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Introduction

By Heather McRobie

Scholar Ruti Teitel has defined 'transitional justice' as the conception of justice associated with periods of political change. This encompasses both formal justice mechanisms such as prosecutions of those who have committed crimes under the previous authoritarian regime, and informal mechanisms intended to bring societal-level justice, such as truth-telling and truth and reconciliation processes. The articles collected here reflect the way in which transitional justice as a practice and as an academic lens is itself transitioning – or developing – in tandem with new global realities. The tumultuous changes ignited by the Arab revolutions of 2011 have created both new spaces and new challenges for transitional justice, while other regions and contexts continue to grapple with the dual task of processing their authoritarian past and establishing the foundations of rule of law and democracy.

Many of the concepts and frameworks of transitional justice – particularly the right to truth, in response to forced disappearances – emerged out of Latin America's painful transitions from authoritarianism in the 1970s and 1980s. This is reflected in the pieces in this chapter, which provides a snapshot of the range of transitional justice processes, and the different paths South American countries have taken to come to terms with their past. Lucia Berro ('Accountability for Human Rights Violations During Dictatorship in Uruguay' p 357) addresses the manner in which the legacy of authoritarianism continues to manifest at a societal level, and the open letter written by academics to Uruguayan presidential candidates, calling upon them to prioritise accountability for past crimes. Contemporary attempts to 'breaking the circle of impunity', as Berro puts it, is also a theme that threads through recent developments in Colombia. Andrei Gómez-Suárez ('Colombian Victims: Changing the Rules of the Game' p 357) highlights the dynamics between the three 'groups' of transitional justice processes – perpetrators, victims and bystanders, and how the politicised discourse of victimhood threatened to stagnate the peace process and transition from authoritarianism.

A key concept of transitional justice emerging from the Latin American experience of post-authoritarian transitions was the 'right to truth', to heal the societal damage caused by states who 'disappeared' their enemies and opponents. As Renan Honorius Quinalha outlines ('50 Years Later, Still in Search of Truth: Challenges Facing Truth Commissions in Brazil' p 359) through the case of Brazil's Truth Commissions, this un-stitching of the silence of the victims of dictatorships is a process that requires wholesale restructuring of state institutions. That statements made at Brazil's National Truth Commission can still cause societal shock-waves fifty years after the military coup points to the unhealed wounds that politicised memorialisation processes and incomplete or ineffective transitional justice processes can leave festering.

While the core ideas of 'transitional justice' emerged from the 'first wave' of transitional justice experiences in South America in the 1970s and 1980s, South Africa's post-apartheid transition was also a paradigm-forming experience for both the theory and practice of transitional justice. Alongside the paradigm of the 'truth and reconciliation commission', which has since been used as a template in numerous transitional justice and post-authoritarian processes, the South African experience of transition was bound up with the constitution drafting process, and the need for a constitution that articulated a new, inclusive and healing vision of South Africa. Kayum Ahmed ('Mind the values gap: do we really believe in the Constitution?' p 360) takes the pride South Africans feel at their constitution, often lauded for its progressive values, as a starting point of an exploration of the "values gap" between the vision articulated by the constitution and societal views on issues of LGBT rights and reproductive rights. Ahmed's analysis chimes with the research of recent transitional justice scholars on the difficulties of 'embedding' post-authoritarian constitutions in the new (transitional) cultural context.

The revolutions of the Arab world in 2011 inherited the legacies of transitional justice, in theory and in practice, yet the countries that overthrew dictators during the 2011 Arab uprisings have struggled to carve out the space between various polarising forces, to begin to process their past. The liminal period of post-revolution has been punctuated by political violence even in the country with the most 'straightforward' transition, Tunisia. As I describe in my article ('Will Tunisia's Truth and Dignity Commission Heal the Wounds of the Authoritarian Past?' p 361), Tunisia was best placed amongst the revolutions in the region to find a point of sufficient stability to begin to process its painful past.

As a more recent transitional justice process, it was also able to draw upon earlier 'generations' of transitional justice experiences – the concept of the South American-originated 'right to truth' echoes through to Tunisia's Truth and Dignity Commission, while the South African experience of a 'transitional justice constitution' was self-consciously referenced in Tunisia's post-2011 constitution-drafting process. However, unreliable support from the government, as well as schisms within the body tasked with delivering the Truth and Dignity Commission mean that Tunisia is still just beginning its transition to democracy and rule of law.

