

# Introduction

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

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## 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).

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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 an 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.<sup>1</sup> 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.

<sup>1</sup> 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.

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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.

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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).<sup>2</sup> 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.<sup>3</sup> 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

<sup>3</sup> *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.

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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,”<sup>4</sup> 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.

<sup>4</sup> “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 Ecuador<sup>5</sup>.

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.

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

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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.

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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.

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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.

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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 Dario 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.

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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.

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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 a 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

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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

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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 Víctores, 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 (IACtHR) 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

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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.<sup>6</sup>

PRAIS Program <sup>6</sup>	
Positive Aspects	Limitations or Problems
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.

<sup>6</sup> 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

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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 to 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

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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.

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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