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TOWARDS THE REINTERPRETATION OF THE CLASSICAL THEORY OF TRANSITIONAL JUSTICE IN LATIN AMERICA:

CASE STUDIES ON THE SOUTHERN CONE AND NORTHERN TRIANGLE SUB-REGIONS

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LIST OF ACRONYMS

CJA – Centre for Justice and Accountability

CNV – *Comissão Nacional da Verdade*

CONADEP – *Comisión Nacional para la Desaparición de Personas*

CV – *Comando Vermelho*

CVES - *Comisión de la Verdad Para El Salvador*

CVJ – *Comisión de la Verdad y Justicia*

DDR – Disarmament, Demobilization and Reintegration

FMLN - *Frente Farabundo Martí para la Liberación Nacional*

GDP – Gross Domestic Product

IACtHR – Inter-American Court of Human Rights

ICTJ – International Centre of Transitional Justice

IMF – International Monetary Fund

M-18 – *Barrio 18*

MERCOSUR – *Mercado Común del Sur*

MEVES – *Museu Municipal El Mensú*

MPF – *Ministério Público Federal*

MS-13 – *Mara Salvatrucha*

ONUSAL - the *Mision de Observadores de las Naciones Unidas en El Salvador*

PCC – *Primeiro Comando Capital*

PNC – *Policía Nacional Civil*

TBA – Tri-Border Area

TraCCC – Terrorism, Transnational Crime and Corruption Center

UNCEH - United Nations Commission for Historical Clarification

UNODC – United Nations Office on Drugs and Crime

URNG - *Unidad Revolucionaria Nacional Guatemalteca*

US – United States of America

ABSTRACT

The present research aims at studying the application of the classic theory of transitional justice in Latin America so to understand to what extent there is a need of reinterpretation of this process, since the lawful stability proclaimed as the main product of its method appears to be more related with corruption and criminality in this region rather than the strengthening of democratic institutions and rule of law. In order to achieve this goal, the study will first analyse the contexts of repression and extreme violation of human rights that two specific Latin American sub-regions (the Southern Cone with Argentina, Brazil and Paraguay, and the Northern Triangle of El Salvador, Guatemala and Honduras) were able to overcome with transitional justice. After that, the research will develop on the formation of dominant elites ruled by corruption and the growth of organized crime and their social and economic relevance in the same countries studied previously. Finally, the research will analyse whether the classic theory of transitional justice should be reinterpreted in order to truly achieve its goals, with some dialogue with the theory of Transformative Justice. The methodology for the research will be the inductive analysis of the bibliographic review. It expected to conclude that, if another round of transitional justice in the countries studied should be in order, perhaps a reinterpreted version of the theory should be considered for application, one that does not ignore the endemic causes of violence and human rights abuses and that also includes provisions originally alien to the classic approach, such as economic measures, all as part of a set of efforts to deliver more robust and long-lasting results for the Latin communities.

Key-words: Transitional Justice; Latin America; democracy; stability; human rights.

Chapter 1: Introduction

1.1. Introduction

The present research aims at studying the application of the classic theory of transitional justice in Latin America so to understand to what extent there is a need of reinterpretation of this process, since the lawful stability proclaimed as the main product of its method appears to be more related with corruption and criminality in this region rather than the strengthening of democratic institutions and rule of law. According to Ruti Teitel (2002), transitional justice is understood as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes". It is a process in which the key is to address the trauma, discuss it and understand the impact of repression on everyday life in order to create a bridge between the past and a plausible way forward for the present and future. Hence, the aims are not only at breaking with the past so to establish the rule of law, but also at moving towards reconciliation and prevention of new human rights violations (UNSC, 2004).

By addressing the trauma, transitional justice cannot be portrayed in one specific timeframe, because the psychological effects of a repressive regime go beyond the victim itself; they compose the spirit of a whole community and are usually inherited from one generation to the next (Lira, Salimovich, Weinstein, 1992). Furthermore, reconciliation does not have an exact formula to be applied for every country-case. It involves studying the best tools of transitional justice feasible at the moment and applying them according to the resources available. For example, some countries have managed to conduct trials against perpetrators (e.g. Argentina, Chile, Guatemala, Peru) and others have not; some countries were not able to afford truth commissions, and some others were (e.g. Brazil, Paraguay).

In general terms, it can be said that many Latin American countries have successfully engaged in the process of transitional justice, since the era of authoritarianism and civil wars that marked the XX century in the region was drowned by what Samuel Huntington (1991) called the "third wave" of democracy, and much has been achieved so far regarding reconciliation and accountability. However, the classical approach of transitional justice seems not to be a perfect shape for every case worldwide, as in Latin America, one cannot conclude by the fully reset of peace and respect of human rights.

That is to say, if only analysing the statistics about criminality and corruption levels on the region, the classical approach of transitional justice might have huge pitfalls inasmuch the process has not delivered a healthy and fully human-rights oriented state of things for the post-transitional societies.

This particular aspect of Latin America's records of criminality, corruption and questionable institutions is what could potentially drag the region to the concept of being a "jungle". On October 17th, 2022, the Spanish politician Josep Borrell, acting as the European Union High Representative for Foreign Affairs and Security Policy gave a speech for the new class of diplomats of the European Diplomatic Academy. His statement was short but clear: "yes, Europe is a garden. (…) it is the best combination of political freedom, economic prosperity and social cohesion that the humankind has been able to build (…). The rest of the world (…) is not actually a garden. The rest of the world, must of the rest of the world is a jungle".

The statement was made with reference to the many historical atrocities that the European Union and its current members were able to overcome in order to create the so-called 'garden', such as the two great wars and the nationalists waves in between. And today, according to Borrell, the new class of diplomats – or 'gardeners' – must protect Europe against the contemporary threats posed by the jungle, such as the migration flows and the Russian war against Ukraine. No positive reference to 'the rest of the world' was made in the speech if not that it is a jungle.

As offensive for natives of the 'jungle' as it might be to hear this term in a public official meeting, one cannot disagree with what was said next: "there is a big difference between Europe and the rest of the world (…) is that we have strong institutions. The most important thing for the quality of life of the people is institutions. The big difference between developed and not developed is not economy, is institutions". Indeed, countries with strong institutions tend to have better quality of life. Examples go beyond Europe itself: The United States, Canada, Japan, South Korea, among others (World Bank, 2023). These are the countries who are achieving to fulfil the 16th Sustainable Development Goal, so to maintain peace, justice and strong institutions through "effective, accountable and inclusive institutions at all levels" (United Nations, 2023). However, this is not the case of Latin America.

By the last decades of the twentieth century and the beginning of the 2000s, many Latin American countries engaged in the process of transitional justice in order to overcome the situation of dictatorial regimes (e.g. Argentina, Brazil, Paraguay) or internal armed conflicts (e.g. El Salvador, Guatemala, Honduras) and to align with the new world order, primarily liberal and democratic. This shift from unlawful to legitimate state of things had domestic peculiarities in each country-case, but common features in all of them can be identified: the need of breaking with the past in order to establish the new legal order with respect to the rule of law, the belief in electoral regime as a foundation of long-lasting democracy and, consequently, state-building reforms as endeavours for such transition (Carothers, 2002).

The process of large democratization in Latin American countries was operated in the realm of Huntington's third wave theory, albeit it is not a phenomenon exclusive of the region: transitional justice can be seen everywhere in the world, or as Borrell would have said, everywhere in the jungle. In Latin America, it can be portrayed as the attempt to solidify democratic institutions in the countries and consequently overcoming the previous repressive regimes, therefore bringing some sense of order to the newly-democratic societies. Hence, one cannot say that Latin American countries are not trying to build their own garden, envisioning their own sense of peace and justice for all its citizens, following what was stated for the new European diplomatic class in 2022: "people go by, institutions remain". Nevertheless, the question of the effectiveness of the application of Transitional Justice in Latin America is the general framework of this study, with the following specifications.

1.2. Problem Statement

The research problem arises when considering that there might have some features not covered by the classical transitional justice theory, otherwise the Latin American countries who engaged in such process would not be portrayed today as the world most violent/corrupt ones. At the same time, if there is any sense of stability in the region, since, indeed, no dictatorship nor civil war has emerged so far, this phenomenon might be linked much more with some particularities of the countries' political dynamics rather than a product of transitional justice alone.

That is because, according to the World Bank Atlas on Sustainable Development Goals, the rates of homicide in Latin America are the highest of the entire world (World Bank,

2023). This is particularly interesting when observing the world map of people living in conflict-affected regions: according to the same database, Latin America is not a region qualified as facing conflict or institutional and social fragility – mostly due to the long-term effects of transitional justice, meaning, the overcome of repressive regimes –, except Haiti and Venezuela; yet the deaths by interpersonal violence represents 20.7% of total deaths, the highest of any region compared (World Bank, 2023).

In this sense, although the countries have engaged in transitional justice to obtain stability through a lawful way, it cannot be said that peace and protection of human rights are safeguarded – not at the beginning of the transition, nor least nowadays. On the contrary, criminality in a broader sense – corruption, illicit hubs of traffic of illegal goods, human trafficking, smuggling, drug cartels and other forms of organized and individual crimes – is the characteristic that have never abandoned the region. Stability, therefore, might derive less from the new institutions proclaimed by transitional justice and more from the corruption feature inherent in them.