While the function of formal and informal transitional justice mechanisms alike may be to process the path, it is always with one eye on the future – to lay more firm foundations for a state or society to begin to flourish, unencumbered by the brutalities of its past. While all the cases discussed in this chapter provide snapshots of countries still in the process of 'transition' – or of healing from their past – they also provide examples for how societies continue to find dynamic and innovative ways to process their collective traumas and past experiences in order to begin again.

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Accountability for Human Rights Violations During Dictatorship in Uruguay

By Lucia Berro | 27th November 2014

This Sunday, November 30th, 2014, Uruguayans will choose their next president, and the country will celebrate 30 years of democratic elections after over a decade of civil-military dictatorship.

The country has come a long way since the reinstatement of democracy and has been praised for its progressive achievements in human rights issues, taking the lead on making legal same-sex marriage, guaranteeing women's right to safe and legal abortion and legalizing and regulating the production, sale, and consumption of marijuana. However, the legacy of the dictatorship remains an 'unfinished business' for Uruguayan society and the country has faced strong criticisms for its inertia in addressing the systematic human rights violations that occurred between June 1973 and February 1985, which included the systematic use of torture, political imprisonment and forced disappearance.

Pablo de Greiff—the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of non-recurrence—said: *'A chapter of Uruguay's recent past is yet to be resolved adequately. In order to move forward and continue on the path of development, the country needs to realize the rights to truth, justice, reparation and guarantees of non-repetition.'*

Due to the lack of discussion and attention to the topic accountability for past crimes in the presidential campaign, sixty academics around the world, led by Francesca Lessa, signed an open letter addressing the presidential candidates.

The letter requests the next president to tackle as urgent the following three priorities:

1. Remove all obstacles that impede the reporting of human rights violations and the advancement of judicial proceedings in courts without unjustified and undue delays;
2. Establish a formal mechanism to investigate all crimes of the dictatorship – from enforced disappearances and torture, including domestic violence and rape against women and children and sexual crimes, and summary executions, violations of labour rights and freedom of expression, as well as economic-crimes – thus targeting a broad universe of victims;
3. Continue to progress with the design and implementation of public policies for comprehensive reparation for victims, encompassing symbolic and material reparations aimed at all the different categories of victims. Reparation comprises also the right to truth, as the Inter-American Commission on Human Rights said, which includes not only the direct victims and their families but the whole society that possesses 'the inalienable right to know the truth about what has occurred ... in order to avoid a repetition of similar events in the future.'

No matter who is elected this Sunday, the next government has a unique opportunity to finally break the circle of impunity and lay 'a solid foundation for a just and equitable society that will allow new generations to address the challenges of the future.'

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Colombian Victims: Changing the Rules of the Game

By Andrei Gómez-Suárez | 24th November 2014

Important developments have taken place in the Colombian peace process since August 2014. For example, the establishment of the Historic Commission of the Conflict and its Victims and the Subcommission to discuss Disarmament, Demobilization and Reintegration, made up of members of the security forces and FARC. However, the direct participation of victims in the negotiations deserves special attention because it has contributed to building legitimacy for the Santos-FARC peace talks amongst skeptical sectors of society.

In June 2014, right in the middle of the presidential race, the negotiation teams decided to create a new mechanism for the participation of civil society in the peace talks. Before beginning to discuss the fifth point of the agenda on victims' rights, it was decided that five delegations of twelve victims each would travel to give their testimonies to the negotiation teams in Havana. The United Nations, the National University of Colombia and the Church were asked to select the victims and to organise the logistics for their direct participation.

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The first delegation of victims showed a sense of working as a collective, which seemed to be fading away with subsequent groups. Although each delegation is made of a broad spectrum of victims, they don't claim to represent all the victims of the Colombian armed conflict. On the contrary, by recognising the diversity of spirals of victimisation and the different impacts of the conflict, the delegations of victims have helped to make visible the human face of the Colombian tragedy to Colombians and to the world, as well as making clear the challenges to the protection of their rights in a post-conflict scenario.



