y contenido del Informe Final de la Comisión de la Verdad de Ecuador. In *Develando el desencanto. Informe sobre derechos humanos Ecuador. Versión ampliada*. Quito: Andean Program on Human Rights, Universidad Andina Simón Bolívar. Sede Ecuador. pp. 83 to 92.

impunity, and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Therefore, the recommendations in both reports are structured under large sets of actions such as satisfaction, restitution, indemnification, rehabilitation, and no repetition, pursuant to international human rights standards and the doctrine and jurisprudence of the Inter-American human rights system.

The catalogue of recommendations, 178 for Paraguay and 155 for Ecuador, was the result of a gradual consultation and building process, particularly in Ecuador. This country conducted a preliminary review of recommendation that have been suggested for years by governmental and non governmental human rights organizations, both national and international, for instance, the Office of the Ombudsman of Ecuador, the national and international human rights NGOs, the Inter-American Commission and Court of Human Rights, the UN committees, some non conventional mechanisms, also the United Nations, such as the Special Rapporteurs or Task Forces who visited the country on several occasions.

Based on these recommendations and considering some suggestions derived from the interviews of people who made their statements to the CV, a series of questions were designed and asked to the victims during three workshops in the cities of Guayaquil, Quito, and Loja; on the one hand, in order to find out the correct type of reparation for victims, and on the other hand, to find out about the possible reparation measures derived from a preliminary review. The outcomes of these workshops allowed systematizing a list of recommendations that was later submitted, debated, and improved during a meeting attended by representatives of governmental organizations to discuss the different topics. Then, there was a meeting with some non-governmental human rights organizations to obtain their points of view about the catalogue of recommendations under study. As can be seen, the set of reparation measures had a participative dynamics that took into account the demands of the victims and the opinions of governmental and non-governmental organizations and which gave it a significant legitimacy as a recommendation development process.

In Paraguay, this was not done in participative manner, but it took into consideration the demands made by the victims during their testimonies to the CVJ, as well as some statements made by some human rights NGOs, who filled out a questionnaire sent by the Commission.

Both commissions analyzed the impact or consequences of such violations, a study that became a chapter in each final report. This should be assessed because the reports go beyond a mere description of the perpetrated violations to timely analyze the effects of such violations at an individual, family, and collective level and how they de-structured the community and social fabric.

Unlike other truth commissions in Latin America, both in Paraguay and Ecuador they indicated the names of the alleged perpetrators of the violations. The report of Paraguay mentions 447 first and last names of people accused by the victims, and the report of Ecuador, 460 who were indicated by the investigations. Even though in both final reports these names did not have any legal or judicial consequences, mentioning the first and last names of the perpetrators of such serious human rights violations is indeed a social sanction.

There are also unpublished analyses in the reports of both commissions regarding the Latin American experiences. Both commissions, though in a limited manner, tried to document cases of human rights violations against the LGBTI population (lesbian, gay, bisexual, transgender, and intersex). The report of Paraguay did it based on two paradigmatic cases that are included in volume VII, the case of Bernardo Aranda in 1959 and the case of Mario Luis Palmieri in 1982; and the report of Ecuador did it in the final section of the chapter on sexual violence and the gender approach in volume I titled “Homophobia and transphobia: violence and discrimination against the LGTBI population in the decades of 1990 and 2000”.

By pointing out some analytical innovative elements, the topics of exile and ill-obtained rural lands should be mentioned in the report of Paraguay; and in Ecuador, the analysis of violence as part of the repressive speeches of León Febres Cordero and the case studies included in the section about crimes against humanity. The Paraguayan exile during the Stroessner dictatorship had such a magnitude that it was considered in the mandate of the CVJ as a violation that should be analyzed in a specific manner. The way each final report deals with these topics is outstanding not only due to their uniqueness and the analysis presented; these topics are a significant contribution to the study of human rights in the region.

An additional outcome of the CV of Ecuador is worth mentioning: a bill to provide reparation for victims. As one of its most important recommendations, the CV developed a bill to provide reparation for victims and ensure the prosecution of serious human rights violations and crimes against humanity committed in Ecuador between October 4, 1983 and December 31, 2008. Such a bill is structured into six titles: object and principles, victim reparation measures, institutional structure for reparations and prosecution, a procedure to grant individual measures of administrative reparations, investigation and prosecution measures, and transitional provisions and amendments. The bill suggests the creation of a program of administrative reparations as the most effective mechanism to encourage victim reparations.

The drafting of the bill considered a thorough comparative analysis of the programs of reparations in Latin America and included valuable comments of some Ecuadorian experts and governmental officials. The bill was formally submitted to the National Assembly at the beginning of the second half of 2010, and the Ecuadorian Parliament has not yet properly debated this bill. This is an important initiative to implement the recommendations of the CV and, above all, to build a solid path that will prevent human rights violations from repeating.

The bill is foreseeing two types of reparation measures: individual administrative reparation measures and general-scope reparation measures. Individual measures are specifically aimed at direct victims and their relatives. General-scope measures are aimed at compensating the Ecuadorian society as a whole and undertaking institutional reforms that prevent cases from repeating. The bill suggests an institutional structure for the implementation of reparations and the prosecution of the perpetrators of human rights violations, creates a procedure to grant individual administrative reparation measures to overcome the main regulatory obstacles for the prosecution of human rights violations investigated by the CV, and guarantees the protection of the human rights of victims during the procedure.

Nevertheless, not everything is positive and there are shared deficiencies that emerged during the activities of both commissions and that are reflected in the final reports. The two commissions had to overcome an obstacle also faced with other truth and transitional processes: the under-registration of cases of sexual violence, including rape. This under-registration is due not only to the fear of women to file a complaint, but also to the prioritization of complaints regarding others: husbands, children, and relatives. Moreover, in both cases, there were small specific teams that, from a feminist approach, worked on this issue, and meant a significant progress regarding other experiences. Furthermore, there were difficulties to make up these groups within a more general approach of the commissions. Anyway, both reports pointed out some relevant cases in the respective chapters on sexual violence and the gender approach. In this sense, due to its uniqueness, I should mention the case of sexual slavery included in Chapter VI about gender differences and the impact of violence on women in volume V, related to the consequences of violations, of the Final Report of Paraguay, and the cases of homophobia and transphobia against the LGBTI population that are included in the fourth section of Volume I of the Final Report of Ecuador.

The rights of indigenous peoples were not analyzed as a key issue by each commission, when the presence of indigenous peoples in both countries is relevant and, above all, when they are historically

unknown and violated. Even though Paraguay tried to close this gap with a public hearing and the inclusion of a chapter on this topic in the Final Report, it is a pity that, for example, there has not been a thorough investigation to determine the possible configuration of genocide against indigenous peoples, as suggested by one of the conclusions of the Final Report, i.e., conclusion number 167 regarding the Aché group. The gap is more evident in the report of Ecuador because there is not any specific section on this topic, not even at an early stage there was any interest in investigating cases against these indigenous peoples. One of the scarce documented cases is that of the Kichwa group in August 2005, case number 106.

Some of the issues and facts that are included in Volume VII of the Final Report of the CVJ of Paraguay regarding paradigmatic cases deserved a more thorough investigation. The violations of the rights to freedom of speech, opinion and expression in the media, the Condor Operation, and the repression of the communist party, just to mention three topics, deserved a more detailed analysis. Undoubtedly, the truth commissions throw a huge snowball that along its path should start disclosing hidden realities and realities that have not been entirely revealed. As properly suggested by Michael Ignatieff, the truth commission started reducing the accumulation of public lies of society⁸ and, more than a finishing point, they are a starting point to deal with the atrocities of the past.

Some of the most daring conclusions of both reports, from a political point of view, are the characterizations of the Strossner and Febres Cordero regimes; and from a legal point of view, human rights violations are classified as crimes against humanity. The Stroessner political regime was not characterized as a simple military dictatorship but a totalitarian regime that practiced terrorism of the State. The political regime of León Febres Cordero was not characterized as a democratic government that criminalized and repressed the political opposition, thus degrading human dignity. Both reports classified some human rights violations as crimes against humanity, that is, there were attacks against the civil population in a general and systematic manner, and they were not isolated or sporadic cases of violence. The classification of these violations regarding the crimes perpetrated during the Stroessner regime against the civil population and political opponents and, at least for the Alfaro Vive Carajo cases Taura commando groups during the Febres Cordero regime, had a unique significance in view of international law.

Both commissions produced documentaries that were later shown to the public after submitting their final reports. The CVJ of Paraguay produced a 45-minute long documentary video that presented the context and main conclusions of the Final Report. The CV of Ecuador produced a 107-minute long documentary titled “Archives of the Truth Commission,” images, and testimonies about historical events that should not be repeated and disclosed the most significant findings and conclusions of the CV.

During the presentation of both final reports on August 28, 2008 in Asunción and June 7, 2010 in Quito, the presidents of both countries, Fernando Lugo of Paraguay and Rafael Correa of Ecuador, publicly asked to be forgiven for the human rights violations, a symbolic gesture that can be deemed an acknowledgement of the accountability of the State for such regrettable events.

Impacts of the Final Reports of Both Commissions on the International Human Rights Protection Systems

The impacts of the final reports and their follow-up in some international scenarios are different. The case of Paraguay has generated a major mobilization of organizations closer to the Common Market of the

8 “A Truth Commission can only seek to reduce the number of lies that are circulated and that are not denied by anybody and to change the public framework of speech and memory, but nobody can blame them for failing to change behaviors and institutions. This was not its mission. The past is always a topic of debate, and the duty of these Commissions is to refine it in order to reduce the percentage of permissible lies.” In: Ignatieff, M. (1999). *El Honor del guerrero*. Barcelona: Taurus. pp. 165.

South (MERCOSUR) than to the Inter-American system. The Common Market of the South is seeking the integration of the States of Argentina, Brazil, Paraguay, and Uruguay, and since 2009 it has had an Institute of Public Policy on Human Rights. There are regular meetings of higher authorities related to human rights, among them, the General Directorate of Truth, Justice and Reparation of the Ombudsman Office of (DGVJR-DP), which has been participating in the discussion of a Protocol on the Basic Principles to encourage an observatory on crimes against humanity and the development of a Report on Never Again about the Condor Operation in the region.

The Ecuadorian case, even though it aroused interest in the Inter-American Commission on Human Rights because its report was submitted during a hearing held on October 29, 2010, has not mobilized the Inter-American system regarding the use of a report about its decisions and a follow-up of its recommendations. Some UN mechanisms, in recent reports, have mentioned the work of the CV of Ecuador.

The Committee Against Torture, in its final observations for the Government of Ecuador corresponding to the examination of regular reports to be submitted in accordance with the Convention Against Torture, and approved during session held on November 2010, has requested the State to provide thorough information about:

... The response to the [sic] 115 recommendations made in the final report ... The outcome of the examination by the National Assembly's Commission on Justice and Structure of the State and the subsequent proceedings for the adoption of the bill for reparation of victims proposed by the Truth Commission; the outcome of any investigations and criminal trials, including the sentences handed down, that may result from the information submitted by the Truth Commission to the Office of the Public Prosecutor⁹.

On the other hand, the report of the Rapporteur of Extrajudicial, Summary, or Arbitrary Executions about the mission to Ecuador and distributed on May 9, 2011, points out that: "The Truth Commission of the Government, which examined the violations perpetrated between 1984 and 2008, is an important attack against impunity. Even though its composition and independence have been questioned, the Commission gathered invaluable information on perpetrated violations. It is now of crucial importance to adopt the corresponding measures."¹⁰ The body of the Rapporteur's Report states the following, among others:

89. Those who have criticized the Commission raise important concerns, and highlight the need for inquiries to be – and to be seen to be – independent and objective. I also have due process and security concerns about the manner in which alleged perpetrators were named in the final report. However, the detailed and extensive information recorded constitutes an enormous accomplishment, especially because of the large amount of official material declassified and the hundreds of witness and victim statements taken.

90. The challenge now is ensuring that this information is securely archived and followed up with criminal prosecutions in appropriate cases. [...] Government will need to ensure that families are assisted during this process, that victim outreach occurs and protection provided when needed¹¹.

The universal and Inter-American systems are likely to conduct a true monitoring of the final reports of both commissions. To prevent these efforts from becoming just paper battles, inter-governmental human rights bodies must be committed to the Paraguayan and Ecuadorian causes.

9 United Nations. Committee against Torture (2010). *Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Ecuador, CAT/C/ECU/CO/4-6*. 45th session period, November 1-5, 2010. (Unedited version).

10 United Nations. Human Rights Council (2011). *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, Mission to Ecuador, A/HRC/17/28/Add.2, 9 de mayo de 2011*. 17th session period.