1.3. Objectives of the study

The objectives of the research can be classified as general and specific.

1.3.1. General object

The main objective of the research is to study the application of the classic theory of transitional justice in Latin America so to understand to what extent there is a need of reinterpretation of this process, since the stability proclaimed as a product of its application appears to be more related with corruption and criminality rather than strong institutions.

1.3.2. Specific objects

First of all, the specific object is to analyse the contexts of repression and extreme violation of human rights that two specific Latin American sub-regions (the Southern Cone with Argentina, Brazil and Paraguay, and the Northern Triangle of El Salvador, Guatemala and Honduras) were able to overcome with transitional justice. After that, the objective is to study the formation of dominant elites ruled by corruption and the growth of organized crime and their social and economic relevance in the same countries studied previously. Finally, the research also seeks to expand on the legacies left by transitional justice in the two regions studied in order to understand whether the classic theory should

be reinterpreted so as to get closer to its central objective of detaching societies from criminality and violence towards being fully human-rights-oriented. These countries were selected because of their relevance for the argumentation to be constructed and the conclusions that are expected to be achieved, in the sense that, if the failures of transitional justice can be observed in both regions and all six countries, this may be an indicator that the dead end of this theory has much more connection with its intrinsic features rather than the external context of its application.

1.4. Research questions/hypothesis

Did the six Latin American countries elected to this study succeeded in applying transitional justice to overcome repressive regimes?

Is it true to say that peace and stability are automatic features that emerge after the transition from a repressive to a democratic regime is completed?

Is it possible to say that, in the long term, criminality and corruption are stability factors in the Latin American countries, much more than transitional justice?

Is it possible to say that the classical theory of transitional justice *per se* was not enough to bring justice and peace to the countries studied, in such a way that it should be reinterpreted so to be more appropriate to their contexts?

1.5. Justification for the study

The research can be justified by the fact that Latin America is a reference of having used transitional justice in the past years to overcome repressive regimes and seek reparation for the victims and for future observance of human rights, yet the statistics and studies about criminality in the region prove that there is no peace and security in these countries: although no dictatorship/authoritarian regime is so far prevailing and democracies are quite stable, neither they are enough to say that such stability comes from the idea of justice as a result of surpassing the wrongdoings of the past. On the contrary, it seems that they come from the general unlawful state of things that is observed in the overall levels of corruption and criminality in the countries. In this light, at the academic level, a reinterpretation of the classic approach of transitional justice should be deemed appropriate.

1.6. Research limitations

Although the research intends to study Latin America, not every single country of the region will be examined. Only six specific countries will be analysed, and they were selected based on two reasons: first of all, from a spatial perspective, they comprehend two troublesome sub-regions of Latin America due to their criminal statistics, yet they are located in opposite geographical sides (the Southern Cone in the bottom end of South America and the Northern Triangle in the central-north of Central America). Second, although these regions have different cultural features and a quite significant distance among them, similar patterns of crime and corruption can be observed, which can represent clues on the idea of the failures of transitional justice, if only considering that all these countries have engaged in this process almost at the same time. This means that the research is limited to these countries only, albeit the concluding observations may be feasible of embracing other Latin American countries from an inductive point of view. In addition, for the purposes of the study, the concept of "peace" will be narrowed to the cessation of formal hostilities/conflict, meaning that further developments on other specific concepts of peace will not be made during the study.

1.7. Conceptual framework

For the purpose of this research, the concepts of transitional justice and peace must be clarified. As mentioned before, transitional justice can be understood as a method of political change to overcome repressive regimes (Teitel, 2002). It contains strategies, such as the promotion of trials, lustrations, amnesties and the creation of truth commissions, all of them with the same goal of seeking accountability for perpetrators and justice/reconciliation for the victims, although the latter is much more of a process than one static target (Freeman; Hayner, 2003).

This process leads to major institutional changes towards the state-building of a democratic and peaceful country. However, the post-transitional justice phase in Latin American countries have not unveiled a well-functioning democracy, nor least any sort of progress on this behalf. Rather, these countries are stuck in what Thomas Carothers denominated as "the grey zone", which enables common features of criminality and corruption orchestrated by dominant elites to grow and prevail (Carothers, 2002).

In this sense, while a pure concept of peace can mean the end of conflict and violence (extracting from Oxford Learner's Dictionary, Collins Dictionary, Cambridge Dictionary and Britannica Dictionary), the challenge of the research is to understand to what extent

this dimension of peace was achieved – and if it was, if it still remains – after transitional justice despite the statistical evidences of violence and corruption in the Latin American countries that will be studied. Finally, if considering the countries permanence on Carothers' "grey zone", the second challenge of the study will be to indicate where are the flaws of transitional justice theory and how can this framework evolve so as to effectively deliver its human-rights purposes.

1.8. Methodology

The following research can be classified as exploratory, considering that it aims at investigating specific features of transitional justice and its applicability nowadays in the selected region. The approach shall be qualitative because there will be the collection of all data gathered and extraction of conclusions based on this analysis. The method chosen is the inductive, considering that the research will explore specific situations in Latin America so to draw a broader conclusion for the entire region. As for the procedure, the study will adopt the bibliographic review, meaning the interpretation of books, articles, journals, periodic papers, reports, among others. This method will be used for the entire research, more prominently on the first chapters, and other sources shall be added for the last ones, such as statistics provided by international organizations. Other investigative sources shall be used, such as reports from truth commissions, as well as legislative and judicial sources, as some laws and legal cases are expected to be analysed. All the sources will be addressed to corroborate the final conclusions.

1.9. Chapters outline

The research will be divided in four main chapters. Considering the current chapter as the first one, the second chapter will be devoted to expand on the pure concept of transitional justice, how this process is used and which specific methods are available under its spectrum to achieve its goals. The third chapter will provide the specific contexts of the six countries elected (Argentina, Brazil, El Salvador, Guatemala, Honduras and Paraguay) and their repressive regimes/civil wars in order to understand the relevance of transitional justice as a vector towards the overcome of the institutionalized situations of mass violations of human rights and the creation of democratic institutions.

The fourth chapter will expand on the features of Latin America after transitional justice: the implementation of the rule of law and democratic regimes, but as a consequence, also the emergence of dominant elites linked with corruption and criminality. There will be

sub-sections to explain the growing presence of corruption in the regions, as well as the high levels of criminality (the latter point will also count with an analysis of the South American Tri-Border Area illicit hub).

The fifth chapter will be devoted to understand whether a reinterpreted method of transitional justice should be debated, one that includes specific features that were missing in the first round of transitions, and therefore have caused the endemic state of violence and corruption in the countries analysed. It will be seen that such renewed theory should elasticize its original target and perhaps create other tools and update the original ones, as an attempt to cover the blind spots demonstrably left by the classical approach. All the previous sections will be considered in order to build a theory on this regard. Moreover, at this point, a comparative analysis with the theory of Transformative Justice will be provided, in order to understand that despite its similarities with a reinterpreted version of transitional justice, these are both complementary approaches to one another. The last chapter will be dedicated to the conclusion of the study, which will provide an overview of the main findings of the research and answer the research questions/hypothesis presented on item 1.4.

Chapter 2: conceptual framework of transitional justice

2.1. Introduction

This chapter aims at defining transitional justice and expanding on its conceptual framework for further discussion in the following chapters. For this purpose, this session will be divided in three parts. The first one will be devoted to understand the origins of the theory of transitional justice from a historical and political perspective. After this first clarification, the next part will be dedicated to expand on the methodological aspect of transitional justice by exploring its main tools for reaching the goals. The last session will contain an overview of the previous topics and a general conclusion for the chapter, in which it will be confirmed that transitional justice is a complex tool, since it has many different mechanisms designed to achieve the maximum level of restorative justice in a particular situation of human rights violation.

2.2. The birth of the theory of Transitional Justice

2.2.1. Conceptualizing Transitional Justice

According to the Oxford English Dictionary, the word "transition" can be understood as "a passing or passage from one condition, action, or (rarely) place, to another". The word "transitional", therefore, is the adjective form of the action of changing from one stance to the other. From a simple analysis of this concept, it can be concluded that anything that is said to be "transitional" needs at least two different vectors, one as the starting point, and one to be reached, the final destination.

The Cambridge Dictionary expands on the concept of "transition": "a change from one system or method to another, often a gradual one". The problem with this definition lies on the "gradual" aspect of change. Change can be gradual in some study fields, usually the ones where the transition is provoked and meticulously calculated in advance, such as chemistry and mathematics. Differently, in the study field of political sciences, there is little to no gradual change, as global history shows. "Change" is entrenched in the evolutional aspect of humankind, but such evolution is imprinted with conflicts of many natures and sizes, since it carries out driving and opposing forces of different natures (e.g. social, political, economic, religious, psychological).

"Gradual" change, therefore, is not a common feature in this field. In this sense, the primary concept of transition as change from one condition/system to another is the

common ground of both Oxford and Cambridge definitions and it can be applied in the field of political sciences.

Difficulty arises on the definition of "justice". The Cambridge Dictionary simplifies it as "fairness or rightness in the treatment of other people". The Oxford English Dictionary states that it means "the quality of being just or right, as a human or divine attribute; moral uprightness". Hence, the common feature between the two concept is the notion of fairness.