However, the recognition of a diverse universe of victims has been hijacked by politicians opposing the peace process. This has unleashed a perverse and dangerous process of identity politics, which stigmatises sectors of Colombian society and fractures the country's already weakened social fabric. If unattended, the hyperreal dichotomy between FARC and state victims, which is beginning to gain strength, could become the seed of a new spiral of violence. In transitional contexts, identity politics are often socially constructed to justify the continuation of violence in order to protect an ahistorical and fantastic identity.

Now that the fourth delegation of victims has returned to Havana, the challenge for the remaining delegations will be to avoid falling prey of party politics and contribute to the reconciliation of Colombian society by overcoming the division and mistrust that has impeded the consolidation of a movement for peace in Colombia. The challenge faced by the victims is great; the challenge for Colombian society is even more serious.

Death threats against victims after returning from Havana demonstrate that there is a need for social movements, individuals and organisations to stand by the victims. Their presence in the rounds of negotiation has been a victory for civil society, which has seen itself represented in Havana for the first time with these delegations, going a long way toward tackling the perception that the negotiations lacked an important democratic component. The support of civil society for the victims is crucial to ensure that this small victory is not used by spoilers to reignite a dirty war against those supporting the peace process.

Instead of compartmentalising victims, security officers and policy makers into different conferences and spaces, Colombians need more events that bring them together to talk about the transversal issues that perpetuate political violence. There are some examples worth noting. In terms of public institutions, the National Centre for Historical Memory brought victims, security officers, practitioners and students, among others, to commemorate Memory Week and participate in the Archives for Peace International Seminar in October, to discuss the idea of a Memory Museum in Colombia. International organisations are also playing their part. The Organisation of Iberoamerican States has convened three international conferences to talk about transitional justice and the idea of a culture of peace. These two-day workshop-conferences convene a series of roundtable discussions in which students, victims, security officers, and policy makers sit down to offer their views on truth, justice, reparations and guarantees of non-repetition.

However, the most important development is the International Victims Forum, which took place in September in twenty cities around the world. The Forum aims to bring together different sectors of victims, from all sides of the conflict, just as the delegations to Havana seek to encompass the multiplicity and heterogeneity of suffering. The key proposals made by the Forum are centred on the importance of creating the institutional framework, which can effectively guarantee the fulfilment of the rights of Colombian victims who live outside the country. In the fourth delegation, just returned from Havana, one participant was Juan Carlos Villamizar, the first victim to go to the negotiating table from his exile in Spain – a historic development in terms of the recognition of the six

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million Colombians living abroad, who are beginning to feel included.

The presence of victims in Havana highlights the flexibility of the negotiation parties to respond to the demands of Colombian society without compromising the strategic objective of ending the armed conflict by reaching a comprehensive agreement on four points: rural development, political participation, illicit drugs and victims' rights. The direct participation of Colombian civil society is a ground-breaking exercise in the global paradigm of conflict resolution. However, for it to succeed, it takes more than the commitment of the negotiation teams; the whole of Colombian society must overcome the fragmentation that has brought more than fifty years of war.

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50 Years Later, Still in Search of Truth: Challenges Facing Truth Commissions in Brazil

By Renan Honorius Quinalha | 7th April 2014

On the eve of the 50th anniversary of the military coup, which initiated the latest and the longest Brazilian dictatorship (1964-1985), the statements of the retired Army Colonel, Paulo Malhães, at a public hearing of the National Truth Commission (the 'CNV') held on March 25th, shocked the Brazilian public.

'I killed as many people as was necessary,' he said. During the dictatorship, broad tactics of repression and violence were used to persecute political dissidents. According to the numbers known today, it is estimated that around 500 were killed or missing, more than 70,000 were imprisoned for politically-motivated reasons (and often subjected to systematic torture), thousands were exiled and a number of others lost their political rights.

Since the democratic transition, the relatives of the missing and former victims of the dictatorship have demanded truth and justice with respect to the state violence committed in the recent past. However, only since a few years ago have these claims garnered more attention in the Brazilian political agenda. As far as reparatory policies are concerned, it is worth noting that Law 9140, passed in 1995, recognized the official responsibility of the Brazilian state in cases of dead and missing people. In 2002, through an executive provisional order (later turned into Law 10,559 in 2003), the Amnesty Commission was established, with the objective of providing financial and symbolic reparations to those who were the victimized during the dictatorship.