11 Ibid, par. 89 and 90.

Paraguay after the Submission of the Final Report of the CVJ

The General Directorate of Truth, Justice and Reparation of the Ombudsman Office of Paraguay (DGVJR-DP)¹², created on January 13, 2009, is the body that has provided an ongoing follow-up to the work of the CVJ. Even though the initial intention of the commissioners of the CVJ of Paraguay was, based on the Argentine model, to create a National Human Rights Secretariat, assigned to the President's Office in order to encourage the implementation and follow-up to the recommendations set forth in the final report, and the Ombudsman Office, as the State control body, took on this task. Even though the implementation of the recommendations has been slow and modest¹³, there are some improvements that are worth mentioning.

Since 2006, during the mandate of the CVJ, there has been a search for human bone remains of the disappeared or executed victims, and there have been five excavation procedures which found and exhumed three sets of human skeletal remains. Since the creation of the DGVJR-DP in 2009, seven sets of human skeletal remains have been found in the excavations made in the current seat of the so-called Specialized Group of the National Police in Asunción (in the past, the Headquarters of the Police and the 40 Battalion), and five sets of human skeletal remains in the district of Carlos A. López, Department of Itapúa.

An excavation work team was composed of officials from the DGVJR-DP, the Criminal Investigation Unit of the National Police and the Office of the Public Prosecutor, with the advice of the Argentine Forensic Anthropology Team. The DGVJR-DP evaluated the possibility of conducting other excavations in Asunción and the interior of the country. The human skeleton remains found have been taken to the Forensic Laboratory of the Office of the Public Prosecutor and, they are most definitely the remains of the disappeared victims. The identification of the exhumed remains is a complex and expensive process that also involves the participation and cooperation of governmental bodies, and the Directorate is seeking both technical and economic cooperation.

The DGVJR-DP has been giving follow-up to the compliance of the recommendations of the Final Report of the CVJ and, for this purpose, there was an "International Seminar on Reparation Policies: Truth, Justice, and Memory" in Asunción on June 1-4, 2010, which sought to conduct a first assessment of the current and future situation of the implementation of recommendations of the CVJ. While the balance, as it is described, is modest, what is important is that pressure is being exerted by victims, human rights organizations, and the DGVJR-DP to implement such recommendations.

Moreover, the DGVJR-DP has followed up to the lawsuits filed by the CVJ in court and has filed new complaints. As stated before, there have not been any sentences regarding the complaints filed by the CVJ or the DGVJR-DP; the perception is that even three years after the submission of the final reports, the Office of the Public Prosecutor is just recently showing a real interest in the recommendations. We will have to wait and see if such an attitude is translated into court decisions because this is the best method to verify if the Paraguayan justice system wants and can punish the perpetrators of human rights violations.

New forms of victimization for the violations of human rights have been frequent; particularly in court scenarios, a situation that is taking place in Ecuador. Guillermo Weyer, a Paraguayan living in Argentina for 35 years, went back to Paraguay in April 2011 to ratify with his testimony a complaint regarding violations he was victim of during the Stroessner dictatorship, a statement made before a prosecuting agent of the Specialized Human Rights Unit of the Office of the Public Prosecutor. It seems that the proceedings caused

12 I appreciate the information provided by this Directorate to present its activities, both to its Director Yudith Rolón and the team of collaborators.

13 See ABC Digital: <http://www.abc.com.py/2011/06/13/nota/estado-incumple-recomendacion-de-la-comision-de-verdad-y-justicia/>.

him a lot of stress and there was no accompaniment or a careful attitude, and this led to his heart attack. At the end, Weyer died on April 27, 2011. This case shows a lack of a psycho-social perspective to file any legal proceedings and requires immediate corrective actions.

The DGVJR-DP has promoted the creation -and coordinated - of the Network historical and awareness sites of Paraguay, established by Executive Decree 5619 in December 2010. Among others, the historical and awareness sites include the former Department of Police Investigations of Asunción and the Paraguayan House in the Argentine city of Corrientes. This network, composed of victim organizations and human rights governmental and non governmental organizations, is assessing other sites that were detention and torture centers in the past, so that they can be declared as historical and awareness sites.

The production of memory events, such as marches and concerts, coincided with other activities to promote and disseminate the Final Report, including the declaration of this report as a report of national interest by the President of the Republic through Decree 1875 of April 23, 2009. Additionally to these dissemination activities, the DGVJR-DP has published other supplementary documents, particularly a book titled “La situación de derechos humanos en el Paraguay entre 1978 y 1990: el procedimiento confidencial 1503 de las Naciones Unidas.” This book describes the procedure based on the Paraguayan case and the internal activities of the UN Human Rights Commission between 1978 and 1990 and, above all, some important documents that were part of this book were gathered. These documents truly reflect the human rights situation during the Stroessner dictatorship and, in many aspects, they throw light on specific cases and facts. The DGVJR-DP has also entered into some inter-institutional cooperation agreements with governmental and international bodies in order to carry out some of these activities¹⁴.

On July 25, 2011, the virtual museum called MEVES, “Memory and Truth about Stroessnerism” was added to the network¹⁵, and this museum seeks to promote democratic values through the dissemination of the Final Report of the CVJ by using an Internet multimedia platform. The virtual museum has three main areas: theme tours that illustrate the Stroessner dictatorship; human rights news, and a virtual human rights classroom especially aimed at teachers and students. The project was implemented by the Information and Resource Center for Development (CIRD), with the cooperation of the European Union and the support of the DGVJR-DP.

For these activities, there has been an important participation of the victims and human rights organizations. The leaders of the work at the DGVJR-DP are victims of the Stroessner dictatorship; this situation also takes place in many other organizations. Women participate in all these organizations; they even play major leadership roles in these processes. The commitment by these people, the NGOs, and the victims has been essential to implement these proposals.

The indemnifications of the victims of human rights violations during the Stroessner dictatorship have been granted since 2001 in accordance with Law 836 of 1996 and its corresponding amendments. The indemnified violations include enforced disappearance, extrajudicial executions, torture, and unlawful deprivation of liberty. Law 3603 of 2008 expands the spectrum of people who are entitled to claim an indemnification, including first-degree consanguinity relatives and “the children of victims who, at the time of their parents’ deprivation of liberty, were minors and suffered physical and/or psychological human rights violations by State agents.”¹⁶

14 A research that presents some public policies about truth and memory, before the CVJ, during its mandate and some of the DVJR-DP is the research conducted by Garretón, Francisca; González, Marianne; and Lauzán, Silvana. *Estudio de Políticas Públicas de Verdad y Memoria en 7 países de América Latina*. Centro de Derechos Humanos, Facultad de Derecho, Universidad de Chile, Santiago de Chile, 2011. [Online resource at <http://www.democraciadh.uchile.cl/>].

15 See: www.meves.org.py.

16 Law 3603, article 2.

According to data provided by the governmental Duty Coordination Unit from the General Directorate of Administration and Finance of the Finance Ministry of Paraguay, the following single-payment indemnifications have been granted to the victims of the dictatorship: in 2010 payments were made to 195 people, in 2009 to 490, in 2008 to 442, in 2007 to 355, in 2006 to 338, in 2005 to 457, and in 2004 to 197. In total, indemnifications were paid to 2,474 people. According to this directorate, the budget until 2010 was 4,939,068,5054 guaraníes (approximately US\$ 12,737,857), and the payments amounted to 49,311,650,912 guaraníes (approximately US\$ 12,717,474). The outstanding balance from recipients who did not show up was 79,034,142 guaraníes (US\$ 20,382.90). About 99.84% has been granted and the balance is 0.16%¹⁷.

The efforts of the DGVJR-DP and the civil society, as well as the victims, to position the Final Report and especially to implement the recommendations, can be contrasted with the attitude of the Government. The Fernando Lugo Administration, to the extent that it broke the chain of the governments of the Colorado Party, generated a lot of expectations among the Paraguayan historically underprivileged social sectors, among them the victims of the Stroessner dictatorship. There were demands for an authentic transition, in which the topic of human rights played the main role. Even though it is impossible to say that the Government has not supported these demands, the dissemination and implementation of the Final Report of the CVJ have not had the foreseen commitment. Slowly and gradually, as other political issues in Paraguay, the Lugo Administration has shown interest in the implementation of the recommendations of the CVJ, particularly the support for the activities of the DGVJR-DP.

Ecuador after the Submission of the Final Report of the CV¹⁸

One of the recommendations of the CV of Ecuador was the creation of an institutional structure in the Ministry of Justice and Human Rights to lead the implementation of recommendations. A year after submitting the Final Report, the CV still is encouraging the implementation of such recommendations and has prevented the rights to truth, justice, and reparation from being just a simple catalogue of good intentions. That is, the CV did not end its mandate with the submission of its Final Report, but on three occasions its mandate has been extended to take follow-up actions; the last extension is until September 2011.

The main reason for the continuation of the CV is explained by the continuous political changes, particularly in the Ministry of Justice. From the creation of the CV to August 2011, four ministers of justice and human rights have been appointed, and the same number of human rights undersecretaries of that ministry have been appointed, and these were initially appointed as the formal liaison between the Government and the CV and the bodies in charge of leading the implementation of its recommendations. This permanent change of officials has led to a minimal staff of the CV because they are experts in the topic so that the Commission implements some of its activities to prevent the Final Report from falling into oblivion. Particularly, its work after the submission of the Final Report has focused on its dissemination and promotion -both the written and documentary versions- across the country, the promotion of the prosecution of the cases at the recently created Specialized Unit of the Truth Commission of the Office of the Public Prosecutor, the promotion of the victim bill, and the close contact with the victims.

The CV has continued implementing activities to disseminate and promote the Final Report. Some of them are twenty thirty-minute radio programs during the first half of 2011, which were broadcasted by more than 175 radio stations in the country. The commission also translated the documentary titled “Archives

17 Information provided by the Duty Coordination Unit from the General Directorate of Administration and Finance of the Finance Ministry of Paraguay to the DVJR-DP. I express my gratitude to the director of the DVJR-DP for providing this information.

18 I appreciate the information provided by Christian Bahamonde, Executive Secretary of the CV of Ecuador, about the current activities of the Commission.

of the Truth Commission” into English, and it is producing a new documentary on reparations. The first submission of the Final Report had wide media coverage, both from the press and the television stations. The archives of the CV were delivered to the National Archive of Ecuador, through the Ministry of Culture, and at present there are efforts to make the Heritage Coordinating Ministry to declare the Final Report as cultural Heritage of Ecuador. During the first extension of its mandate, from August to December 2010, the CV was authorized to receive and document new cases of human rights violations that occurred between 1984 and 2008. For five months, the CV received 22 new cases; some of the León Febres Cordero years and others were more recent.

The Specialized Unit of the Truth Commission from the Office of the Public Prosecutor, created in November 2010, with six prosecutors and support investigation staff, received documentation about 118 cases submitted by the CV. Its members were trained by the CV by taking courses in Quito in December 2010, January 2011, and some in May 2011. They visited Buenos Aires and Corrientes, to hear first-hand experiences about the investigation and charges of crimes against humanity.

Until mid-July 2011, this unit started the previous investigation of about 88 cases. Some of the procedures conducted during the investigations include visiting the places where the cases took place, seizing of some police files containing case documentation, and hearing the statements made by the victims and the alleged perpetrators. The proceedings have not been formally open in any of the cases. It is now time to press charges against the alleged perpetrators so that proceedings can start. The change of management of this unit in May 2011 and the appointment and assumption of office of the new Attorney General in 2011, have not provided trust or promptness to the Specialized Unit. As of August 2011, the CV decided to provide assistance to the victims during the criminal proceedings, so that they can attend their testimony sessions.

Until 2011, there is just one case that was heard by the CV and which is being investigated by the Office of the Public Prosecutor. This case is about an extrajudicial execution of a high-school sixteen-year old student, Damián Peña, in Cuenca on January 11, 2002, by members of the National Police. On July 1, 2011, a prosecutor from Cuenca, but not from the Specialized Unit -because it is not within its jurisdiction- formally started the proceedings.

A situation that has been taking place during previous inquiries is that most victims have felt under pressure because the interviews by the Specialized Unit do not take into account their painful experiences. In other words, there has been a secondary victimization situation. There is concern, such as the aforementioned Paraguayan case, because there is no accompaniment or psychological care provided by the Office of the Public Prosecutor. As indicated above, the lack of a psychological program for the victims of human rights violations is a serious weakness of the Ecuadorian cases that must be immediately corrected.

A group of passive members of the National Police, under the name of the Institutional-Legal Defense Commission of the National Police, submitted two publications in response to the Final Report of the CV. One is titled “*Terrorismo y subversión, la verdad que no se ha dicho,*” and the other is titled “*Réplica al informe de la Comisión de la Verdad.*” Both are seeking to declassify those who were commissioners and members of the support committee, and assessments of some cases perpetrated by Alfaro Vive Carajo are being conducted. This reaction is just trying to discredit the work and the Final Report of the CV using biased and ideologized arguments, and the CV has categorically held the Police accountable for the perpetration of gross human rights violations during the León Febres Cordero Administration.