However, according to the Stanford Philosophy Encyclopaedia, the concept of justice has distinct levels: at the individual ethical level, "justice is often contrasted with charity on the one hand, and mercy on the other, and these too are other-regarding virtues", which is closer to the ideas brought by the two previous dictionaries. However, "at the level of public policy, reasons of justice are distinct from, and often compete with, reasons of other kinds, for example economic efficiency or environmental value". This level is related to the idea of limiting the concept of justice as "giving what is right to one another" according to many social constraints that must be considered by governors while managing public resources. In this regard, justice is aligned with a sense of seeking an egalitarian share of goods within the community.

But this task might never be achieved nor even by the most skilled governors if one tries to reach a common sense of what an egalitarian share of goods is, given the fact that "equality" and "equity" are two distinct ideas. While the first one tries to ensure fairness, neutrality and impartiality by treating everyone exactly the same, the latter focus on the different needs of people and try to give to each one the amount of resources needed to narrow down or eliminate the gap among the various groups within the same community (Minow, 2021). This is the social dimension of justice.

Nevertheless, going back to the concept of justice provided by the Oxford English Dictionary, a highlight must be done in the idea of justice coming as "a moral or divine attribute" and as a result of "moral uprightness". Apart from the religious dimension of justice – whose roots come from the sacred and ecclesiastic sphere of each religion –, justice as an exercise of morality deserves attention. According to Bauman and Skitka (2009), because moral mandates change people's judgement about fairness, moral conviction is at the core "of many of the most contentious issues" of global history.

Discussions about any topic, from the lowest to the highest level of social importance will always be affected by individual morality (e.g. the right to abortion, death penalty), which makes the conquer of justice sometimes a remote goal, even a chimera, if only considering that each individual, either personally related or not by the discussion topic has its own ideal of "moral uprightness". In this sense, the concept of justice can be intertwined not only with many different dimensions, but also with many different targets, when considering the results expected to be achieved with it. At this point, justice is associated with the idea of law enforcement – moral, social or even divine law, as long as it is a codified instrument of constraints to a Hobbesian natural state of behaviour.

The first and classic target of the management of justice is the punishment of the perpetrator according to his/her crime. This notion is known as retributive justice and derives from Hammurabi's *lex talionis*, meaning that humankind recognizes the need of holding perpetrators into account at least since 450 B.C. However, as human societies evolved, some old practices began to be questioned. The principle of retributivism remains codified until recently, yet the manners to achieve it should go beyond the mere payback, at least from a moral and social point of view. As flagged by Alec Walen (2023, n.p), "there is something at least mysterious, however, in the modern thought that an individual could owe suffering punishment to his fellow citizens for having committed a wrong. How does his suffering punishment 'pay his debt to society'?"

Modern theories of law enforcement started to consider this question and the urges of re-stablishing the *status quo ante*, meaning the immaculate social bond between victim and perpetrator prior to the felony. Justice in this context should detach from the classic notion of retributivism and move towards reconciliation, and restorative justice arises as the missing piece to achieve it. It does not mean that no punishment at all shall be operated, but justice should now prioritize reconciliation through a victim-centred approach (Mousourakis, 2015).

Restorative justice has its main roots on the Maori community in New Zealand. The Maoris are a Polynesian indigenous community that for many years have practiced ancient rituals of what today is known as restorative justice: in the occurrence of a crime, both victim and perpetrator's families would gather in a community meeting and would begin a discussion on the circumstances of the felony. Justice would be achieved through a process of reconciliation coming from the common recognition of shame on the perpetrator (Shank; Takagi, 2004). The focus is on the dialogue between the two extremes

and on the maximum support of each person involved, in a way of equalizing the power dynamics.

The critique of the Maori tradition lies on their community-based judgment, once no systematic and codified rule of law operates in such rituals. According to John Braithwaite (2000, p. 129),

> The restorative justice ideal could not and should not be the romantic notion of shifting back to a world where state justice is replaced by local justice. Rather, it might be to use the existence of state traditions of rights, proportionality and rule of law as resources to check abuse of power in local justice and to use the revival of restorative traditions to check abuse of state power.

In other words, in a society dictated by democracy and strong institutions, restorative justice might be the most reasonable and modern way of justice, yet this way of holding accountability has to obey the principle of coercive power deriving from the State rather than the community. Nevertheless, despite the critique, restorative justice seems to be the one elected by law operators worldwide as a human rights-centred exercise of law enforcement. This concept of justice is codified in the United Nations Handbook on Restorative Justice Programmes, where six main objectives are listed: supporting victims; restoring the damages relationship; reaffirming community values and denouncing criminal behaviours; encouraging responsibility; identifying restorative outcomes; and preventing recidivism.

Therefore, if assuming the word "transitional" as the status of changing from one condition/system to another and choosing the concept of "justice" as restorative – from the point of view of the results expected, aside from the religious, moral or social dimension –, the contours of the concept of "transitional justice" can be outlined as a blend of all the main ideas of both concepts. The result of this exercise leads to the definition provided by the UN Security Council: transitional justice is "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (2004, p. 04).

The transition is operated from a starting point of a regime of abuses and illegality to a State dictated by the rule of law and power of its institutions. As stated by Wendy Lambourne (2014, p. 34), "peacebuilding and transitional justice involve promoting socioeconomic and political justice, as well as legal justice that combats a culture of

impunity and sets up structures to ensure ongoing respect for human rights and the rule of law". Hence, the "full range of processes" can be understood as a holistic approach, in the sense that a wide variety of tools must be operated for the overall pursuit of justice.

Considering the main idea of accountability linked with reconciliation, it can be concluded that restorative justice is the main goal of transitional justice, while the "transitional" feature can be translated as political change (Teitel, 2002). When political change from the previous regime to the next one is not gradual nor pacific, transitional justice should be used as a mechanism to ensure the respect of human rights, accountability, guarantee of non-repetition and, most importantly, reconciliation from a restorative point of view.

Because transitional justice is more of an action-plan rather than a fixed tool, it has to count with many actors: activists, lawyers, politics, policymakers, all driving forces towards the success of the transition towards justice (Arthur, 2009). And because it is a holistic strategy, it counts with many tools at disposal of the transitioning rulers, which shall be addressed later on this chapter. At this point, it is important to understand the global and political framework that caused the birth of transitional justice the way it is conceptualized.

2.2.2. Transitional Justice as a theory: global historical and political framework

According to Gidley (2009, p. 17), transitional justice "is in some ways millennia old and in other ways only as old as the term itself". It is usually referred as a modern phenomenon because of its close relations with the 20th century, yet the exercise of political change is not new for humankind, which suggests that transitional justice is a practice used long ago by societies worldwide, although not with the full understanding of its meaning and how it is perceived today.

In this sense, examples of transitional justice can go back to ancient history. Professor Hakeem O. Yusuf outlines the earliest developments of transitional justice beginning in ancient Athens in 411 B.C to overthrown oligarchic regimes and restore the democratic order, as well as to restore illegally confiscated lands to its previous owners (2022). A few years later, the fall of the "twelve tyrants" in 405 B.C. is considered to be one of the earliest cases of the use of amnesties, trials and lustrations – all methods of transitional justice, as it will be seen in the next section – as core composers of a rudimentary peace agreement designed for reconciliation among the Athenian society (Lanni, 2010).

However, as highlighted by Hakeem Yusuf (2022), transitional justice has not always been associated with pursuing the establishment of the democratic regime. For example, during the English Restoration, the execution of king Charles I in 1649 and Oliver Cromwell's rise in power through the republican regime lead to the exile of Charles II, the heir of the throne, to the Netherlands. In 1660 the monarch wrote a statement ensuring no prosecution for the ones involved in his father's execution, as well as religious freedom and the concessions of amnesties after his restoration as king of England, Ireland and Scotland. The document, known as the Declaration of Breda, is an example of the use of transitional justice as a mechanism to establish the foundations of today's English constitutional monarchy (Yusuf, 2022).

The French and American Revolutions can also be considered as important events to understand transitional justice, albeit the short-term controversial outcomes achieved in comparison to the pre-established goals, since "the United States failed to expand the franchise to all free men until the early nineteenth century, while the French Revolution degenerated into the Reign of Terror and Napoleon's dictatorship" (Posner; Vermeule, 2004, p. 770). Apart from this critique, it can be said that the French Revolutionary Trial is an example of applying some vague notion of transitional justice, whereas in North America, the former British colonies have proclaimed a Declaration of Independence with specific insurance of trial by jury – as opposed to the previous colonial regime of royal juries under King George III's rule –, a rudimental way of addressing past abuses and guaranteeing non-repetition.

Nonetheless, the focal historical and political point to the birth of transitional justice as known today relies on the XX century. One can argue that, if transitional justice seeks to address human rights violations through accountability, reconciliation and guarantee of non-repetition, the biggest failure of this strategy throughout global history was the League of Nations. In 1919, the Allied and Associate Powers gathered in Versailles to draft the peace-agreement with Germany that would origin the League and was expected to put a definitive end at international hostilities by, among other measures, global disarmament.