More recently, however, a key milestone was reached with the adoption of Law 12,528 in 2011. This law created the CNV, with a mandate to examine and clarify the serious human rights violations in Brazil that occurred in the period between 1946 and 1988, focusing on the military dictatorship. The CNV is a state body without judicial powers, but it is vested with the authority to investigate 'serious human rights violations,' according to Law 12,528. In order to promote the right to truth, some of the powers granted to the CNV include the authority to summon public officials to testify, to request documents, and, importantly, to name perpetrators.

In the aftermath of the CNV's establishment, a series of other institutions at both state and local levels started to participate in the transitional process, including state and municipal truth commissions, NGOs, unions, universities, and so on. There have been numerous public hearings throughout the country. For example, the Truth Commission of the State of São Paulo held more than 120 public hearings, which were open to the general public and broadcasted live, with the broad participation of victims and relatives. A large amount of information was systematized through these official channels, opened by the Brazilian state for the very first time in Brazil's history.

Yet, almost two years since the CNV's work started, it still faces major obstacles in its fact-finding tasks as well as in its relationship with the armed forces. Many files are now available for consultation, some even in digital format. However, there must be full and complete access to existing military archives, which have not yet been analyzed, to ensure the success of all of the Truth Commissions in Brazil during their remaining time. Second, the armed forces are not yet fully under civilian control. The armed forces must break their silence and apologize to the nation for the violations committed by some of their members, as evidenced by the recent testimony of Paulo Malhães before the CNV. In order to break the lack of institutional support for the Truth Commissions, political branches, particularly the presidency, must fully exercise democratic control over the armed forces and other social groups that were influential during the dictatorship. Only in this way can there be restoration of truth and respect for human rights.

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Mind the values gap: do we really believe in the Constitution?

By Kayum Ahmed | 14th July 2014

South Africans often proudly proclaim that our Constitution is one of the most progressive in the world. Yet if you ask most South Africans how they really feel about gay rights and abortion, their answers, more often than not, contradict the values enshrined in the Constitution.



Understanding this 'values gap' between our personal values on the one hand and constitutional values on the other is important because it provides us with insights into the nature of South African society.

So who are we? A recent Foundation for Human Rights (FHR) study suggests that 63% of us are opposed to same sex relationships, and 73% of our population believe that a woman cannot refuse sex with her husband if he demands it. By the way, that last statistic includes women respondents to the survey. Given the gap between our personal values and the values enshrined in the constitution, the question we are confronted with is how do we bridge this values gap? The response one often receives is: education. More specifically, human rights education. The logic is that if we teach people about the rights in the Constitution, they are more likely to understand and accept these rights. Unfortunately, this is not quite the case.

As part of my studies on human rights education, I tested this hypothesis by conducting a survey of students currently participating in a South African masters degree programme in one of the most prestigious international human rights law programmes in the country. All of the students enrolled in the masters programme participated in the anonymous survey, which compared their personal values to the constitutional values. On the question of whether gay people should have the right to marry, 56% agreed that same-sex couples should have this right, and 22% strongly disagreed. About 42% of the class supported a woman's right to choose an abortion, while 50% of students were opposed to abortion.

We assume that most, if not all, students studying human rights law would fully support human rights principles, and therefore would be supportive of the values enshrined in the Constitution. However, only 62% agreed or strongly agreed with the following statement: 'my personal values are the same as the values in the Bill of Rights.' Twenty-five percent of students disagreed or strongly disagreed with this statement. Some of these masters students are likely to go on to teach other students. Many of them may go on to become judges and policy makers, given their level of expertise and education. What do you think will happen when those masters students become policy makers, and those policy makers are confronted with questions pertaining to gender equality and same sex rights?

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When comparing the results of my survey to the FHR survey, it is evident that the values gap exhibited by the masters students is far smaller than the gap between the personal and constitutional values of most South Africans. This means that human rights education does appear to have a positive impact on bridging the values gap, but its effect is not quite as compelling as proponents of human rights education have led us to believe.

People with low levels of education are often targeted through human rights education programmes. This is important, but I would argue that it is insufficient. The evidence shows that the values gap amongst those of us who have acquired masters degrees and have been appointed as decision makers – judges, teachers, policy specialists and political office bearers – remains significant.