The proposal to pass the victim bill recommended by the CV at the National Assembly was hindered in 2010 by different political avatars. The Assembly changed the legislative agenda during the second half of 2010, particularly due to the police rebellion and the retention of President Rafael Correa on September 30,

2010. This event practically buried the initiative in 2010. In the first months of 2011, the Ministry of Justice submitted a new proposal, not for a law, but a presidential decree that was discussed at the Attorney General's Office, a body that is in charge of implementing the decisions of the Inter-American Human Rights System. After some visits by officials from the Deputy Secretariat of Human Rights of the Ministry of Justice to Argentina, Chile, and Peru in May 2011 to become aware of the experiences of the reparation programs in those countries, the Ministry has reviewed its position and has been insisting on the need to create, through an organic law, a comprehensive victim reparation program. This important initiative of the CV is likely to be seriously taken, both by Ecuadorian governmental organizations and the National Assembly.

The Ecuadorian political agenda in 2011, regarding justice and human rights, has focused on the promotion of a significant justice reform, so there was a referendum on May 7, 2011, which was won by the Government by a small margin, but it has generated a significant opposition. The referendum created new crimes, toughened up the sentences, restricted the expiration of preventive prison, and changed the judge selection mechanism, among others. The justice reform has practically monopolized the governmental efforts and has prevented the promotion of the proposals included in the Final Report of the CV.

On the other hand, victim and human rights organization have not adopted the Final Report of the CV enough, and they have not become a lobbying group to encourage the implementation of the recommendations. The apparent apathy or weakness of non governmental human rights organizations is a negative factor in this scenario. Moreover, in Ecuador there is a lack of strong victim organizations and of a dynamics of collective collaboration. The CV has become a bridge between the victims and the Office of the Public Prosecutor for a better articulation of its work. This is one of the current justice challenges.

As a Epilogue

Paying off old scores from a violent past is not an easy task. If societies are more democratic, and if there is a social Rule of Law, countries will be better prepared to face the challenges of a transitional justice. If societies are more unequal and human rights are not properly respected and guaranteed, there will be less favorable conditions to face impunity and less victim reparation.

In the cases of Paraguay and Ecuador, democracy is still being built amid efforts to improve the standard of living of their citizens. The creation of truth commissions in Paraguay and Ecuador, and particularly their final reports and the initiatives that are encouraged to promote their recommendations are a starting point to pay off those scores of a past characterized by gross human rights violations and to improve the standard of living of their democracy. Following Avishai Margalit¹⁹, Paraguayans and Ecuadorians are just starting to have their own personalities and to make ethical sense because they have started to remember.

Even though the demands for justice can decrease over time²⁰, this does not mean that the victims of human rights violations in Paraguay and Ecuador do not have the right to demand truth, justice, and reparation. As properly stated by Tzvetan Todorov, the more serious the offense was in the past, the more rights there will be in the present²¹. One of the best reparations to be given to victims is the right to know and the right to justice. "Remembering to prevent history from repeating is not the same as remembering to do justice: in the former, we think of ourselves, in the latter we think of the victims."²²

19 Avisahi, M. (2000). *Ética del Recuerdo*. Barcelona: Herder.

20 Filippi, A. (2007). *Damnatio memoriae y humanitas del derecho*. In P., Eiroa, J., Otero. In *Memoria y derecho penal. Colección Más derecho*. (3). Buenos Aires: Fabián J. Di Plácido Editor.

21 Todorov, T. (2002). *Memoria del mal, tentación del bien, indagación sobre el siglo XX*. Barcelona: Península.

22 Reyes, M. (2003). *Memoria de Auschwitz, actualidad moral y política*. Madrid: Editorial Trotta.

As stated in *Las políticas hacia el pasado*: “As Hannah Arent stated, the first act of totalitarianism is to kill the legal drive of citizens, and part of the duty of transition institutions such as the truth commissions is to revive that drive .”²³ Hopefully, the truth commissions of Paraguay and Ecuador were able to revive the drive of many citizens, and hopefully that drive will not weaken or disappear, quite on the contrary, it will be strengthened and will remain, so that an authentic reconciliation based on the rights to truth, justice, and reparation can be achieved.

23 Barahona de Brito, A.; Aguilar Hernández, P.; González Enríquez, C. (Editors). (2002). *Las políticas hacia el pasado*. Madrid: Istmo.

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Truth, Justice and Reparations The Case of Peru: Schedule and Difficulties of a Transitional Agenda

Rolando Ames and Félix Reátegui

Introduction

During the first years of the Twenty-First Century, Peru was getting ready to deal with its past of armed violence and massive human rights violations inherited from the previous two decades. This process took place within a transition-to-democracy context after the collapse of Alberto Fujimori's authoritarian government (1990-2000). Thus, two breaking points in Peruvian political life combined: going from a period of armed violence to one of peace, and from authoritarianism to the restoration of the Rule of Law.

The core of that experience was the work conducted by the Truth and Reconciliation Commission (hereinafter, CVR or the Commission) between 2001 and 2003 and its legacy. This legacy may be divided into three dimensions. First, a reconstruction of the past emphasizing the human rights violations perpetrated by subversive organizations and State agents, as well as the existence of numerous silenced and hidden victims; second, a collection of recommendations for justice, reparations and reforms that would foster the consolidation of peace with justice and would deal with the rights of victims; and third, but not least, an urge for truth and memory that would thrive among the different populations affected in the following years.

This text sets forth a schedule towards the compliance of the CVR recommendations, therefore, it shows to what extent the victims' rights to truth, justice and reparations has been dealt with, and what difficulties have been encountered in this process.¹ However, to better understand this process, it is suitable to present a brief description of the Peruvian case and its dilemmas, on which we will concentrate in this introductory section.

Peru experienced an internal armed conflict with unique characteristics, as it was influenced by recurrent historical features in its development as a society. The vertical relations between the original ethnic groups and cultures and the European population who arrived in the Sixteenth Century, characterized the three Colonial centuries, and were even present, with slight modifications, in the first century of the Republic. The social democratization promoted since the 1930s was accelerated by the migration process to the coast and to urban development. However, the strongest discrimination manifestations survived in the Andean region and the Amazonian East. It was precisely in the Andes where the Maoist ideology subversive organization, known as Communist Party of Peru – *Sendero Luminoso* (Shining Path, hereinafter *Sendero Luminoso*), obtained strong roots when it started its armed operations in 1980.

The time elapsed since the presentation of the CVR Final Report² has been useful to verify the persistence of this fundamental fact, which seems to be less perceptible in the routine life in the capital city and the urban coast. The predominant public opinion in Lima has been reluctant to accept the reconstruction of facts set forth in that report, as it has for the twelve most violent years. This political and cultural aspect of the Peruvian process should be placed at the beginning of a balance regarding what has taken place over the last six years with the truth, justice and reparations agenda.

We are talking, then, of socio-cultural restrictions inherent to a country characterized by deep socio-economic gaps and by abysses of recognition separating the urban and Creole population from the rural population, which includes the indigenous population group who speak Quechua and other indigenous languages.³ However, the CVR report somehow modified the image distorted by a fear of violence which

- 1 The authors wish to thank the efficient cooperation of Álvaro Paredes, PUCP Sociology student, in the account of facts and actions related to the compliance of the CVR recommendations in the period of analysis.
- 2 The Truth and Reconciliation Commission final report was submitted on August 26, 2003, after 26 months of work. It is composed of nine books and twelve annex volumes. See CVR. (2003). *Informe Final*. Lima. We likewise refer the reader to the final report's abridged version, prepared by the CVR Submission Commission. See CVR. (2004). *Hatun Willakuy: Versión abreviada del Informe Final de la Comisión de la Verdad y Reconciliación*. Lima.
- 3 According to the 2001 National Household Survey by the National Institute of Statistics and Computer Science (INEI), the indigenous population accounts for 32% of the national population. See Del Pollo, F.; Oyarse, A., Shkolnik, S., Velasco,

had spread over a large section of society during the 1990s. The population groups least involved or affected by the conflict accepted the thesis according which the State military intervention had saved the country from the indiscriminate terrorism of *Sendero Luminoso*. This widely disseminated idea moved towards the recognition, by a significant sector of the population, that violent actors had not only included subversive organizations, but also the armed and police forces.⁴

Nevertheless, the awareness about the need for a transitional justice process is still limited. Discrimination habits and the little value attributed to and power held by peasant sectors were at the epicenter of the internal war, hindered a more horizontal communication among Peruvians. On the other hand, the brutality of many of the actions by *Sendero Luminoso*, the experience of a bloody war, and the economic factors that provoked an extreme crisis at the beginning of the 1990s, favored the emergence of an opinion that was satisfied with the military defeat of *Sendero Luminoso*, regardless of the costs. In this climate of opinion, Peru's self-perception as a country who had defeated the demons of terrorism, hyper-inflation and political party demagoguery, thanks to three main forces: the army, foreign investment, and Fujimori's quasi-dictatorial authoritarianism at times, prevailed.

The CVR was created due to a particular situation: Fujimori's second attempt for re-election divided society, and the disclosure of corruption and several Fujimorism emblematic crimes were at the forefront. This forced him to leave the presidency and flee the country. The image of a military leadership directly perpetrated to corruption worsened this situation. And it was under these circumstances that the brief –but exemplary – transition Government of Valentín Paniagua, the first months of that of Alejandro Toledo, and a favorable international climate (previous to the terrorist attack in New York and Washington on September 11, 2001) facilitated the drafting of the Commission's report.

Given this background, an analysis of the process immediately after the report's submission – that is, between 2003 and 2005 – should explain the intense controversy it created and the aggressiveness of the press in Lima, characterized by its primary submission to Fujimorism. Although the transitional justice process started in a favorable time of transition towards democracy, after submitting the report and recommendations, a readjustment of actors and forces started.

Conservative sectors rejected the report since the beginning. They were hostile to an impartial reconstruction of the truth that did not defend the armed forces nor did it justify the crimes by state agents. Very soon the thesis of “damage to the image of the armed forces” emerged, and the CVR was accused of comparing the Peruvian State to a terrorist organization.

The groups who had led the dictatorship opposition, the victims' relatives, certain critical intellectual cores, and different youth sectors, fought from the opposite side. Controversy went beyond state bodies during the Toledo Administration, divided between the support given to the Commission and the attack by ideological sectors close to the most powerful groups in society and the mass media.

The Work of the CVR

The work of CVR, around which the abovementioned controversy emerged, consisted of a thorough investigation during which almost 17,000 testimonies were collected in the most violent areas in the country. These are depositions made by victims or direct witnesses of human rights crimes or violations perpetrated

F. (2009). Censos 2010 y la inclusión del enfoque étnico: hacia una construcción participativa con pueblos indígenas y afrodescendientes de América Latina. In the *Series on Seminarios y Conferencias*. (57). Santiago: CEPAL.

4 We are talking about public opinion survey results in cities at the national level, comparing those of 1998, during the Fujimori regime, to those from 2003, when the CVR submitted its report (cf. mainly *Encuestadora Apoyo, Opinión y Mercado*, nowadays, *Ipsos Apoyo*).

by subversive organizations such as *Sendero Luminoso* and *Túpac Amaru* (MRTA); by national police or armed forces agents; and by other armed actors such as rural self-defense committees and paramilitary groups that emerged during that period. This investigation drew conclusions that are summarized as follows.

The CVR gathered direct statements by 24,000 fatal victims (dead and missing), but it estimated that the total of fatal victims is around 70,000 dead or missing people. Moreover, it proved that state and non-state armed actors perpetrated crimes against humanity. The Commission established nine guidelines or patterns of violations against human rights perpetrated during this period: 1) murders and massacres, 2) extrajudicial executions, 3) enforced disappearances, 4) kidnappings, 5) torture and cruel, inhumane or degrading treatment, 6) sexual violence against women, 7) violence against children, 8) violation of collective rights, and 9) violation of due process.

The CVR also made interpretations on the cultural, institutional and political aspects of violence and vulnerability of life, as well as human integrity during the internal armed conflict. Thus, it pointed out the large pre-existing and persistent economic and social gaps and the prevalence of racism in Peruvian society.⁵ Using that same logic, it indicated the weaknesses of key institutions such as the Judiciary and the Congress of the Republic, and, in another order of analysis, the national educational system and the political party system. Moreover, it pointed out the State's weakness and its inability to exercise democratic authority in the national territory as an important factor for the generation of a climate of violence and the lack of protection of human life.