However, Japan's invasion of Manchuria in 1933 and its consequent withdrawal from the League, and the rise of Mussolini, Hitler and other authoritarian regimes as a result of the nationalist waves across Europe were altogether destabilizing factors for the credibility of the League. Distrust on its influence soon led to a raise on global investments on

military equipment from mid-1930 on, and the ideal of non-repetition and the prevail of peace became a chimera, as the Second World War erupted with perspectives of becoming even deadlier than the previous (Eloranta, 2011).

As this speculation proved to be correct, it can be said that an effective example of transitional justice first emerged in global context in 1945 with the Tokyo and Nuremberg Trials, which corresponds to Samuel Huntington's second wave of democratization (1991). However, according to Ruti Teitel (2003), the post-World War II responses to past atrocities still had pitfalls (e.g. legal irregularities of the Trials, debates about the legitimacy of international accountability towards the implementation of domestic rule of law), and that is why this period constitutes the first phase in transitional justice's genealogy. Nevertheless, the positive outcomes for the strengthening of international law, especially through the creation of the International Criminal Court and the Genocide Convention, as well as the boost of comparative constitutionalism are major accomplishments of transitional justice as a developing theory.

The following phase of Teitel's transitional justice's genealogy is the post-Cold War period. According to Francis Fukuyama (1992), political change became the urge of the second-half of the century, since "the parallel crises of authoritarianism and centralized socialism have left only one competitor in the ring, with an ideology of potentially universal validity: liberal democracy, the doctrine of individual freedom and popular sovereignty". In this sense, the fall of right-wing authoritarian regimes in Southern Europe and Latin America, the collapse of the Soviet Union and consequent liberalization and modernization of fifteen countries freed from the communist regime, as well as the decline of one-party regimes in some African countries were some of the main features of the post-Cold War that enabled the spread of transitional justice worldwide (Carothers, 2002).

This framework of international political change is conceptualized by Samuel Huntington as the third wave of democracy (1991). According to his theory, the events of mass democratization in the 1980s proved to be a 'snowballing' effect towards the pursuit of democracy in other countries, mostly in the Balkan region, Nepal and Mongolia. For example, the international wave of democratization pressured the Nepalese government to lift the ban on political parties, as well as in Romania, where the dictator Nicolae Ceausescu was compelled to authorize other countries to compete in the 1993's elections.

Needless to say, as Huntington warns, the snowballing has no effect if the countries allegedly influenced by democratization do not have basic conditions for political change: "the 'worldwide democratic revolution' may create an external environment conducive to democratization, but it cannot produce the conditions necessary for democratization within a particular country" (Huntington, 1991). One example is the case of former Yugoslavia: despite all the external pressures to democratization, it was only after almost four years of intense conflict and massive external interference that the political change could be operated and the seeds of democratization could be properly dibbled in the region.

The establishment of *ad hoc* international tribunals to investigate human rights violations in Yugoslavia and Rwanda are examples of the prevailing theory of transitional justice as a consequence of the political framework, also known as Huntington's third wave of democracy, or Teitel's second phase of genealogy. The idea of the Tribunals follows the heritage of Nuremberg and Tokyo, yet not every transitioning country have adopted this model. Although the reasons may vary, the central justification relies on the lack of political interest: as stated by Paige Arthur (2009, p. 342),

> Though the claim that international justice was cut short by the Cold War is not entirely incorrect, as Cold War tensions clearly played a role, this claim dangerously simplifies and effectively collapses decades of history. In the cases of Madagascar, Kenya, Indochina, and Algeria (to name a few) the lack of international accountability for systematic repression endured by civilian populations in the 1940s and 1950s was not a "consequence" of the Cold War. One might rather propose, as many did at the time, that the reason that a standing court to try international crimes had not been set up after World War II was precisely because great powers such as France feared their own soldiers would be tried for violations they committed in the colonies. And one should not forget that the ex-colonial powers – especially France – continued to play strong economic and military roles in their former colonies, making the introduction of accountability measures very difficult.

That is why transitional justice as a phenomenon deriving from political change has to have different methods in order to try to achieve its goals. It is up to the new regime to fully comprehend the many tools available and deliberate which ones are effect at the very beginning of the transitional period and which shall be incorporated later on. It is a matter of politics, resource-management, economic constrains, but more importantly of trying to reach the closest level of justice – from a restorative perspective – to its people. These methods will be analysed in the following section.

2.2.3. Transitional Justice as a method: five pillars

Throughout the historical development of the theory of transitional justice, it can be noted that the strategies used to implement the goals during the political turmoil of the 'transitioning' phase somehow overlap. For example, as seen previously, the use of trials is present since the early stages of transitional justice, however more prominently after the Second World War. Trials can be considered as one important pillar of transitional justice. However, in some cases the use of trials could have not been a direct possibility (as it will be seen in the next sections of this chapter) due to many factors, that shall be explored below.

In this sense, other mechanisms have to be available in order to facilitate the transitioning phase and seek justice and they must be used cumulatively, as warned by Pablo de Greiff (2012, p. 36): "international experience suggests that if these measures are implemented haphazardly, piecemeal, and in isolation from one another, it is less likely that they will be seen as instances of expediency at best". The most important ones, according to the selected bibliography, are the following.

2.2.3.1. Trials

According to Stephan Landsman (1996), there are six immediate benefits of applying trials during transitional justice. First of all, trials can launch a tradition for the new government of the prevalence of the rule of law and its institutions. In the long term, they can be seen as an effective correctional tool, which should strengthen the new democratic institutions and therefore discourage further violations of rights. This gives the trials a preventive perspective, as noted by Ellen Lutz (2009, p. 42): "embedded political institutions such as successive democratic elections, separation of powers, the rule of law, and strong codes of professional ethical responsibility have done their work in preventing head-of-state misconduct".

The next two benefit of trials rely in its educational and informational dimensions. Landsman suggests that trials have the power of raising awareness about the wrongdoings committed by the perpetrators and defining the limits of such practices, in a way of cataloguing the real extent of damages in "an accurate record". By doing so, prosecutions indicate the concrete victims, reveal the true perpetrators of abuses and draw the lines for the need of specific compensations. Both these benefits overlap with the goals and results of the truth commissions, as it will be seen in the next item.

The last three benefits are intertwined. First of all, prosecution can lead to punishment, which is a spread message coming from the new institutions that perpetrators will face consequences. This message stigmatizes perpetrators and help to bring closure to victims by ameliorating their feelings of revenge. It also strengthens the power of the rule of law as a mechanism of deprivation of liberty – or other types of punishment – of anyone considered to be guilty as charged, which rises the credit of law enforcement. Persecution, therefore, leads to punishment, prevention and healing.

On the other hand, some challenges can be opposed to the use of trials during the early stages of transitional justice. According to Hakeen Yusuf (2022), in a context where perpetrators still have a huge influence in the country, they can request amnesty in exchange of leaving power, meaning that no prosecution should ever take place. Even if trials take place, the level of neutrality of the judges and the efficiency of the results would be questionable.

The mere procedure of trial is also target of critics. McEvoy and McConnachie (2014) bring attention to the management of the victim's voice during the hearings and Court sessions. According to their study, appropriation and manipulation of the facts is embedded in the criminal lawyer's profession in order to achieve the results wanted. In this context, victims can have their story shortened, arbitrarily cut or emphasised in secondary aspects, all according to the wish of the law professionals involved. This factor can lower the victim's expectations about the entire reveal of truth, not to say that can diminish their will in cooperating with other judicial cases.

In addition, there are some contexts where victims and perpetrators remained geographically close to each other during the transitional period. If the trial is supposed to be conducted in that same area, victims might feel scared, pressured or even obliged to behave in a more introspective way and therefore to not disclose all information needed to carry out a strong case. This pattern was studied by Olsen and others (2010, p. 988):

> (…) courts in new democracies face particular constraints in reaching judgments against perpetrators. The authoritarian leaders may have appointed judges before the democratic transition, rendering biased outcomes; evidence is often missing or tainted. Witnesses either do not exist, or feel intimidated to speak out against perpetrators, and courts often have to apply laws adopted from authoritarian codes. Recognizing the legal constraints on accountability through trials, the moderate approach advocates non-judicial remedies and rehabilitation.

After the promulgation of the Rome Statute of the International Criminal Court, one might argue that this last stalemate can be solved by transferring the domestic trial to the international court based in the Netherlands, if only the case fits the competence of the chamber (to prosecute cases of genocide, crimes against humanity and war crimes committed by any member State). However, the mere fact that the persecution of justice is being done abroad, with foreign judges and foreign personnel imprints the idea that domestic institutions are weak and the new government do not have the resources to bring justice to its own citizens without relying on external – and sometimes unknown – factors. This is can be interpreted as a threat to the legitimacy of the new regime and its credibility among the citizens.

Nevertheless, trials are the pure exercise of the rule of law and democracy. This tool has limitations, as seen, yet the heritage of the Nuremberg trials is undeniable – although questionable because of its innovative legislative approach –, since they were the foundations of the many trials around the globe – both at the international and domestic levels – that were conducted in the legitimized attempt of implementing the rule of law.

2.2.3.2. Truth commissions

Considering that the main goal of transitional justice is to bring restorative justice in a victim-centred approach, it can be said that the pursuit of truth is a core element of transitional justice. According to Salimovich and others (1992), victims of political violence usually experience an expressive burden of fear, which translates into psychological scars that might perpetuate for generations. In this sense, the only way of moving forward is by addressing the past wrongdoings, and the only way of doing so is by acknowledging the real extent of the violations of rights during the repressive regime.