It seems counter-intuitive to want to develop human rights education strategies focussed on the highly educated in our society. However, given the role played by the educated elite in decision-making, it is imperative that we start bridging the values gap by acknowledging that it is not only the poor who need to be ‘workshopped.’ The personal beliefs and values of the privileged and powerful need some shaking up too.

But as you know, we educated types do not like being questioned. We know what’s best for you. Well at least 62% of us do.

Kayum Ahmed is the Chief Executive of the South African Human Rights Commission. Kayum holds five degrees and recently started his third Masters degree (MSt) in international human rights law at Oxford.

Will Tunisia’s Truth and Dignity Commission Heal the Wounds of the Authoritarian Past?

By Heather McRobie | 20th February 2015

Tunisia’s Truth and Dignity Commission sets a precedent in transitional justice initiatives amongst countries that experienced the Arab uprisings four years ago and has been greeted with optimism by victims of the Ben Ali regime. But unreliable support from the government and internal divisions within the Commission pose threats to its ability to fully deliver justice for historical human rights abuses

In 2011, Tunisia’s Jasmine Revolution inspired popular uprisings across the Middle East and North Africa. Four years later, Tunisia is again setting a precedent in the region – its Truth and Dignity Commission, which began work in December 2014, will be the first attempt at a ‘truth and reconciliation’-style process in a country that overthrew a dictatorial regime in 2011.

Many herald the establishment of the Truth and Dignity Commission as another sign that Tunisia is the Arab Spring’s ‘success story.’ As Syria continues to be engulfed by war, Libya disintegrates with two governments, each claiming legitimacy, and Egypt slides back to authoritarianism under Sisi, Tunisia appears the country of the 2011 revolutions that is best placed to begin to address its authoritarian past.

The Truth and Dignity Commission was established in the 2014 constitution and 2014 Transitional Justice Law. The Commission has a broad remit to address ‘political, social and economic crimes’ committed between 1956 and 2013. Its work will encompass both ‘informal’ transitional justice processes like ‘truth-telling’ and recognition of victims of human rights violations, which seek to bring about societal-level reconciliation, and more ‘formal’ aspects such as reparations, which will be paid from the Commission’s Victims Fund.

The Commission has been welcomed by victim’s rights groups and anti-torture groups, which particularly throughout the Ben Ali period, sought accountability for human rights abuses committed by the state and campaigned for rule of law and transparency. The Commission claims that its offices currently receive, on average, five people a day seeking justice for human rights abuses committed by the state.

The inclusion of the word ‘Dignity’ in the transitional justice body is significant, a self-conscious reference to the demand of the Tunisian Revolution for ‘employment, freedom, and national dignity.’ As such, the Commission positions itself as an inheritor and defender of the values of the revolution, notably a rejection of the authoritarianism and corruption of the Ben Ali era. However, human rights organisations have expressed concern that current high-level politicians, particularly President Essebi, who was elected in late 2014, previously held high-ranking governmental positions under Bourguiba and Ben Ali. And as such, they will be disinclined to support the spirit of the transitional justice initiative.

While the constitution protects the existence of the Truth and Dignity Commission, the government has ultimate control over its budget, a fact that has already begun to constrain the work of the Commission. If the current and/or future Tunisian government is not fully supportive of the Commission’s work, this could pose problems particularly for its planned work that deals with reparations.

Moreover, in a report released in January 2015 entitled ‘Tunisia: Four Years On, Injustice Prevails,’ Human Rights Watch noted that

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transitional justice processes and the attempt to establish transparency and rule of law were still far from complete, and efforts to 'ensure accountability for unlawful killings committed during the 2011 uprising were blighted by legal and investigative problems and failed to deliver justice for the victims.'

In addition to the external obstacle of the government's wavering support for the Commission, the body has also been marred by internal divisions, as members of the Commission come from across the political landscape, from left-leaning feminists to those who identify with Islamist ideologies.

Lastly, the Commission faces the challenge of living up to the pressure placed on it by the region, as the first commission of its kind since the revolution, to provide a 'template' for post-2011 transitional justice in the wake of authoritarianism. The Truth and Dignity Commission thus faces a difficult task – but hopefully not an insurmountable one.

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