Finally, the CVR offered recommendations on truth, justice, reparations and institutional reform. It proposed a comprehensive reparations plan composed of six different programs: economic reparations, education reparations, health care reparations, restitution of citizen rights, collective reparations and symbolic reparations. On the other hand, it offered suggestions for the creation of the specialized judicial sub-system that would be in charge of due process of the crimes perpetrated in the period, and it pointed out the regulatory and legal framework criteria to be adopted in order to comply with the right of the victims to truth and justice. Regarding this right, proposals were made for a national policy for disappearances and a national policy of anthropological and forensic investigations. Finally, a wide program of State reforms was presented as a way to **reconcile** it with the civil society: this implied strengthening and broadening the presence of the State as a democratic authority and guarantor of rights, and, therefore, improving different aspects of its social service networks. The reforms also implied, in the logic of offering **non-repetition guarantees**, modifying the operations of institutions which, like the military and judicial apparatus, influenced on the accumulation of human rights violations during the period.⁶

Since the first years after the submission of the Commission's final report in 2003, it was estimated that the full compliance with its recommendations – to which we refer in this text as a **transitional agenda** – would be difficult, and even improbable. Nevertheless, it was also understood that the co-relation of political forces, as well as the existence of a sensitized public opinion before the abuses perpetrated during the armed violence period, would make it possible to achieve certain relevant advances.

Although shy, certain advances were possible in the 2003-2005 period. Contrary to what happened in other countries, in Peru, no impunity mechanisms were adopted after the work of CVR. The action of justice followed its course, though slowly and with setbacks. With regard to the rights to truth and memory,

5 The Commission determined that 75% of the victims were indigenous individuals, basing this ethnical definition on the mother tongue.

6 See a brief presentation on the case and the scenario immediately after the CVR's work in Peru in Ames, R. (2005). *Violence, truth..., Reconciliation in Peru?* In: IHR-IDEA. *Verdad, justicia y reparación. Desafíos para la democracia y la convivencia social*. San José. The unabridged version of the Commission Final Report may be also consulted: CVR. (2004). *Hatun Willakuy. Versión abreviada del Informe Final de la Comisión de la Verdad y Reconciliación*. Lima.

State actions were scarce. Instead, there was a boom of local initiatives by the affected populations. The most significant omission in this matter is the non-existence of a genuine national policy on disappearances.

At the end of that period, concerning reparations, a law creating a State policy with that purpose was enacted although the institutional framework and the allocation of resources were not adequate.⁷ However, in institutional reform matters, the actions of the State were practically nonexistent.

The 2006-2011 period may be considered as the one in which the transitional and transformation drive slowed down in the Peruvian society. This does not mean that there has not been any progress in the compliance of recommendations. The achievements made are neither few nor despicable, starting with the prosecution and conviction of former president Alberto Fujimori for crimes against humanity. However, there was neglect by the State, particularly from the Executive Branch, of all transformational language, as well as of the implementation of a conservative and reluctant approach to the demands of justice.

But this is combined with three other concurrent processes. The first is the persistence of a victims' claim manifested in the emergence of organizations for that purpose and the consolidation of networks giving them a larger audience and ability to act in a coordinated manner.⁸ The second is an assessment of democracy including important transitional agenda components by young social sectors and new liberal expressions, throughout this decade. The third is a demand for social justice with a poorly organized national side, on the one hand, and on the other, a more leftist side. This third process, already present in the 2006 elections, generated an important turn in the national political scenario through the success of these change alternatives in the elections for Lima's Office of the Mayor (2010) and other constituencies, and, above all, in the election of the President and Congress members (2011).⁹

This text presents an explanation of the process followed by the truth, justice and reparations agenda in Peru, as of 2005. This period elapses from the end of the Alejandro Toledo Administration until the end of the Alan García Pérez Administration, with a brief prolongation until the 2011 presidential elections, and the inauguration by the new head of State, Ollanta Humala. This text also provides a brief overview of what happened in this period and an interpretation of the socio-political process underlying the registered results, and the medium-term impact of the CVR process. Every transitional agenda is, by definition, uncomfortable for the established branches of power, and is subject to scenario variations, making it more or less feasible. The case of Peru is useful to analyze that complex dynamic life of the truth, justice and reparations demands.

7 In July 2005, Law 28592 was enacted, creating the Comprehensive Plan of Reparations. The regulations of that law would be issued one year later. In 2004, the Alejandro Toledo Administration created the High-Level Multi-Sectorial Commission, in charge of coordinating the implementation of reparations.

8 The main one among them is *Movimiento Ciudadano para que No se Repita* (Citizenship Movement So It Won't Happen Again), which, according to institutional information, "articulates 38 active groups in the 25 regions in the country" "gathering more than 600 institutions." See its website at <http://www.paraquenoserepita.org.pe/pqnsr/>

9 During the general elections in Peru, representatives to the Congress of the Republic are elected (Congress is composed of only one chamber), as well as the election of the President of the Republic. In 2011, the elections had two "rounds". In the second round, contested by the two winning candidates of the first round, Ollanta Humala won by a small margin against Keiko Fujimori, daughter and political heiress of former president Fujimori, who is now service time in jail for his accountability in crimes against humanity.

Part I: Transitional Agenda Schedule

This section presents the schedule for the truth, justice and reparations agenda in the 2006-2011 period. From a general perspective, we may say that the State's and Government's level of commitment or decision with regard to the transitional agenda has undergone four distinguishable stages over the last five years. These stages indicate a gradual weakening of those commitments and decisions.

It is suitable to make an observation before tackling the characteristics of these periods. These have been considered from the point of view of the continuity and intensity of the actions in the areas of truth, justice and reparations. We will mention the institutional reforms, but the impact of the CVR recommendations on this aspect has been practically nonexistent.

The reparations component also follows a relatively constant political and institutional path, and to a certain extent, less subject to drastic changes, such as the case of justice and the political statements of the Government. There was a perception of a gradual development of an institutional and organizational framework leading to the compliance with the right of victims to reparations in the 2003-2005 and 2006-2011 periods.

It is true that the actions to this date are far from satisfactory, and that the institutional framework has coherence and funding problems. Nevertheless, a continuity of this topic may be perceived in the Government's agendas, in a path that goes from the creation of the High-Level Multi-Sectorial Commission (CMAN), the enactment of a reparations law, the creation of a Reparations Council (CR), in charge of developing a single registry of victims, the granting of collective reparations to communities affected by armed violence, and the enactment of a legal standard to enforce individual reparations.

Consequently, the differentiation between periods is more visibly based on the justice component, and along with it, other fundamental dimensions of the process, such as truth and memory, and in a broader perspective, the Government's political statements.

First Period: Maintenance of the Previous Drive Regardless of a Change of Government

This period may be considered a continuity of the dynamics established during the Alejandro Toledo Administration, in spite of the presence of military and political leaders in the Government openly opposing the CVR Final Report. At the end of the Toledo Administration, a certain regulatory framework that offered possibilities to assess human rights violations was conceived. We can say the same thing about the policy of criminal persecution against corruption crimes perpetrated by the Fujimori Administration. The beginning of the 2006-2011 governmental period inherited this drive. The processes that were already open followed their course even though there is still a lack of collaboration by key actors, such as the Ministry of Defense. The same happens with the reparations policy. An institutional framework for such reparations is still being outlined. The key aspect is that the State already recognizes the existence of this legal obligation and that the new Administration has not stated any political will to ignore such obligation.

This period lasts the entire first year of the new Government, starting in July 2006, and even includes the end of that same year. It could also be noted that this is a time in which President García is hesitant about which would be the important political guidelines of his term. The ghost of his previous failed Government (1985-1990) is still present and encourages him towards a not very willing attitude about how his new presidential period would be like. It is in this trend that continuity regarding justice and reparations may be interpreted.

Second Period: A Conservative Turn (2007-2008)

In 2007, a change in the treatment of justice and truth is announced, a trend that would be stressed towards 2008. It may be noted that eventually, in the heart of the Judiciary, the conviction of the criteria to process human rights violation cases started to yield, and there is change towards positions more inclined to acquitting State agents in the judicial cases that were then being prosecuted.

We are speaking of a change in the scope of the Judiciary, that is, not directly evident in the Executive Branch. It still seems, to a certain point, committed to the reparations process, although the steps taken in that direction (mainly based on the provision of collective reparations) are criticized by victim organizations and other actors involved.

The most remarkable fact is the beginning of a change in the regime's political orientation and personality. The President is clearly in favor of large natural resource exploitation companies by establishing economic growth based on primary exports as a goal during his term. Correlatively, the Government defines any social organization or professional and political group that would question that decision and make claims on specific investment projects as enemies.¹⁰

In the meantime, human rights movements, victim organizations, and the spokespersons of a certain Liberal Democrat stance emerging during the fight against Fujimori's re-election at the end of last decade, kept an opposition that, while it hardly expressed itself in the partisan political scenario, it would keep certain influence or ability to be heard in a public environment during that period.

Third Period: Cancellation of the Transition (2009-2010)

In the previous period, there were tendencies in favor of judicial impunity: sentences that, among other things, question the way in which enforced disappearance crimes were prosecuted in the last few years.¹¹

During this third period, from 2009 to 2010, these tendencies towards impunity were exhibited by the Governmental party, and it concluded with a legislative decree which, if had prevailed, would have been the same as a law on impunity. These movements characterize what we will refer to as **quasi cancellation** of the transitional agenda by García Pérez.

This refers to the presentation of bills by Peruvian APRA Party's (*Partido Aprista Peruano* – PAP) congressmen, like Edgar Núñez and Mercedes Cabanillas, who proposed amnesties for State agents involved in human rights violations. The culmination of this tendency was the governmental proposal of Legislative Decree 1097 in September 2010, which seriously hinders the continuation of open judicial proceedings against armed forces personnel and imposed severe temporary limitations to start new processes.

The defeat of the legislative decree is also important to portray this period, since it evidenced the existence and influence of Liberal Democratic sectors associated with leftist sectors traditionally defending the pro-human rights agenda. This means that, even though the most powerful political and economic sectors seem to stand against justice and truth, the game still offers spaces for these other sectors, which may achieve partial victories in an open political scenario.

¹⁰ This topic is dealt with in more detail in part II of this document.

¹¹ Among other cases, this puts in evidence the so-called “Matero case”, in which the presumed individuals responsible of an enforced disappearance were absolved. See details on this tendency later in this document.

Fourth Period: Elections and New Government

The last period includes the presidential electoral process in April and June 2011, in which two candidates ran: Keiko Fujimori, Alberto Fujimori's daughter, and Ollanta Humala, a late unifying force of his nationalist party, comprehensive but inarticulate social dissatisfaction, but unorganized, individuals, and the aforementioned options for more substantive changes.

The Fujimori option combined the forces contrary to justice and truth. In fact, its triumph would have meant not only an almost direct openness to the liberation of Alberto Fujimori – convicted for human rights violations¹² –, but also the claim for a certain **official memory** established in the country during the 1990s. To a certain extent, the victory of Humala allows for the survival of the transitional agenda and the arrival of professionals and politicians in favor of this memory in governmental positions.

In any case, it was possible to confirm the existence of a powerful sector controlling the mass media and other spaces of power, and decidedly against the transition agenda, and at the same time, the validity of an open political scenario accepting a democratic institutionalism and the subsequent existence of other forces impacting the public opinion and achieving certain political victories, at least to maintain the agenda.

We now present an account of the main events and actions concerning truth, justice and reparations matters during this period. The points of inflection pointed out in this section as distinguishable political process periods will be perceived in the treatment given to each of the topics.

Justice and Human Rights Violations

The mandate of the CVR included contributing to the elucidation of crimes and human rights violations and the exercise of justice. Concerning this, it conducted investigations on 75 cases with the objective of determining accountabilities. At the end of its mandates, it submitted the investigations' files to the Office of the Public Prosecutor.

In 2006, 59 cases of human rights violations were prosecuted at the Judiciary, and 29 cases remained in the preliminary investigation stage. These cases involved a total of 373 individuals prosecuted: 269 military men, 68 members of the National Police of Peru (PNP), fifteen members of Peru's Navy, and 21 civilians.

A very important milestone took place that year: the first sentence for an enforced disappearance in Peru. This sentence was issued by the National Criminal Court – in charge of the specialized sub-system on human rights violations and terrorism – on March 20, for the disappearance of college student Ernesto Castillo Páez. The court convicted four members of the National Police. Moreover, the leaders of *MRTA* and its head, Víctor Polay Campos, were criminally convicted. The sentence issued on October 10 against Abimael Guzmán Reinoso and leaders of *Sendero Luminoso*, for the Lucanamarca, Ayacucho peasant massacre case, was especially important. Guzmán received a life sentence. This sentence was based on the thesis of indirect responsibility authorship as grounds for the accountability of leaders of organizations perpetrating human rights violations, and it pointed out that this was equally applicable to both non-governmental and governmental organizations. The year 2006 also marks the beginning of former President Alberto Fujimori's extradition process, detained in Chile.