For example, during the dictatorial regime in Argentina, forced disappearances were a common practice of the repressive regime. The families of the victims had no clue if their beloved person was still alive or not, and if he or she was being tortured or not. Families and friends have then suffered with the uncertainty of the person's wellbeing and whereabouts, and the agony of uncertainty would provoke negative effects on relationships, work environment, and within the community. This strategy of political fear used by the regime of repressing the society by establishing the "invisible enemy" – meaning that anyone could be the potential enemy, and anyone could be victim of forced disappearance – had the powerful impact of disintegrating the society from the bottom to

the top, at such point that, after the end of the dictatorship, the one thing that could reunite people was the search for their relatives, and consequently, the search for the truth (Robben, 2007).

Truth commissions are non-judicial bodies not necessarily related with the government that have a mandate of an established period of time to conduct investigations and collect testimonies in order to unveil the reality experienced by survivors and victims during the previous repressive regime. According to Van Norloos (2021), they are the product of the right to truth, which is a new-born right that is developing its significance among the international law apparatus, especially after some specific trials conducted in the Inter-American Court of Human Rights (case Velásquez Rodríguez v. Honduras) and the European Court of Human Rights (e.g. case Al Nashiri v. Poland).

According to Mark Freeman and Priscilla Hayner (2003), truth commissions have many benefits, yet are not always used. For example, they can provide a safe environment for victims to share their stories and boost the public debate about the past. By doing so, they can make recommendations about the proper reparations for victims and pinpoint the most effective changes that must be institutionalized during the transition period. However, to quote a few challenges, the authors suggest that truth commissions might not be used due to lack of political will, shortened resources, the prevalence to address more urgent needs and even the sociological fear of sparkling violence and war while revisiting the past.

Another great challenge of truth commissions is highlighted by Susanne Buckley-Zistel (2014, p. 158). Although these organs enjoy a great level of independence and are non-judiciary, the author suggests that they are not shielded against external influences:

> Based on anecdotal insights into the South African TRC, as well as other commissions, it showed the workings of the commissions, how they inform causal emplotment and how they (attempt) to influence the meaning given to events by witnesses in their narratives about the past. More concretely, it showed how the narration of the violent past is conditioned on the dominating institutional embedding in the framework of the truth commissions, as well as (and closely related) how the discourses in the commissions are formed by the social and political contexts into which they are embedded. These 'regimes of truth' (Foucault) determine what may be said where and how, and are therefore fundamentally political. Where the dominant discourse in the public sphere has not yet been consolidated – as can be seen in the example of Guatemala – there is a risk that the battleground of the conflict is transferred into the forum of the truth commission.

Similar to what can happen during trials, if the perpetrators still have strong influence in the country, truth commissions might be affected by a half-version of the truth told by

survivors/victims, mostly due to fear of future retaliations. This is particularly relevant considering that the findings of the organ are publicized in a final report, usually indicated as evidence for further persecutions/reparations. That is why Ruti Teitel (2002) argues that the pursuit of truth is intertwined with a necessary conflict among justice, history and memory, yet this condition should not discredit the importance of this tool in rebuilding the community's identity and addressing individual trauma towards reconciliation with the past.

2.2.3.3. Reparations

The right to a fair reparation is enshrined in international law by article 8 of the Universal Declaration of Human Rights: "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". In the context of transitional justice, it means that victims are entitled with specific rights deriving from reparations: restitution of the *status quo ante*; compensation for the patrimonial or moral loss (e.g. loss of educational or work opportunity, forced eviction); rehabilitation of victim's wellbeing, mostly from a psychological point of view; satisfaction in the sense of public acknowledgement of their struggle and their dignity; and guarantees of non-recurrence, usually from legal and institutional reforms (Masiko-Mpaka and others, 2022). Therefore, reparations gravitate around the concept of restorative justice, because they are not aimed at retribution only and have a victim-centred approach.

All of these rights have severe limitations, mostly relative with the insufficiency or total lack of resources to their implementation. For example, the Inter-American Court of Human Rights have ruled cases based on the principle of *restitution in integrum*, meaning that survivors and relatives of victims of past abuses should be fully compensated. The calculation of the amount of debt considers the material damages and the foregone wages of the victim subtracted by 25% (as a margin of what would have been spent on a personal level only).

With this light, Pablo De Greiff (2006, p. 457) brings to light the case of the Peruvian Truth and Reconciliation Commission, which in 2003 have calculated the estimated amount of compensation for all the 69 thousand victims of the internal armed conflict in around 10 billion *nuevos soles*. However, the entire revenue of the country for the year in question was less than the amount of the debt, meaning that it was completely unfeasible

to make the payments, otherwise the country would have not had any other funds to address the other needs. As the author concludes, the restitution plan would have failed either way "for different reasons, including the generalized perception that the plan would give benefits to a large number of people who are deemed not to deserve them, namely former insurgents, people who do not have 'clean hands'".

That is why reparations have multiple dimensions, as seen, not necessarily involving monetary features. Professor David Gray (2010) proposes the arrangement of these spheres in a four-dimensional model based on the type of reparation (material and non-material) and the target audience (individual or group), reaching the following categories: material and individually oriented; non-material and individually oriented; material and group oriented; non-material and group oriented.

According to this method, material and individually oriented reparations would include pensions and social welfare entitlements, whereas material and group oriented reparations would include group payments and access to education and employment opportunities. On the other hand, non-material and individually oriented reparations would include personal official apology and truth-seeking, whereas non-material and group oriented reparations would include official public apology, public memorials, social integration, public remembrance days and revision of public history and school texts (Gray, 2010). In this sense, reparations go beyond the mere monetary compensation to the relatives of the victims and the survivors, and non-material remedies can also set the foundations for future generations to perceive preservation of memory and reconciliation with the past as core features of the country's history.

From this perspective, Luke Moffett (2017) suggests three main deliverables of reparations in transitional justice: first of all, they are a political project, in the sense that public acknowledgement of the wrongdoings and admission of guilt set the grounding rules for the new government's narrative, and addressing collective violence helps to rebuild the civic trust among citizens. This latter effect is observable when reparations serve as the prove that the new institutions are willing to provide remedy and reconciliation, which has the power to convince people to collaborate in trials and truth commissions. According to Pablo De Greiff (2006, p. 463),

> (…) trust is something that is earned, rather than arbitrarily bestowed, and this is true just as much for institutions as it is for individuals. (…) Again, for victims, reparations constitute a manifestation of the seriousness of the state and of their fellow citizens in their efforts to re-establish relations of equality

> and respect. In the absence of reparations, victims will always justice and reparations have reasons to suspect that even if the other transitional mechanisms are applied with some degree of sincerity, the 'new' democratic society is one that is being constructed on their shoulders, ignoring their justified claims. By contrast, if, even under conditions of scarcity, funds are allocated for former victims, a strong message is sent to them and others about their (perhaps new) inclusion in the political community.

The second deliverable of reparations from Moffett's theory is their transformational capability, considering their future-looking perspective. This is particularly true in Gray's dimensions of non-material and group oriented forms of reparations, especially the revision of public history and school texts. They can be transformative in a gender-based perspective, if only adopting a backward-looking perspective to identify and exterminate the triggers of sexual and domestic violence used in the past. Lastly, the third deliverable is the notion of reparations as core elements to deal with the past, because they represent a form of accountability diverse from the accusatory model of trials, and they can become especially relevant if amnesties had to be granted, to ensure proper compensation from the administrative venue.

All in all, reparations are important tools to achieve the goals of transitional justice, as this pillar "sharpens the focus on what justice aims to best serve the interests of the intended beneficiaries" (Laplante, 2014, p. 79). It can go further than the scope of truth commissions, for example, in the sense the latter is informative and can only indicate potential reparations, while the former is the remedy *per se*. Regardless of the different constraints – usually monetary –, they are the closest to materially bring justice to the survivors and relatives of the victims while shaping future generations about past wrongdoings, in a proper 'transitional' manner.

While the monetary constraints challenge the economic compensation of victims, symbolic initiatives help to publicize the past events and build civic trust regarding the need of non-repetition. Two examples can be found about this aspect: the first is in Paraguay, where the country did not have the financial means to compensate survivors of the past regime, but instead it created the permanent online museum to raise awareness on what should never happen again, the so-called MEVES virtual museum. Similarly, in Brazil, although much work still needs to be done on unveiling the truth extension of the harms provoked by the dictatorial regime, former military leaders are having their *honoris causa* titles revoked by federal authorities. These are examples of efforts to strengthen

the education of future generations on the relevance of transitional justice and the need of safeguarding its achievements – precisely, the prevalence of democracy and the rule of law. Both these cases will be expanded in the next chapter.

2.2.3.4. Amnesties

One expressive challenge of transitional justice is to redraw the power dynamics in order to overcome the previous regime in the most efficient and safe manner. As seen, even though trials and truth commissions are a meaningful tool, not always they are available in the early stages of the transitional phase of the country. In some contexts, the influence of the former regime is still so prominent that the cession of power would not be granted without personal guarantees of non-persecution. In these contexts, the use of amnesties is the possible way forward.