These events foretold the consolidation of the specialized sub-system for the prosecution of human rights violations. This went hand in hand with the steps taken towards a reform of justice according to the

12 Alberto Fujimori received guilty verdict as indirect perpetrator of voluntary manslaughter and kidnapping. The sentence, issued on April 7, 2009, was 25 years in prison. The Special Criminal Court of the Supreme Court explained in its statement that “the voluntary manslaughter crimes are crimes against humanity, according to the criminal international law.”

recommendations made by the Special Commission for the Complete Reform of Justice Administration (*Comisión Especial de Estudio del Plan Nacional de Reforma Comprehensiva de la Administración de la Justicia* - CERIAJUS). It should be noted that the judicial system reform was also one of the recommendations by the CVR.

The progress perceived in 2006 would soon start to be hindered by changes in the Judiciary and the Office of the Public Prosecutor. Until September 2007, of the cases submitted by the CVR to the Office of the Public Prosecutor for the investigation of human rights crimes, only six were sentenced, twenty were in open criminal proceedings, and 22 were under a preliminary investigation at the Office of the Public Prosecutor. Throughout that year, a criminal investigation was opened only for the Sancaypata (Ayacucho) case.

Four members of the Colina Group (annihilation squad created at the heart of the armed forces during the Fujimori Administration) were sentenced after having recourse to the benefit of effective collaboration. On February 5, the National Criminal Court issued guilty verdict for the disappearance of local authorities in Chuschi, province of Cangallo, Ayacucho, on March 14, 1991. This sentence was quite relevant regarding the criminal persecution of the enforced disappearance crime. Two aspects on the sentence should be highlighted:

[...] the crime of forced disappearance, like all crimes against humanity, before being considered a positive rule in criminal law, has always been part of the *jus cogens*, which means that it was part of the Common Law [...] and its prosecution and punishment were an obligation of every state, even if the national rules did not establish them pursuant to provisions set forth by the IACHR (the Inter- American Commission on Human Rights) in recurrent jurisprudences.”¹³

[...] in permanent crimes, the applicable law is not necessarily the one that was valid when the crime was perpetrated, every time the conduct persist while the whereabouts of the victim is still unknown; therefore, if there is a more serious offense, it will be applicable to the persons which started the action and continued [...] Another consequence of permanent crimes is that the breach of the legal right persists even after its perpetration. In its structure, the typical conduct persists on a perpetration basis beyond the initial perpetration.¹⁴

It should be pointed out that the notion of the continuity of the typical punishable behavior had already been established in the sentence for the disappearance of Ernesto Castillo Páez. In any event, it could be said that at that moment a favorable tendency towards litigation continued. But in that same year, procedural exceptions and other resources whose effect was to hinder the criminal prosecution of crimes were admitted: the Third Criminal Court for Free Prisoners of Lima admitted one *habeas corpus* lawsuit, but it dismissed the complaint filed by the Office of the Public Prosecutor against 24 members of the Navy of Peru, involved in the killing of inmates perpetrated in the penitentiary center known as “El Frontón,” in 1986. It was considered that the criminal action had prescribed. Likewise, on March 9, the Office of the Public Prosecutor filed the investigation against Alan García, President of the Republic, when the events took place, Agustín Mantilla, the then Vice-Minister of the Interior, and retired Vice-Admiral Luis Giampietri, all for the same case.

On the other hand, on September 21, the Chilean Supreme Court issued a decision in favor of Fujimori’s extradition, allowing an unprecedented event, such as the criminal proceeding against a former head of State on the grounds of human rights violations, as well as for crimes of corruption.

13 National Criminal Court sentence, p. 88.

14 National Criminal Court sentence, p. 102.

Nevertheless, at end of 2007, the exclusivity of the jurisdiction of the National Criminal Court had still to be defined regarding the prosecution of human rights violation cases. Parallel investigations persisted in the military jurisdiction, in spite of sentences issued by the Supreme Court and the Constitutional Court, attributing these cases to the civil jurisdiction. Finally, at the end of the year, there still was not a witness and judge protection program and legal defense for the victims of human rights violation cases. Of the six serious human rights-related sentences issued by the National Criminal Court in 2007, three were convictions and three not guilty verdicts.¹⁵

In 2008, the investigation about cases of sexual violence against women, one of the patterns of human right crimes and violations pointed out by the CVR, found its way. As part of this, a criminal complaint was filed for the case of rapes of women in the communities of Manta and Vilca (Huancavelica). The events, documented by the CVR, took place in year 1983, when a military base had been set up in the zone. Nine armed forces heads or authorities were accused.

Moreover, Vladimiro Montesinos (Alberto Fujimori's former advisor) and Generals Nicolás Hermoza Ríos and Luis Pérez Documet were accused for the disappearance of students from the university known as "La Cantuta." Concerning this case, the First Special Criminal Court issued guilty verdict against Julio Salazar Monroe and other four agents of the abovementioned Colina Group.

During the 2004-2006 period, the Judiciary resolutions had adopted most of the criteria established by the Inter-American Court of Human Rights (IACHR) and the Constitutional Court on the inadmissibility of mechanisms hampering the investigations on human rights violations. However, in 2007-2008, there was a change in the Judiciary regarding the standards established by the Inter-American Court's jurisprudence. A tendency towards the search for impunity emerged. This may be explained through the improvement of the image of armed forces and, therefore, of their capacity for political pressure and in the media. A certain margin of plurality of criteria within the Judiciary is also a fact that has been constant throughout this time.

A significant example of this tendency is the so-called Matero case (disappearance of four citizens from the Matero community, in Cangallo, Ayacucho, in 1986), in which the National Criminal Court decided to issue a non-guilty verdict for the military men accused in a proceeding focused on the disqualification of witness relatives and other decisions indicating an deviation from the previously adopted criteria.

On November 6, 2008, congressman Edgar Núñez Román, from the governmental party, submitted a bill proposing amnesty for the commando groups who participated in Chavín de Huántar military operation¹⁶. He also proposed the creation of an *ad hoc* commission to evaluate, qualify and propose amnesties for the military and police personnel accused or prosecuted for the alleged perpetration of military crimes or crimes against humanity. Congresswoman Mercedes Cabanillas Bustamante, also from the governmental party, submitted another bill aimed at the creation of an *ad hoc* commission to propose to the President of the Republic the acquittal, commutation of sentences and rights of pardon to the military men and police officers who were prosecuted or accused on the grounds of "insufficient evidence."

In the same year of 2008, the Law of Organization and Functions of the Military and Police Jurisdiction was enacted, a rule that keeps a body of district attorneys and military and police judges appointed by the Executive Branch who are not subject to the control of the National Council of the Judiciary. In parallel,

15 Available at http://www.justiciaviva.org.pe/webpanel/doc_int/doc22102009-195100.pdf.

16 This is the name given to the rescue operation of the hostages taken by the MRTA in December 1996 and during the summer of 1997, at the residence of the Ambassador of Japan. The operation concluded with the rescue of 72 hostages. One of them died. Two members of the commando group and all the kidnappers died. Later, there was evidence that extrajudicial executions had taken place. The operation took place on April 22, 1997.

the “specialized” condition of the National Criminal Court was weakening, as it widened its jurisdiction to include topics such as terrorism, drugs trade, money laundering, kidnapping, extortion, tax-related, intellectual property, and customs crimes. This contravened the recommendations of the CVR and the international practices that advised the constitution of specialized judicial sub-systems to provide attention to the accumulation of massive human rights violations.

In 2009, the tendency towards impunity increased with some strongly arguable sentences. On January 30, the National Criminal Court sentenced retired Navy commander Andrés Egocheaga Salazar to twenty years in prison and the payment of 200,000 new soles (approximately US\$65,000) for civil reparations for the voluntary manslaughter of Indalecio Pomatanta Albarrán. Nevertheless, during that same proceeding, frigate captain Jorge Luis Rabanal Calderón and sub-officers Pedro Rodríguez Rivera and Mario Peña Ramírez were acquitted.

In contrast, the Second National Higher Criminal Public Prosecutor’s Office formalized the accusation in the case of Los Cabitos headquarters (disappearances, torture, and extrajudicial executions in an Ayacucho military base between 1983 and 1985). Later, the National Criminal Court would declare the case imprescriptible.

The First National Higher Criminal Public Prosecutor’s Office, by means opinion issued in July 2009, formalized an accusation in the so-called Pucayacu II case (assassination of seven Ayacucho citizens in 1985).

An important and favorable-to-justice milestone took place on April 7, when the Supreme Court Special Criminal Court sentenced Alberto Fujimori Fujimori to 25 years in prison for his responsibility in the Cantuta and Barrios Altos cases, as well as for the aggravated kidnapping of Gustavo Gorriti and Samuel Dyer.

In the meantime, and in contrast to the actions of the Supreme Court, the National Criminal Court emphasized its tendency towards impunity. A clear example was the sentence for the case of enforced disappearance known as Los Laureles, issued on October 13 by this judicial court. In this human rights violation case, perpetrated in the Counter-subversive Base No. 313, Peruvian Army officers Mario Brito, Oswaldo Hanke, Jesús del Carpio, Mario Salazar, and Miguel Rojas García were acquitted regarding the enforced disappearance of Esaú Cajas, Samuel Ramos, and Jesús Liceti. In this case, the Court dismissed the value of the incriminatory evidence and only considered direct evidence as valid. In this regard, it is worth explaining that the Supreme Court, in the Alberto Fujimori case, had already established the validity and relevance of the incriminatory evidence to demonstrate responsibility in complex crimes perpetrated by organized power groups. This was also already explained by the Inter-American Court. Thus, the sentence in the Velázquez Rodríguez vs. Honduras case, of July 1998, the Inter-American Court ruled: “The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, traces, and presumptions may be considered as long as they lead to conclusions consistent with the facts.”¹⁷

An especially worrying element about the sentence issued for Los Laureles case is that it questioned if there was a disappearance in the Huallaga, and it stated that probably the victims had become drug dealers.¹⁸

17 The reference to the decision of the Inter-American Court of Human Rights was taken from Ambos, K. (2010). *Trasfondos políticos y jurídicos de la sentencia contra el ex presidente peruano Alberto Fujimori*. In K., Ambos, I., Meini. (editors). *La autoría mediata. El caso Fujimori*. Lima: ARA editors.

18 See a critical analysis of the sentence on the newsletter of Institute of Legal Defense: *Ideele-mail*, n.º 614 on October 14, 2009, in: http://www.justiciaviva.org.pe/webpanel/doc_int/doc15102009-153232.pdf.

Until December 2008, of the 194 cases supervised by the Ombudsman Office, 112 were still under preliminary investigation, 23 were in pre-trial proceedings, 24 were in oral trial proceedings or pending proceedings, 19 already concluded with a sentence, 5 were filed without an opinion about the merits of the case, and there was no information for 11 of them. This situation did not drastically change 2009.

The approval of the directive project "Applicable guidelines in the preliminary investigation of the crimes relevant to the Supra-provincial Criminal Prosecutor's Offices and Special Criminal Prosecutor's Offices" prepared by the Coordinating Higher Prosecutor's Office to establish certain common proceeding criteria to conduct human rights violation investigations, was still pending.

In 2010, there was a formal opening of the trial against Alberto Fujimori for voluntary manslaughter and aggravated kidnapping against six members of the Ventocilla family, in Huacho, in 1992. Likewise, the oral proceedings started again in the proceedings for alleged extrajudicial executions after the Chavín de Huántar operation. The Inter-American Court held the Peruvian State liable for the disappearance of university student Kenneth Anzualdo, missing in 1993.

However, in the homicide case of Indalecio Pomantanta, the Supreme Court decided to conduct a new oral trial. As mentioned before, only one of the accused was convicted, and the other three were acquitted.

In 2010, it seemed that there was consolidation of the tendency to impunity with Legislative Decree 1097, which pointed out that crimes against human rights should be filed if no sentence was issued within 36 months as of the beginning of the pre-trial proceedings. Furthermore, it indicated that the Convention on Imprescriptibility of Crimes of War and Against Humanity, "has been in effect in Peru since November 9, 2003," when this country joined the convention. This decree generated loud public outcries by the different sectors of society. After a laborious struggle, in which the decree was heartedly defended by the ministry of Defense, Rafael Rey, it was amended and finally repealed. This event represented an important trend: on the one hand, the clear opposition against the enforcement of criminal justice by the Government and by the most conservative sectors in society; on the other hand, the activation of an important and *transideological* coalition, in which leftist and liberal sectors converged in a strict defense of human rights.

That same year, in July, army officer Telmo Hurtado, accused as the actual perpetrator of the Accomarca massacre, in which residents of this community were murdered, including women and children, in 1986, was extradited to Peru. On August 2, he was held liable by the National Criminal Court to determine if he accepted the accusation, or if a public trial should be initiated. Last, on June 1st of that same year, the Third Liquidating Criminal Court of the Supreme Court of Justice of Lima restarted, for the third time, the oral proceedings in the trial for alleged extrajudicial executions during the Chavín de Huántar operation, in 1997.

As a summary, as noted by several human rights advocacy organizations, the period has witnessed the quasi-consolidation of a trend towards impunity characterized by different elements: exclusion of incriminatory evidence as an element for the legal foundation of sentences in complex crime cases, a trend to dissociate military senior officers from the cases under investigation, disqualification of testimonies by witness relatives, acceptance of the "excess" theory in cases such as Parcco Alto and Pomatambo, which lessened the value of the thesis of crimes against humanity and the existence of a policy that violated human rights. We may also add the fact that complex cases are heard by supra-provincial judges in Lima, which makes it difficult to interrogate witnesses who live in provinces and this leads to an extension of the term for the investigations.¹⁹

19 See, among other sources: National Human Rights Coordinator. (2011). *Informe anual: de los conflictos del presente a los desafíos del futuro*. Lima.

Reparations

As pointed out, since the Alejandro Toledo Administration, an institutional framework for the reparation of victims has been brewing. The starting point was, of course, the same recommendations by the CVR to create a comprehensive reparations plan. This was followed by the creation of the High-level Multi-Sectorial Commission, which is the body in charge of coordinating the compliance with CVR recommendations, the enactment of a reparations law and the creation of the Reparations Council. Next, there is an account of that schedule.

In 2006, important actions were taken for the implementation of a reparations program for the victims of the internal armed conflict. The Regulations of the Comprehensive Reparations Plan (PIR) were enacted, and the members to the Reparations Council were appointed. Retired military men and human rights advocates were appointed to take part. The Reparations Council has the mandate of developing the Sole Registry of Victims (RUV), an instrument for the implementation of the Comprehensive Reparations Plan. The members of said Council were elected from a list proposed by the CMAN. The high political sensitivity of this topic is validated here, as it sought to include a human rights trustworthy group, but this would not mean an estrangement from the military world. As such, the Council has operated acceptably.

However, the PIR only started to be applied in 2008, and it did not allocate budgetary resources to the financing of the Reparations Council or the reparations programs.

In 2007, the CMAN approved the beginning of the PIR through the implementation of the Collective Reparations Program (PRC), to finance construction and development projects in peasant and native communities mainly affected by violence. The Comprehensive Reparations Plan was launched in Huanta, Ayacucho, on June 16, 2007, with the symbolic handing over of the first collective reparations. During a first stage, there was intervention of 440 rural towns highly affected by violence. During 2007, priority was given to the PRC application, mainly in 134 towns in Ayacucho, 88 in Huánuco, 72 in Junín, 65 in Huancavelica, and 47 in Apurímac. Another advance was the enforcement of the reparations program in the health area, through the affiliation of victims to the Comprehensive Health Insurance (SIS). Moreover, the Ministry of Women and Social Development (MIMDES) granted 1,350 displaced accreditations, and the Ombudsman's Office delivered 75 enforced disappearance certificates to victims' relatives. This was aimed at facilitating the access of the persons registered in the reparations programs.

By the end of the year, the Reparations Council had yet to start the development of the Sole Registry of Victims. This was due to the fact that the budgetary resource management significantly delayed the hiring of personnel and the beginning of tasks for the creation of the RUV. It was only between June and October 2007 that the CR technical team operations started.²⁰ Thus, by the end of 2007 the Reparations Council, regardless of having registered 1,631 individual victims and 1,243 towns, only registered 351 towns and no individual victims.²¹

20 The following results were obtained: a) a national map of the concentration of violence, a basic instrument to prioritize areas for the gathering of information, b) a CR territorial layout strategy, c) Regulations for the registration proceedings at the RUV, detailing the operational guidelines, criteria and definitions for institutional tasks. It came into force after the approval of the amendments proposed by the CR to the Regulations of Law 28592 (published in February 21, 2008), c) a protocol for the inclusion in the Census for Peace, regarding provisions contained in Law 28592 and its Regulations, d) operational instruments for registration: information gathering card, fill-out and interview guidelines, RUV database platform, e) methodology to assess the level of impact on communities and towns to be registered in the RUV Book 2, f) protocol for the evaluation of files, including reference to the exclusions defined by the law and an analysis of the events and impact, g) individual victim registration basic module (digital).

21 By registry, we understand the action of collecting information. The registry consists of a registration application in the RUV, and this is, therefore, the beginning of the process. The Council compiles data on the victim, the impact, information on relatives, if needed, and other relevant data. Registration is the formality of formally entering a name in the Sole Registry of

During that time, the affiliation process to the Comprehensive Health Insurance for relatives of the victims of La Cantuta started. Moreover, the Provincial Municipality of Huanta signed an agreement with the PCM to grant reparations to twenty communities. Also, the granting of certificates to political violence victims and collective reparations in Chuschi and the VRAE started.

However, until October of this year, only 131 communities that should have benefitted from the PRC had their respective works. Likewise, the completion of works in about 800 communities benefitted by the PRC was still pending. Moreover, advances regarding economic and educational reparations were pending, as well as an easy access to housing for the internal armed conflict victims.²² There was no follow-up to the sentences of six cases prosecuted by the Inter-American Court of Human Rights against the Peruvian State, which implied symbolic reparation measures and compensation acts. Finally, the CMAN stated that the Health Reparations Program would be implemented as of 2009.

Until December 2009, the RUV had registered 66,088 individuals as victims of human rights violations perpetrated during the period of violence. In the same way, it identified and registered 5m423 collective beneficiaries. By September 30, two lists of beneficiaries were delivered to the CMAN: the first one comprises 36,708 beneficiaries for the educational reparations program; the second, 39,452 beneficiaries for the health reparations program.

Regarding collective reparations, in 2009, the accumulation of benefitted towns raised to 1,397. Likewise, the CMAN conducted technical assistance workshops, mainly in Apurímac, Ayacucho, Huánuco, and Junín. In 450 towns benefitted by the PRC work, meetings were held with CMAN technicians, in order to advise the population on the development of technical files, collection of observations, legal assistance for the drafting of agreements, assistance on legal proceedings and drafting of the required documentation. In regards to individual reparations, on September 21, 2009, the Reparations Council provided the CMAN with a list of 30,051 beneficiaries of the economic reparations program, including 29,186 relatives of dead or disappeared victims during the period of violence, 641 individuals with serious injuries, and 224 victims of rape.

In the institutional area, several local Governments (Anchonga and Congallao Castrovirreyna) allocated a budget for the implementation of collective reparation projects and symbolic reparations for the victims.

In brief, the inexistent attention to reparations in health, education, the facilitation of access to housing solutions and individual and economic reparations was obvious during the year. In spite of the important number of victims registered in the RUV, the CMAN did not significantly encourage the individual reparations program, arguing the need for the Reparations Council to provide information to accredit the victims in each one reparation program, thus going beyond the duties of this entity. Moreover, the rights restitution program does not have the necessary institutional regulatory development to adequately enforce it. Finally, by the end of the year, the registration process for individuals displaced by violence as collective beneficiaries in the RUV had not started yet. The creation of said registry is still facing difficulties due to the lack of human resources for the verification of more than 39,000 cards submitted.

In 2010, the Reparations Council submitted 17,161 accreditation certificates – 16,808 individual reparations, and 353 collective reparations – at a national level. However, until August 26, 81,213 individual

Victims database. It is the direct consequence of the decision adopted by the Council during its regular sessions, where it is determined if the condition of victim of an individual is recognized or not. In case the Council's opinion is positive, he/she is registered in the RUV. The Council decisions are reflected in the minutes of each session. (The authors wish to thank Jairo Rivas Belloso, Council of Reparations technical secretary, for his personal communication).

22 See APRODEH-ICTJ. (2009). *Sistema de vigilancia de reparaciones – Reporte Nacional de Vigilancia del Programa de Reparaciones Colectivas. Etapa II*. Lima.

and 5,609 collective beneficiaries had been registered. In July, the Executive Branch created a commission in charge of drafting the technical guidelines and methodologies to determine the amounts, procedures, and methods of payment for the economic reparations program to be implemented in 2011.

From 2007 to this day, more than 1,800 communities have benefitted by expenditures higher than 160,000,000 soles from the central Government, by means of the PCM and for collective reparations purposes. Although there was co-financing by regional and local Governments, most of the expenses were borne by the central Government. Thus, to this date, about 660,000 individuals have benefitted from the PRC. In regards to the types of projects financed, it should be noted that, until December 2010, most of this involved the construction of irrigation infrastructure (18%), closely followed by community management and infrastructure projects (17.9%), and then, livestock projects (14%), and educational and sports services (13%), among others.

To conclude with the topic of collective reparations, it should be pointed out that more emphasis has been given to the construction of works than to the remedial purpose these initiatives should have. No design was made, and no resources were allocated, to the symbolic, educational, housing reparations or the restitution of citizen's rights. Neither were the PIR regulations amended to include innocent individuals who suffered imprisonment and the victims of sexual crimes other than rape as economic reparation beneficiaries.

Consequently, the victims, their relatives and neighbors have not been able to clearly understand, even upon receiving some of these reparations, that this was a form of compensating their suffering due to unjustified violence during the internal war. These programs were frequently confused with other simultaneous social support actions developed by state bodies. Human rights organizations have been able to prove, through consistent surveys, this significant confusion. The joint profile of a current transitional justice process has not been frequently visible, as it should, through these collective reparations.

Finally and surprisingly, by the end of the Alan García Administration, on June 16, the implementation of an individual economic reparations program was approved. It started with a budget of 20,000,000 soles (approximately US\$7,300,000). By May 31, the RUV has registered about 120,000 individual victims, 5,668 communities and towns, and twenty displaced groups. 70% of the more than 135,000 registrations collected have been rated. Moreover, 44% of the certificates accrediting registration in the RUV have been submitted. Therefore, the Reparations Council has the largest testimonial documentation concerning the internal armed conflict.

As a negative aspect of the final months of the Alan García Administration, Supreme Decree 051-2011-PCM declared December 31, 2011, as the closing date for RUV registrations. Likewise, an amount of 10,000 soles (approximately, US\$3500) was defined as individual economic reparation.

It is clear that the outgoing Government, although keeping the collective reparations component in its agenda, treated it with limitations. Currently, the main problem for affected individuals is that they have experienced –justifiably – as an arbitrary and questionable decision-making both the guideline for individual economic reparations –which establishes a very limited ceiling –, and the extreme shortening of the term for registration as a reparations beneficiary. Moreover, these decisions were not consulted with victim organizations.²³

23 See Rivas, J. Reparaciones: balance 2006-2011. *Noticias Ser*. [In the web]. Available at <http://www.noticiasser.pe/24/08/2011/informe/reparaciones-balance-2006-2011>.

Truth and Memory

In its final report, the CVR claimed having received reports of more than 4,600 clandestine burial sites. Furthermore, it reported having received information on the existence of 8,000 disappearances. The registry of missing persons was continued by the Ombudsman's Office. Today, the number of disappearances is estimated at 15,000 people.

The policy concerning disappearances is thus the most important aspect regarding the right to truth. We pointed out certain relevant events and actions in regards to this topic.

In 2007, the Ministry of Women and Social Development (MIMDES) handed out 1,350 accreditations to the displaced, and the Ombudsman's Office handed out 75 written enforced disappearance certificates to the victims' relatives. It should be pointed out that by virtue of an assignment set forth in Law 28413, since 2005 the Ombudsman's Office has been in charge of verifying the information that would lead to the control of the legal situation of disappearances. Consequently, until July 2010, 2,957 applications were received, and 1,981 investigations were concluded, on the basis of which 1,540 absence certificates due to enforced disappearance were handed out, while the reunion of three families who were separated by a context of violence was fostered.

Finally and closely related to the question of truth, the development of an anthropological-forensic interventions plan that would allow an adequate response to the magnitude of the task and the particularities of clandestine and non-official burial sites was still pending, in order to ensure the recovery and identification of the human remains. In regards to this, there is still a need for a suitable coordination between the judicial perspective focused on the identification of perpetrators and the humanitarian perspective, focused on providing the victims' relatives with accurate information about the whereabouts of the disappearance of their loved ones, beyond the results of a criminal proceeding. The denial of truth due to judicial obstacles, especially in a context stressing a tendency to impunity, is posed as a significant challenge at this moment.

During this period, damage has been produced to the establishment of truth in the judicial scenario. Except in two cases (sentences on the Chuschi case and the homicide of Efraín Aponte Ruiz), the National Criminal Court has refrained from rating systematic human rights violations as crimes against humanity. This establishes their alleged nature as isolated actions, hiding a central piece of truth, which is that these are system crimes, forcing an investigation of the state power structures behind those recurrent crimes in certain regions and in certain periods of the armed violence situation.