According to Patrick Lenta (2023, p. 443), "amnesties are often granted as an inducement: to members of rebel groups to defect or surrender or to autocratic regimes and their agents to relinquish power peacefully". They are related with the concession of mercy from the new government to the former, as an act of oblivion and forgetfulness. Once an amnesty is granted to a perpetrator, this person cannot face charges, because the new sovereign State has decided to extinguish liability for any criminal and civil crime committed in the past regime (Mallinder, McEvoy, 2012).

A study published by Tricia Olsen and others (2010) has conducted a quantitative approach of transitional justice mechanisms in 92 countries. The results show that amnesties were the most frequent tool of transitional justice used in the world:

Figure 1. Adoption of transitional justice mechanisms around the world (Olsen and others, 2010)

Table III. Transitional justice mechanisms (region and sample subset)

Type	*Africa*	*Asia and Oceania*	*Europe*	*Americas*
Number of civil wars	56	72	18	18
Number of democratic transitions	29	21	22	19
Trials				
Civil war	15	8	15	2
Authoritarianism	3	1	21	16
Amnesties				
Civil war	78	70	16	28
Authoritarianism	10	6	6	15
Truth commissions				
Civil war	8	12	1	5
Authoritarianism	10	3	4	10
Reparations				
Civil war	2	0	0	1
Authoritarianism	2	0	11	7
Lustration policies				
Civil war	5	1	3	2
Authoritarianism	3	1	14	5

This table illustrates the importance of amnesty laws during both the contexts of internal conflicts and repressive regimes. Except from Europe, all the other regions in the world have adopted amnesties in a large-scale, and the direct consequence of it is the inexpressive number of trials conducted in the same areas. This point is sensible when it comes to the reconciliation aspect of transitional justice.

One might argue that amnesties are a remedy exclusively to ameliorate the perpetrator's state of mind, and the victim-centred approach gets to be lagging behind. There is a necessary tension between amnesties and the implementation of the rule of law, in which the former excludes the benefits of the latter, leading to feelings of impunity. In a transitional society, where rebuilding civic trust is one key element to the success of the transitional justice, this feature can be a potential threat.

One way forward to this challenge is proposed by Mallinder and McEvoy (2012). According to their research, the key to overcome the general sense of 'denying' the truth once the amnesty is granted is to frame the law within the restorative justice spectrum. Transitional governments should be able to manipulate what John Braithwaite called "reintegrative shaming" (1994), meaning that shame for past crimes should be parted in two different but not opposing poles: shame as both a factor of reintegration and stigmatization of the perpetrator.

The study brings examples to illustrate the idea. In South Africa, the Amnesty Committee hearings were conducted to ensure victim's participation in the amnesty processes. This participation included the right to be notified prior to hearings and to make formal objections to amnesty applicants. Dialogue between victim and perpetrator could also occur if only requested by the victim and mediated by the Truth and Reconciliation Commission. Moreover, in Uganda, amnesties would include participation in cleansing rituals and reconciliation ceremonies that would conditionally lead to public confessions and apologies. However, as the authors conclude, this theory is limited, as "other perennial problems of restorative justice remain, such as determining how genuine an apology or an act of remorse is, how to prevent perpetrators from promising too much, or how to prevent acts of revenge" (Mallinder, McEvoy, 2012, p. 432).

Nevertheless, although one may argue that granting amnesties is naturally opposed to the rule of law and its establishment, when portraying transitional justice scenarios, the conclusion has to be the complete opposite. As justified by Lenta (2023), the concession of amnesties in transitional justice settings is sometimes fundamental once is the only way to guarantee the peaceful transition to the new institutions. In this sense, amnesties are not just a mere tool of transitional justice, but perhaps the essential factor that allows the others to be effective in due time – if only considering that amnesties will not be granted to every single perpetrator. Amnesties, hence, are much closer to honour the rule of law in the long term than to ruin it.

2.2.3.5. Lustration policies

In cases where transitional justice is used to overcome repressive regimes, one key aspect of ensuring non-repetition of the violations of human rights is to ensure that the perpetrators are no longer well positioned in the power balance inside the community. While trials and truth commissions have the scope of unveiling the wrongdoings and naming the culprits, changing the official personnel is the measure prior to these consequences that can properly break with the past cycle of systematic repression and give space to the new democratic institutions to grow.

According to Roman David and Cynthia Horne (2022), there are two main forms of changing personnel: lustration policies and vetting policies. Both of them are the set of employment rules to be applied in the current official personnel in order to establish the democratic principles and identify and eliminate perpetrators or potential threats to the

new system. The latter is more prominent in stable democracies because the criteria for preventing suspicious people to rise in any level of power or excluding officials from their occupations are settled in advance based on past and present personnel performances.

Transitional countries, however, do not have the conditions to settle criteria based on present behaviours, as the previous regime is barely overturned. Lustrations, then, are the feasible policies to be inserted in these contexts, because they tackle only the employment positions involved in the previous regime in order to substitute the specific share of personnel and therefore achieve discontinuity from past to present/future term (David, Horne, 2022).

Lustration has its roots in the post-communist era. In Czechoslovakia, lustrations were used to investigate whether a person had any compromising background linked with the previous regime that could represent a threat if allowing his or her occupation of public official positions. In times of transitional justice, alongside with this primordial goal of monitoring the past ideological roots, lustrations also have a spirit of purification of the personnel in the light of the new dominant values (David, 2017). In this sense, the reveal of truth remains one central aspect of this mechanism, as well as trials, amnesties and truth commissions.

Given the fact that lustration policies can remove and add people to compose the new staff based on past behaviours, one might argue about the validity of such method in the light of the rule of law – more specifically, the principle of prohibition of retroactivity. According to Roman David and Cynthia Horne (2022), during the post-communism transition, while the Czech and Slovakian Constitutional Courts have ruled that their domestic lustration policies did not offend this principle, the Hungarian Constitutional Court decided on the other way around, challenging the constitutionality of their lustrations laws and demanding legislative change.

In this sense, since the constitutional validity of the lustration policies may vary from country to country, this mechanism can be seen as weaker on unveiling the truth in comparison to the others. As stated by Horne (2014, p. 233), "lustration measures that are overtly manipulated by political parties for personal advantage or used as acts of revenge politics, as documented in Hungary, Albania, and Poland, could decrease citizen trust in political parties and government". As seen previously, if civic trust is at risk, the entire process of transitional justice may crumble. Moreover, David and Horne (2022) also

suggest a negative impact of lustrations on democratisation, since the mere notion of excluding people based on their previous religious, ideological or political beliefs is naturally opposed to the idea of democracy. This is also a threating factor for the building of civic trust about and strengthening the credibility of the new government among citizens.

The way forward from both these deviating factors is to comprehend three different dimensions of lustrations. According to David (2017, p. 165), lustrations can operate with policies of dismissal or exposure of personnel, or confession of tainted officials: "these methods were an essence of exclusive, inclusive, and reconciliatory lustration systems, respectively, and could serve as proxies for three clusters of transitional justice methods, namely retributive, revelatory, and reconciliatory". If only considering these different dynamics of lustrations, this tool can be properly used on behalf of reconciliation and unveiling the truth towards restorative justice.

2.3. Conclusion

This chapter aimed at conceptualizing transitional justice, identifying its historical and political origins and outlining its main mechanisms of implementation. As seen in the first section, the terms "transitional" and "justice" alone can have different interpretations, yet their composure is what represents the challenges and outcomes of breaking with institutionalized systems of repression and human rights violations.

Transitional justice is a modern theory, albeit its foundations can be tracked in the ancient world, and has applicability not only during repressive regimes towards democracy, but also to end internal conflicts. Its mechanisms are vast and act from different venues, but the central goal is always the reconciliation and reveal of the truth through a victim-centred approach, meaning that they are all somewhat intertwined in the light of their common targets. As stated by Buckley-Zistel (2014, p. 159), "justice, transition, truth, reconciliation, restoration, reparation and so on are not in and of themselves neutral and unbiased, but the result of the complex context of spacio-temporal agencies and structures both inside and outside the institutions".

This notion of complexity is particularly interest because, as concluded in the beginning of the chapter, there is little or no "gradual" change in the political sciences field. In the cases of political violence by internal conflict or authoritarian regimes, although the experiences lived by victims and survivors have common psychological features, such as

fear and anxiety (Salimovich and others, 1992), each national population carry out specific traumas, and that is the main reason why transitional justice is not a static method for every situation. Such conclusion paves the way to move forward in the research so to bring the perspective of its application in the two Latin American sub-regions (the Southern Cone with Argentina, Brazil, and Paraguay, and the Northern Triangle with El Salvador, Guatemala and Honduras).

Chapter 3: Transitional Justice in Latin America: contexts and developments

3.1. Introduction

This chapter aims at delineating a general overview of some countries in Latin America and their relation with the theory of transitional justice as a method of overcoming repressive regimes/internal conflicts and mass violations of human rights. For this purpose, the chapter will be divided in two main sections, one for the contexts of application of transitional justice in South America (Argentina, Brazil and Paraguay) and other for Central America (El Salvador, Guatemala and Honduras). The last session contains an overview of the previous topics and a general conclusion for the chapter.