In regards to the commemoration and organization of symbolic acts of recognition, the State has not designed a policy yet. The exception at the level of national initiatives is the creation of a commission to build a museum or a memorial site. This decision followed a complex path. Initially, the Peruvian Government rejected a donation of resources by the German Government for the creation of such a museum. Finally, after strong pressure from society, especially from opinion leaders such as author Mario Vargas Llosa,²⁴ the Government accepted and created this commission chaired by Llosa and composed of, among others, two former members of the Truth Commission, Salomón Lerner Febres and Enrique Bernalles Ballesteros.²⁵

24 See Vargas Llosa, M. El Perú no necesita museos, in *El País*. March 08, 2009. [On the web]. Available at: http://www.elpais.com/articulo/opinion/Peru/necesita/museos/elpepucul/20090308elpepiopi_13/Tes.

25 Later, Salomón Lerner Febres, former president of the CVR Peru, and Mario Vargas Llosa resigned from the Commission. Vargas Llosa did it to protest for the Government's promulgation of a legislative decree seeking impunity for the military, as mentioned above. The Commission for the memory site still exists, chaired by the outstanding plastic artist Fernando de Szyszlo.

A relevant event was the organization of the *Yuyanapaq* photograph exhibit about the internal armed conflict, at the Museum of the Nation, sponsored by the Ombudsman's Office. *Yuyanapaq* was the exhibition of Truth and Reconciliation Commission launched in 2003, before the submission of its final report. The photograph exhibition at the Museum of the Nation will remain open until 2011.

In August 2007, the Executive Branch organized a ceremony in honor of the victims, and the Day of the Defenders of Democracy was established. This day, dedicated to the military personnel, converges with the *Castrense* discourse, according to which the image of the armed forces has been affected by denouncing the crimes perpetrated by its agents. Similarly, in October, the regional Government of the Amazon declared the September 16-21 week as the Week for Peace. Moreover, the Peruvian State apologized for the Cantuta crime. However, on September 23, the “The Eye that Cries” memorial was partially destroyed by Fujimori’s followers in the context of his extradition.

If the State action regarding memory matters has been quite scarce, in contrast we may say that during that period different sectors of society have undertaken numerous initiatives for the recovery and symbolic interpretation of the past. In the first place, we should mention the commemoration strategies undertaken by diverse victim organizations and communities affected. A survey of memory sites carried out by the *Movimiento Ciudadano para que no se Repita* registered, until 2009, 101 initiatives for “physical memory sites that were deliberately planned, designed, and built by different organizations and groups in the country.”²⁶

Over the last few years (especially in 2009) different art exhibitions were displayed: “Graphic History of Lima and its Disasters,” “Disappeared,” “Memory of Oblivion: Tarata Street, June 16, 1992,” and “Cantuta: Cieneguilla, June 27, 1995.” Also highlighted is the photographic exhibit “If I don’t Come Back, Look for Me in Putis.” There was also the itinerant museum *Arte por la Memoria* (Art for Memory) initiative, which gathered a group of young plastic artists, with different views on arts and culture. Likewise, the *Yuyachkani* theater group presented a retrospective view of its repertoire with the plays: *El último ensayo* (The Last Essay), *Sin título* (Titleless), *Adiós Ayacucho* (Goodbye Ayacucho), *Antígona* (Antigone).

An important advance in memory matters is the enormous literary production, mainly narrative from recent years. We could mention Alonso Cueto’s *La hora azul* (The Blue Hour); Santiago Roncagliolo’s *Abril rojo* (Red April); Daniel Alarcón’s *Guerra a la luz de las velas* (War at the Light of the Candles), and *Radio Ciudad Perdida* (Missing City Radio); Gustavo Faverón’s *El anticuario* (The Antique Shop); and Iván Thays’ *Un lugar llamado Oreja de Perro* (A Place Called Oreja de Perro). Moreover, there has been abundance of films on diverse aspects of violence and its legacy. The most widely-known is Claudia Llosa’s *La teta asustada* (The Milk of Sorrow). The sector hostile to memory produced a film titled *Vidas paralelas* (Parallel Lives), by Rocío Lladó, defending the official memory by the military sector.

This last aspect is relevant, because in recent years, the armed forces or sectors linked to them have been more active in the task of presenting a version contrary to the truth rebuilt by the CVR. A systematic effort in this sense was the drafting of the report “In Honor of the Truth,” written by the Permanent Historical Commission of the Army of Peru.

26 See Reátegui, F. (ed.). (2010). *Los sitios de la memoria. Procesos sociales de la conmemoración en el Perú*. Lima: IDEHPUCP. See, especially, annex “Relación de sitios de memoria”. Also worth consulting is the electronic portal: <http://mapedositiosdememoriaperu.blogspot.com/>.

Institutional Reforms

Institutional reforms have been the most neglected aspect of the transitional agenda. There are very few State actions in this respect, apart from what concerns the institutionalism relating to justice and reparations, mentioned in previous sections.

Among the scarce advances, we should mention that in 2008 a law was enacted establishing rules for the use of force by the armed forces when its participation is requested for internal control purposes or to reestablish the order. The use of weapons is allowed to repress social protests, without a need for a declaration of a state of emergency. Due to this, in September 2009, the Constitutional Court declares this law unconstitutional. It stipulated that the armed forces should take into account the UN regulations for the use of lethal force, and Congress should issue a related guideline.

Beyond this specific advance, there is still a wide pending agenda including reforms in the armed forces, reforms in the administration of justice, and, as part of this, in the military jurisdiction and the penitentiary system, educational reforms for the promotion of inclusion, respect for diversity, memory and citizenship education, and land-use planning reforms, and the presence of state authorities, especially for a adequate management of local conflicts.

Part II: Changes in Power Relations and their Impact on the Transitional Agenda

Here we would like to highlight the logic of a joint process, placing the described events in terms of the evolution of political power relations throughout these years. We will only refer to the most important aspects of the process, as well as to those more related to our topic. Therefore, we should re-visit elements for the separation of periods we have proposed.

a) Recovery of Factual Powers

As pointed out at the beginning, the creation of the CVR Peru and the fulfillment of its tasks were possible due to a very particular political context, characterized by an enormous discredit, at the end of the Fujimorism, of the factual powers which, victorious during the 1990S, under normal circumstances, would have opposed an investigation of armed violence focused on the violation of human rights and the search for justice in favor of the victims.

Basically, the weakening of the armed forces due to its alliance or complicity with Alberto Fujimori's authoritarian regime is worth mentioning. The revelation on how its highest authorities were involved in the corrupt management of the regime was very shocking and devastating for the institutional image, and no less important, how everyone put himself/herself at the service of Fujimori's main advisor and associate, Vladimiro Montesinos. Montesinos was an Army officer in the 1970s, and, precisely, he was expelled from this military institution on the grounds of treason to the country.²⁷

But it was not only the military sector tainted with illegitimacy due to the fall of Fujimorism, but also the economically powerful sectors. Towards the end of 2000 and the beginning of 2001, there was a public opinion climate in which the forces sympathizing with authoritarianism had such a soft voice and little "symbolic capital" to define a transition political agenda, while pro-democracy sectors and, among them,

27 This charge was due to the fact that Montesinos sent information of the Peruvian armed forces to the Government of the United States. Among a wide variety of bibliographical references on Montesinos' behavior, both before and during the Fujimori Administration, see Bowen, S.; Holligan, J. (2003). *El espía imperfecto. La telaraña siniestra de Vladimiro Montesinos*. Lima: Peisa.

human rights advocates, strongly supported by the international community (Embassy of the United States, European Union) were strengthened and owned the initiative. It was only then that a Truth Commission could be created and appointed. It was, thus, received by the Alejandro Toledo Administration, who decided to ratify its legal existence, and, in fact, provided it with the necessary instruments to work and respected its independence during all his term in office.

Already towards the middle of that Government, the dynamics of the power relations in the country changed. The Government quickly lost momentum. Important economic power groups and conservative sectors took advantage of the weakened President's image and the social revolts against the privatization of utilities and high extractive investment projects. Due to these, several communities claimed territorial rights and expressed their environmental concerns. Therefore, a sense of anguish and non-governance emerged, and on the other hand, a demand for order and stability was included in the national public agenda. Requests for a "strong hand" were no longer eccentric, and it was not embarrassing for these sectors to state a yearning for Fujimori's Government. The symbolic defeat of authoritarianism started to be reverted with vigorous actions by the media addicted to the 1900s regime, especially in Lima.

Thus, during the Alejandro Toledo Administration, the hostile powers to truth and justice found a comeback path to the political arena. Even a request for the vacancy of the Presidency of the Republic was made. It is in this context that a highly weakened President carry out to make political compromises with conservative forces.²⁸

Although the 2006 elections were won by Alan García, main leader of the APRA Political Party and with popular roots and social-democratic external relations, he did it through an alliance with conservative factual political powers and sectors. This situation worsened because suddenly, an almost unknown Army former commander, Ollanta Humala, went to a second electoral round. He proved for the first time, in electoral terms, that in spite of economic growth, large social sectors on the less-modernized territories of the economy were unhappy with the State and its public policies. Humala appeared at that moment as a determined emulator of Venezuelan ruler Hugo Chávez, and lost the election by a tight margin, but in that context, the orientation of the García Administration could be foreseen. Also, an alliance with the conservative elites was forged since the beginning. His candidate to the vice-presidency, former vice-admiral Luis Giampietri, was one of the most violent critics of the Truth and Reconciliation Commission, and one of the most spirited spokespersons of the lawsuits of impunity for the armed forces agents involved in human rights violations.

García's convergence with conservatism is quickly evident. Two other examples were the role played by minister Rafael Rey, a well-known representative of the Catholic conservatism, also reviler of the CVR and a spokesperson of the lawsuits of impunity, first as a Minister of Industry, and then as a Minister of Defense. And there is also the almost explicit alliance with Cardinal Juan Luis Cipriani, archbishop of Lima and primate of the Catholic Church in Peru. Cipriani, a member of the Opus Dei and archbishop of Ayacucho at the end of the armed violence period, has regularly acted as a determined opponent of human rights organizations and, in fact, was a constant ally of the Alberto Fujimori Administration.²⁹

28 It is worth noting that this analysis refers to strictly political aspects of the national agenda. In fact, those great powers had not lost presence in regards to the management of the economy and trade. From an economic point of view, the Alejandro Toledo Administration did not mean a drastic change in regards to the Fujimori Government, but rather continuity, including the respect to the legal framework, the contracts and concessions granted to large companies to do business in the country.

29 The CVR Final Report for Peru, in its chapter on the performance of churches during the armed conflict conducted a very positive assessment both of the Catholic Church and Evangelic Churches, but regretted the actions of Juan Luis Cipriani as archbishop of Ayacucho, the most affected region by human rights violations. See CVR. (2003). *Informe Final*. (Volume III, Chapter 3.3). Lima.

b) The Government Defines a “Vision”

As could be seen in Part I of this document, the recovery of factual powers and conservative positions did not mean an immediate or drastic deactivation of actions in favor of truth, justice or reparations because drive generated by the CVR final report could be maintained. But then, the same did not happen. The counter-offensive of a set of political, economic, institutional, (religious) and media forces aligned and under the determined and effective leadership of President García, would achieve several objectives.

In fact, if his alliances with conservative forces were, in due time, a not-necessarily strategic movement and were focused on ensuring stability and building the trust of those sectors,³⁰ soon García could conceive his own project that would make it possible for him to align behind him those who were his allies under the circumstances. That event takes place when he realizes that the economic growth wave based on the high prices of minerals exported by Peru would give him the opportunity to have a successful Administration in certain aspects, first of all, to extend his political future beyond 2011. That also led him to redefine his allies in more organic terms outside institutional policies (large companies, armed forces and rightist mass media), as well as to confirm an alliance in the official political arena, particularly in Congress, with Fujimorism representatives. At the same time, he defined his opponents: social organizations claiming social or cultural rights in view of the investment wave for mining and hydrocarbons exploitation, left-wing and Liberal Democratic opposition and, of course, civil organizations advocating for the truth, justice and reparations agenda. Thus, there is a new scenario that may be defined as “**friend-enemy**” as a guideline for governmental behavior.³¹

That political option emerged when in October and November 2007 García Pérez publishes two articles in the *El Comercio* newspaper: *El síndrome del perro del hortelano* (The Vegetable Gardener’s Dog Syndrome) and *Receta para acabar con el perro del hortelano* (Recipe to Get Rid of the Vegetable Gardener’s Dog), in which he defines the development project and explicitly accuses as enemies all those who, according to his interpretation, are opposed to allowing all Peruvians to benefit from the wealth distributed across the national territory in the name of particular claims. This shift towards a socially conservative stance taints the Government’s relation with the social agenda in general, and the transitional agenda, defining an alliance with the most hostile sectors towards memory, truth and justice.