These sub-regions were chosen from a geographical standpoint, in the sense that they represent opposite sides of Latin America, as well as from a statistical standpoint, because their high levels of corruption and criminality are somewhat similar despite their different cultural and historical backgrounds. This distinction does not lead to different findings, in the sense that, despite these regions' peculiar backgrounds, the outcomes of transitional justice were somewhat similar. For this reason, while the next chapters will develop on the reasons why the outcomes were standardized, this chapter will conclude in the sense that all six countries analysed have successfully used transitional justice to reset the democratic values at the domestic level, although each one of them diverge in the ranges of retributive and restorative justice for their people.

3.2. Transitional Justice in South America

3.2.1. Contextualization

After the end of the Second World War, the ideological dispute between two Great Powers had initiated the long-lasting Cold War. In that context, the victorious party would be the prevailing ideology, translated by, among other factors, the number of adhering countries to its discourse. Communism was being spread throughout the Soviet Union as opposed to the liberal agenda of capitalist countries, more prominently the United Stated and its European allies. But the iron curtain has never been an absolute wall dividing east and west and hence polarizing the world, since minor pitfalls in both sides – in the Western case, represented by Cuba – could represent a potential threat during the war.

The Cuban Revolution of 1959 and its explicit affiliation to communism would not have raised much alarm in the West if only considering Cuba's size. Yet the problem was the

influence and visibility that the leader Fidel Castro was gaining geographically, so much that his sympathizers could be found across Central and South America, all the way to Argentina. According to Tanya Harmer (2019), the consequent tension between the United Stated and Cuba and the latter's strengthening of ties with the Soviet Union caused preoccupation inside the Organization of American States, with other parties such as Brazil and Argentina improving the efforts of resuming the dialogue between Havana and Washington. However, Harmer suggests that with the increasing interest of the Soviet Union in Latin America, the communist seeds were starting to be spread in the region, concretely through a great amount of "subversive propaganda" published by Cubans and destined to the Latin bloc, with considerable products being exported to the South.

This was the political context of the second half of the past century that paved the way for the emergence of dictatorships in South America and the growing US interest in countering the communist threat in the region. The military *juntas* rising in power had the common goal of saving their respective countries from the subversion to communist values and reaffirming their commitment to the Western ideology, while the United States' strategy would be of sponsoring counter-insurgency practices and offering specialized training to Latin military personnel at US-based educational centres to improve such techniques (US Department of State, 1958).

However, the result of these common efforts has proven to be the implementation of a system of repression and politics of terror managed by the armies and partially sponsored by the United States: only by the end of the century that the first pieces of evidence about a formal alliance of all military dictatorial regimes of the Southern Cone (Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay) for joint coordinated terror acts against subversion started to be unveiled.

According to the Brazilian Truth Commission (*Comissão Nacional da Verdade*), the alliance, known as Operation Condor, was orchestrated in a private meeting of the countries' leaders in Santiago, Chile, in 1976 with the support of the United States "to carry out coordinated activities, clandestinely and outside the law, with the aim of monitoring, kidnapping, torturing, murdering and disappearing political activists who opposed, armed or not, the military regimes in the region" (CNV, 2014, n.p.).

The "Mercosur of Terror", as named by the historian Samantha Quadrat (2002), had three distinct phases: first the formation of a common database of subversive elements in the

region, with the exchange of privileged information of domestic affairs among the State parties. The second phase was the elaboration of joint actions against subversion: exchange of prisoners from one country to another without prior official documentation and kidnappings of relevant political opponents. Lastly, the Operation had the goal of tackling subversion even outside the Mercosur (one example was the assassination of Orlando Letelier, former Chilean minister, in 1976 in the United States).

Pieces of evidences of the Operation were only found by accident in Asunción, Paraguay, in 1992. The files were the first hints of the major coordinated actions by the Southern Cone of Latin America against subversion and communist values, operated by many military personnel and the United States with the twofold goal: for the Southern leaders, to save their countries from the hazards of the subversive elements, understood as "terrorists"; and for Washington, one precious advantage inside their own continent during their ideological fight against the Soviet Union.

Eventually all dictatorships would crumble and fall, each one due to different domestic reasons, and the new democratic order would be established in the countries of the Southern cone, most of them with marked by several changes – if not the complete substitution – of their respective Constitutions. This process of turning from a repressive to a democratic regime follows Huntington's third wave of democracy (1991) and accompanies the increasing visibility of the theory of transitional justice, as seen in the first chapter of this research.

3.2.2. Episodes of Transitional Justice in the Southern Cone: Argentina, Brazil and Paraguay

3.2.2.1. Argentina

The Argentinian official database has established 8,631 as the number of victims during the dictatorship that lasted from 1976 until 1983, along with 649 Argentinian soldiers killed during the Falklands War of 1982 (2022). However, a parallel unofficial number of more than 30,000 victims was claimed by civilians before and during the formal investigations, and it is still an object of debate to this day. Transitional Justice policies were put in practice right after Raúl Alfonsín's rise to presidency in 1983 in the first round of democratic elections in the country after the dictatorship and consequently the formal end of the military rule.

It is important to note that many factors have contributed for the defeat of the military regime, varying from the economic and political instability of the country until the frustrated attempt to regain the Falkland Islands (Pion-Berlin, 1985), yet the pressure of a civilian mobilization of more than 80,000 people gathered in Buenos Aires's min square by the end of 1982 with clear demands of re-democratization was a heavy turning point that culminated in the elections of 1983 (Elias, 2008).

The first measures of the new regime were a complete change in the political posture of the country: at the domestic level, the abolishment of criminal laws from the previous regime and the promulgation of new laws punishing torture and discrimination, the reform of the Military Code and the strengthening of the civilian-led National Ministry of Defence; internationally, the ratification of all relevant international human rights instruments (Nino, 1991).

The pillars of transitional justice described in the previous chapter of this study were applied to ensure the guarantee of non-repetition, the first one being the creation of the *Comisión Nacional Para la Desaparicion de Personas* (CONADEP), the official truth commission devoted to investigate and receive complaints about the past wrongdoings and summarize the information in a public report, which was published only one year after its creation under the famous name *Nunca Más* (Never Again).

The report from CONADEP was divided in six chapters and explored almost every aspect of the enforced disappearances conducted between 1976 and 1983, not only on the procedure behind the abductions but also on the torture methods applied and the identification of at least 340 clandestine detention centres scattered in the country. The report also individualized the many types of victims: children and adolescents, pregnant women, people with disabilities, religious leaders and journalists.

After compiling 7,380 files of complaints, evidences and testimonies from families, victims and also members of the armed forces, the truth commission concluded that the war against subversion did not reach the goal of eliminating terrorism in the country, but instead of institutionalizing the abovementioned politics of terror, where "atrocities were common and widespread practice and were the normal and ordinary acts carried out daily by repression" (CONADEP, 1984, p. 213).

After the release of the report, the instant effect on the population was a refreshed and evidence-supported call for justice. Hence, the Argentinian National Criminal Court of

Appeals took the lead in the public trials of the *juntas* that lasted until the end of the year 1985 and resulted in 800 hearings and 709 judicial cases proving the existence of State terrorism conducted by the military personnel (Strassner, 2023). New rounds of trials would continue to take place, both domestically and internationally, since individual complaints were submitted straight to the Inter-American Commission on Human Rights, but also generally to the Organization of American States and the International Committee of the Red Cross (Sønneland, Sveaass, 2015). According to Lessa (2021), up until the year 2020 at least 1,013 individuals were convicted of crimes against humanity related to the previous regime.

Meanwhile, according to Elias (2008, p. 595), "civil society was flourishing". For example, the Mothers of Plaza de Mayo (Madres de Plaza de Mayo), a non-governmental organization funded by mothers and grandmothers of victims of forced disappearances during the military rule was crucial to unveil the truth about their relative's whereabouts and reunite the children of the dictatorship with their respective biological families. The organization still maintains the website and database updated to guarantee public visibility about the wrongdoings of the past, which under the framework of Transitional Justice theory can be understood as a method of trying to ensure a long-lasting state of non-repetition.

Reparations were also used during the first years of transitional justice in the country. As researched by Sønneland and Sveaass (2015), the psychological effects of the abuses experienced by survivors and families of victims had a heavy impact on the pursuit of reparations, with many people not relying on economic compensation to ameliorate their feelings of frustration, shame and injustice. Nevertheless, alongside with the substantial help of financial support for victims to rebuild their lives, "reparation was seen as a form of recognition of what had been silenced and publicly unacknowledged for a long time. The fact that the cases had been evaluated and reparation endorsed was interpreted as an acknowledgment that a crime had taken place" (2015, p. 234).

Lastly, regarding the concession of amnesties, the Full Stop and Due Obedience laws of 1986 and 1987 were seen as a throwback in the goals of reconciliation and peacebuilding in Argentina, given their core element of granting automatic immunity to all low-ranked military personnel involved in the crimes and abuses of the dictatorship. However, both of these laws were revoked in 2005 by the Argentine Supreme Court, which sealed the

impossibility of the past violations of human rights to be forgotten due to legal technicalities, therefore authorizing trials to move forward (Human Rights Watch, 2005).

3.2.2.2. Brazil

Although the Brazilian military dictatorship was one of the longest in the region because it lasted from 1964 until 1985, it was far less deadly than the Argentinian one, as the official database indicates a preliminary number of 434 people killed during the regime. Nevertheless, the case of Brazil can heavily rely on the feature of episodes of terrorism.