However, although the García Administration portrays itself through what has been described as a tendency towards political polarization, it is careful about maintaining itself within the limits of liberal pluralism. This facilitated the fact that transitional justice agenda advocate sectors, harassed and in a relative minority, could keep a certain presence in the public scenario. García himself, apparently attentive to the issues set forth in the CVR Report, maybe due to his own political past, was careful, for instance, in keeping a relationship with victims’ reparation demands, and was present under certain circumstances in those places, with collective reparation measures. At the end of his Administration, he even ordered the individual reparations program start-up, although with a very limited amount and without a previous dialogue with victim organizations, as seen above.

30 We have to remember that García was besieged by the memory of poor management during his first term, during which violence had extended across the national territory, but which was characterized, first of all, by an economic downfall and endemic corruption. Among the extensive bibliographical references the first term of García Pérez, it would be interesting to see Crabtree, J. (2005). *Alan García en el poder. Perú 1985-1990*. Lima: Peisa.

31 This option for a development model focused on natural resource exploitation and the subsequent abandonment of a State reform agenda in order to build more democratic and inclusive relations with society seems, precisely, the opposite of what the development conception would be defined from the lessons learned in a transitional justice process. Although this text cannot develop an argument on the connections between justice, social transformation and development, we refer the reader to an article where we analyze this topic. See Ames, R.; Reátegui, F. (2009). *Toward Systemic Social Transformation. Truth Commissions, and Development*. In De Greiff & Duthie. (eds.). *Transitional Justice and Development. Making Connections*. Nueva York: Social Science Research Council.

c) The Space for a Transitional Agenda

Since 2009, the political arena was not really in favor of the truth, justice and reparations agenda. In a broader sense, it should be said that this had an adverse impact on the discourse the CVR wanted to convey. This discourse, encouraged by a conception of a strong motivation of the transitional justice process, was focused on the fact that the country should be able to admit its historical errors and deficiencies and undertake a drastic transformation that would entail: a sense of responsibility and solidarity towards those excluded, vigorous actions to ensure inclusion and rejection of the legacy of the hierarchical, state and authoritarian culture that still corrupted the political apparatus. All of this was due to a **complex** sensitivity, characterized by a certain **historical** awareness, that was dominated by a more simple discourse and focused on immediate promises: promotion of economic growth and an immediate and mythic access to the “first world”.

In this situation, it is notorious to see that the transitional agenda could survive, although limitedly, and even that it could win several political battles such as the fight against the attempts for amnesty and pardon for military men, as well as the maintenance of a climate of political freedoms. Some of the reasons for this are that, in spite of all, the CVR discourse still had several respectful individual speakers and that the image of the Commission, regardless of strong demolition press campaigns, was still favorable for the public opinion and, certainly, among the international community representatives accredited in Peru.

Additionally, it is worth mentioning that a convergence of pro-democratic sectors in the Peruvian public space has been taking place; even if it is a minority, this allows keeping the agenda alive: young people, mainly from the university, a politically worn-out, but still active, left wing policy, progressive Christian sectors, a nationalist political sector³² strategically positioned in line with the CVR discourse, several popular protest movements, and as a novel actor, a sector composed of intellectuals, technicians and liberal and democratic opinion leaders, whose most visible and influencing exponent is writer Mario Vargas Llosa.

This confluence of forces has allowed the transitional agenda to keep a certain space. We have already pointed out that recently key institutional restrictions have come from the Judiciary, as well as its setback regarding criteria and standards for the prosecution of serious human rights crimes and violations. We reiterate that one of the most visible manifestations of the resistance capacity of the transitional agenda was the defeat of legislative decrees, which proposed the completion of proceedings against military men after 36 months without having issued a sentence, and other measures leading to impunity. The Government’s willingness to take on the project of creating a national memory site may also be included in this positive account, in spite of a drastic initial refusal, as well as the maintenance and warm progress of a rather limited reparations policy.

d) Social Organizations: Real, but Limited, Presence

Now, we would like to highlight three specific elements, beyond the evolution of the general power correlations set forth therein and that are relevant to understand the complexity of the progress and setbacks of the transitional justice process. We start with the position of social organizations in the public area. We point to the presence and influence of civil society organizations today, in the scenario where the transitional agenda develops.

It should be noted, in the first place, that since the beginning of the two-thousand decade there has been an overflowing in the official or traditional political scenario in Peru, given the collapse of political parties

32 This is the name of the political bloc supporting Ollanta Humala, a sector composed of old and new leftist parties, and also of a network of regional political movements and organizations. It is also necessary to mention at this point that Ollanta Humala has been accused of human rights violations, when he was a military stationed in emergency zones. The case has been dismissed at the judicial level, but it is far from being completely clarified.

since the end of the 1980s and before the activation of local demands in many different ways.³³ These two elements have outlined new ways of mediation between the population and the State, based on platforms, dialogue roundtables, mixed commissions, and in which the protagonists, apart from State authorities, are innovative organizations, such as networks, groups and fronts, advised or supported by actors from the so-called **third sector**, such as non-governmental organizations.

This new framework, characterized by these extra-institutional spaces, has allowed the preservation of governance, though limited and sometimes precarious, in view of the emergence of continuous conflicts and violent protests. However, it has instilled the public process with a dynamics that is not adequately related to what happens in the traditional political arena, dominated by the political parties represented in Congress. This political system disjunction has been affecting the education, adoption and execution process of more consistent public decisions. On the one hand, it distracts the capacity of the official policies to prioritize important political projects; and on the other and, it severs social organization possibilities to have the State make effective decisions, favoring its interests.

Here, we should mention two bodies playing a key role in keeping the CVR recommendations valid: on the one hand, the NGOs that are part or collaborate with the National Human Rights Coordinator. Their professional quality, their strong closeness to the victims, many of them spread across Andean or Amazonian towns of difficult access, have been a key factor for the transitional agenda continuity in the difficult political environment described. On the other hand, the Ombudsman's Office, the State institution created by the 1993 Constitution, during the Fujimori regime, has had, however, a continuous path until today aimed at playing its role in an equally professional and courageous manner. The Ombudsman's Office is the recipient of CVR documentation, and it regularly assesses the human rights situation in the country.

It is in this context that the victim organizations that emerged after the work performed by the Truth Commission³⁴ have found an opportunity to gain presence or, at least, to maintain themselves as valid actors, particularly in regional scenarios. Their work has been changing over time. Initially, and even until now, they are focused on the claiming their right to reparations. Nonetheless, little by little they have broadened their range of interests towards the cultivation of memory and the affirmation of an identity exceeding or surpassing the strict condition as victims. Memory initiatives have gradually become a constant ingredient in the public space in the regions that were most affected by violence, and this contributes to keeping the agenda in force,³⁵ although always in competition with other more notorious agendas in mass media, such as territorial claims and opposition to large investment projects in extractive or agro-exports industries.

Having said this, its limited scope of influence should also be recognized. Circumscribed to regional scenarios, its capacity to make effective public decisions is not too large. First, because in regional areas they find the same limitations than other collectivities or interest groups: chaotic representation systems, weak regional and local authorities, scarce technical capacity for public opinion enforcement. Second, because given the inexistence of large national political parties lacking the necessary political mediation bodies to be successfully heard at the Legislative and Executive Branch. To this, of course, we should add the already

33 On the uniqueness or precariousness of the mediation and political representation system or current Peru, it would be useful to see Martín, T. (1999). *Democracia sin partidos. Perú 2000-2005*. Lima: IEP. Also illustrative, although circumscribed to the capital city, the text: Romeo, G. (1999). *Las nuevas reglas de juego. Transformaciones, sociales, culturales y políticas en Lima*. Lima: IEP.

34 The *Movimiento Ciudadano para que No se Repita* gathers more than 600 organizations. See its website at <http://www.paraquenoserepita.org.pe/pqnsr/node/1>. The Reparations Council registers its first annual report, in 2007, 35 victim organizations. See http://www.registrodevictimtas.gob.pe/archivos%5CInforme_Anuar_Anexos_7.pdf

35 On the blooming and sense of the memorial initiatives in the period see: Reátegui, F.(coord.). (2010). *Los sitios de la memoria. Procesos sociales de la conmemoración en el Perú*. Lima: IDEHPUCP. Available at: http://idehpucp.pucp.edu.pe/images/publicaciones/los_sitios_de_la_memoria.pdf

mentioned social and cultural factors. We are referring to the survival of ethnicity-based exclusion and marginalization standards, which make the most influential social sectors look with indifference at these organizations' claim for rights. The division of the country is still a limitation, not only for this agenda, but also for the consolidation of democracy, broadly speaking.

Saying this does not mean either orphanhood or absolute irrelevance of victim organizations. These keep a certain validity, due, among other factors, to the cooperation and support bonds joining them with other civil society sectors with more power and resources, such as non-governmental organizations, certain universities and the Catholic and Evangelic Church progressive sectors.

e) Balances and Military Power

This extra-institutional dynamics of the social discontent during the García Administration allowed the conservative discourse, and that of its allies, to emphasize an important point in its agenda, which would prove successful: on the one hand, there is a warning in the sense of not allowing protests affect the course of progress that the country would follow, that is, "our growth model," and on the other and, and in direct correspondence, it emphasizes the importance of the armed forces, and therefore, their image and prestige, as guarantors of this social order.

CVR opponents have tried to file specific accusations against the military as an attempt to affect the image of the armed forces and weaken its role in general, and the internal order control, in particular. This discourse affirms that there was a "persecution" against those who fought for democracy, and there has been a drive towards the perception that the Judiciary, harassed by human rights NGOs, treats the military men accused more severely than the members of *Sendero Luminoso*. This discourse facilitated, undoubtedly, the effective resistance of military authorities to the judicial prosecution attempts for human rights violations, by simply denying fundamental information for trials. However, it is also true that these have not made a point in demanding such information. Thus, there has been a tacit convergence between the Office of the Public Prosecutor and the Judiciary, as well as the Executive Branch's inclination not to support the action of justice.

The reconstruction of the military power over the last few years is linked, as already mentioned, to the claim for a "strong hand" in view of social protests. However, according to the police and the armed forces, their role as agents of that "strong hand" would be handicapped by the human rights culture and the crime litigation policy. Our intention here is to stress this surreptitious bond between the defense of the internal order and the idea that the military and the police require or deserve certain immunity guarantees for their actions.

f) State Sub-systems

Finally, we cannot omit that just as force co-relations in the official policies conspire against a greater progress of the transitional agenda, without entirely neutralizing it, there are other barriers (and opportunities) in the structure of the State.

In fact, it is still possible to prove that, in spite setbacks in judicial matters, there are sectors in the administration of justice that struggle to conduct criminal proceedings, especially in the regions where violence affects more severely. A case such as Los Cabitos headquarters (where arbitrary detentions, torture, and extrajudicial executions took place) shows the tenacity of a local judiciary acting without following the tendency imposed by the capital city up to a certain point.

Likewise, different regional Governments, such as Huancavelica and Ayacucho, have made efforts to develop, in the middle of their economic limitations, several measures in favor of victims and aimed at an effective confrontation of the violent past. It is, thus, about several State fields acting with a certain relative autonomy with respect to the national tendency.

However, the limitations to this phenomenon should be considered. The relative autonomy of these state sectors does not necessarily obey to a particular Peruvian State bureaucratic complexity, which would cause the administrative sector to operate independently from politics. It is a more reasonable hypothesis to think that this is due to the political system fragmentation, leaving certain governmental machinery areas loose, otherwise aligned to national politics. It is in those areas in which active civil organizations live, where very heterogeneous leadership emerges, and in which the transitional agenda tries to advance, though slowly and in a fragmented matter.

g) Change of Government and the Transitional Justice Process

Since the end of July 2001, Peru has a new national Government. Ollanta Humala's electoral victory solved an electoral dilemma linked to the concerns about the future of democracy and the respect for human rights. Humala defeated Keiko Fujimori, daughter of a former president convicted for serious human rights violations, and a candidate surrounded by emblematic characters from his father's former authoritarian Government.

Since this Government is just beginning while this chapter is being written, besides mentioning the new President's commitment, ratified by him when he took over, only a brief comment is made. Humala has taken social inclusion as his flag. Making a balance of previous politics, he pointed out that economic growth is valuable, but it has not benefitted the majorities, yet it has reproduced the strong tendencies towards inequality and exclusion. This shift in the Government's direction and the presence of ministers in the first cabinet with a track record coherent with this concern, represent a relevant and encouraging milestone.

Democracy and human rights have an intrinsic relationship with the struggle for social justice in our countries, but we know that the latter does not guarantee by itself the materialization of the first two. This is about complex objectives with their own areas, and there are too many reasons for the Peruvian human rights movement to continue being cautious and protecting its autonomy to remain loyal to its mission in the next few years. At the same time, it is clear that a spirit of justice and fight against discrimination, as previously discussed, should allow for convergences with the transitional justice agenda. We could say that unexpectedly, due to the electoral results, a more promising future has opened before all of us who follow this path. This speaks of the importance of the events, and also of the limitations and possibilities of making drastic social changes.

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