The military *junta* began the new rule with a soft approach. The text of the first Institutional Act proclaimed by the new government was clear: the *junta* would not dissolve the current Constitution, but only modify its provisions to ensure the goal of "restore[ing] economic and financial order in Brazil and take urgent measures aimed at draining the communist pocket, whose purulence had already infiltrated not only the top of the government but also its administrative dependencies" (AI-1, 1964). However, only four years had passed from the publication of the first Act until its renewal in the emblematic Fifth Act of 1968, which had a stronger approach towards subversion.

The formal authorization of the suspension of political rights of any citizen, the instant denial of *habeas corpus* petitions and the grant of self-immunity to the government were the main strategies drawn by the military rule to ensure full persecution and neutralization of the "national enemies" (AI-5, 1968). This was the institutional context when several episodes of torture and kidnappings took place in Brazil, more prominently the execution of Carlos Marighella, a communist inspirer of many left-wing insurgency groups, who was considered to be "enemy number one" of the new State. This proves the change in the previous soft strategy of the government towards a "war against terrorism".

In this context, right after the first democratic elections in the country in 1985, Transitional Justice was first of all shaped to ensure the erase of terrorism. According to Zúquete (2017), legislative efforts to eradicate this practice began in 1983 with the promulgation of the National Security Law, with later developments and complementation with the new Federal Constitution of Brazil, proclaimed in 1988, and the Federal Law of Hideous Crimes of 1990. the Brazilian new democratic rule had ratified the most important international treaties on the fight against terrorism, as well as joined in the Inter-American Committee Against Terrorism, organized by the Organization of American States.

In addition to the heavy changes in the domestic legislation and international posture, the new government published the Law n° 9.140 of 1995 to recognize as dead every disappeared person due to their political activities during the previous regime. This measure brought closure to their families, and therefore some rudimental sense of amelioration to their frustrations and expectations. The Law created the Special Commission to investigate the whereabouts of the victims and apply reparation measures for their relatives, which according to Goes (2013), paved the way to economic compensation for at least 353 families.

Because the military junta remained a powerful actor even after the transition to democracy, trials of the past wrongdoings and human rights violations did not take place in Brazil. Instead, the Amnesty Law of 1979 conceded amnesty to all people involved in political crimes during the dictatorship, except the ones regarding terrorism – in accordance to the polity of eradication of such practice in the country. That is why Goes concluded that "Brazil's military forces conceived a transition to democracy on their own terms" (2013, p. 91).

However, one international trial had a significant role for transitional justice in the country. The case Gomes Lund et. al *versus* Brazil brought to the Inter-American Court of Human Rights filed in 2009 by the Inter-American Commission of Human Rights and judged by the Court in the following year refers to the disappearance of 70 people during 1972 and 1975 in the region of Araguaia, north of Brazil. The judgement established that the State has to investigate and prosecute the perpetrators of crimes against humanity, and in order to do so, it should create a national truth commission. The sentence was obeyed, and the *Comissão Nacional da Verdade* (CNV) operated from 2012 to 2014, with the primary goal of investigating violations of human rights during the dictatorial period to honour "the right to memory and historical truth and promote national reconciliation" (CNV, n. p.).

Indeed, the judgement was partially respected by the Brazilian government, because although no trial was ever conducted regarding the human rights violations occurred in the dictatorship, the work of the CNV helped to build a national common identity about the past and provide evidence for economic reparations for victims. To this day, Brazilian institutions struggle to maintain alive the memory and true features of the military regime, in a strategy of reassuring the "Never Again". One example is the recommendation published by the Federal Public Ministry to two Brazilian universities demanding the

removal of the doctor and professor *honoris causa* titles granted to Arthur da Costa e Silva, Emílio Garrastazu Médici and Humberto de Alencar Castello Branco.

According to the Ministry, since all of these former students/professors have ruled the country during the dictatorship and therefore are directly responsible for mass violations of human rights, they are no longer suitable of holding such honours (MPF, 2024). Although one might argue on the relevance of the request, these symbolic demands published in 2022 and beginning of 2024 seem to prove that the country is still on the road of recovering from the past, especially since no substantial form of retributive justice had ever taken place in Brazil due to the lack of trials.

3.2.2.3. Paraguay

If the dictatorship in Brazil was long because of its 21 years of duration, the case of Paraguay was the longest. Contrary to the previous countries, the dictatorship in Paraguay did not emerge as an urge from the military as the only capable institution to combat subversion and "save" their lands from communism. The reasons behind the permanence of the long-lasting dictatorial period that first inaugurated this type of regime in the region had more to do with a history of political instability featured by fragile foreign policies and a culture of violence and *coups* within the two main political parties' activities throughout the years (Roett, 1989).

Alfredo Stroessner became the leader of the entire period of the Paraguayan military dictatorship, from 1954 to 1989. *Stronismo*, as the period was called, was mostly defeated due to the external pressures coming from all recently-democratic neighbours and the shift of the United States' policy of financing the Southern Cone regimes. As Frank Mora concludes (1998), just like the features of the first years of the Cold War helped to perpetuate the dictatorship in Paraguay, also its end and prevailing liberalist doctrine was one driving factor of the need to end *Stronismo* and give the country a similar transition process as its neighbours.

However, albeit Transitional Justice in Paraguay emerged in the context of international pressures towards democratization, the entire process was blurred by the shadows of Stroessner's political party. Contrary to Argentina and Brazil, Stroessner was not replaced by a democratic round of elections, but instead due to a new coup *d'etat* orchestrated by members of his own party. Hence, the prevalence of the Colorado Party even after the

dictatorship was confirmed by the rising first of Andrés Rodríguez as new president in 1989 and many others from the same political environment until 2008.

Nevertheless, the new Parliament was able to ratify several international instruments of human rights and promulgate a new Constitution of 1992 mirrored in the protection of fundamental guarantees and rights-based approach (CVJ, 2008). But regardless of this first round of legislative changes, the pillars of transitional justice were only adopted 15 years after the fall of the dictatorial regime, with the creation of the truth commission *Comisión de la Verdad y Justicia* (CVJ) in 2004.

The CVJ did not come from a spontaneous governmental attempt to investigate and prosecute wrongdoings from the past regime, but instead as a result of the many pressures coming from non-governmental associations of victims and human rights organizations (Arnoso and others, 2015). During the investigations, many aspects of the dictatorship were found to be similar as the other repressive regimes in the region. For example, just like in Argentina and Brazil, the truth commission concluded on the existence of a real behavioural pattern of actions and methodologies used by the government during the dictatorship that proved the professional training of personnel to conduct human rights violations in a systematic way (CVJ, 2008).

The Commission officialised 20,090 as the number of direct victims of human rights violations during the dictatorship, including torture, kidnappings, executions and forced disappearances, and 107,987 as the number of indirect victims. After the release of the final report containing hundreds of recommendations, the government accomplished the achievement of symbolic measures of reparations, such as public pardon on behalf of the nation for the violations committed during the dictatorship, as well as the inauguration of the *MEVES Museo Virtual en la Web* for the recognition of true wrongdoings of *Stronismo* and the construction of a common memory of that period (Arnoso and others, 2014).

Differently from Argentina and Brazil, no amnesty laws were drafted. However, this characteristic did not consequently mean a higher number of trials than Argentina – and not considering Brazil, since, as seen, no trials were conducted. On the contrary, the most meaningful trial occurred for the purpose of persecuting perpetrators of the Paraguayan repressive regime was the case Goiburú and others *versus* Paraguay. The case was brought by two civilian-led organizations, the International Human Rights Grow of the

United States and the domestic *Comité de Iglesias Para Ayudas de Emergencia*, regarding the forced disappearance of Agustín Goiburú and two other people during the dictatorship.

Goiburú was a doctor and a political activist in the country who allegedly was the head of a resistance group, while the other two disappeared people were believed to participate in such clandestine alliance. According to the plaintiffs' claim (1995), the first one was captured in Argentina and brought to Asunción, where he was last seen alive, and the two other were abducted somewhere in the border of both countries and also taken to the country's capital – this factor is crucial if contextualized at the realm of Operation Condor, which signs for a potential joint and coordinated action between the countries' intelligence institutions. All of them were most probably subjected to torture and illegal detention for 22 months, and after this period they forcibly disappeared.

During the investigations at the Court, the Paraguayan State formally recognized the facts pointed by the plaintiffs and its consequent obligation to provide reparations for the families of the victims. With the formal end of the controversy and no need for further investigations, the Tribunal proclaimed the sentence in 2006 by delimitating Paraguay as a violator of six different rights of the Inter-American Convention of Human Rights, as well as the Rome Statute and the International Convention of Enforced Disappearances. Therefore, the rule reaffirmed the need of reparations and condemning the country to adopt the necessary measures not to let impunity in such cases prevail (IACtHR, 2006).

This last point is what makes the case very emblematic in the international pursuit of non-repetition and strengthening the rule of law: according to Judge Antônio Augusto Cançado Trindade, the juridical appreciation of the case of Goiburú is the proof of a "Condor *Redivivus*", meaning that history repeated itself: "just as many years elapsed before we learned about the acts committed under the criminal policies of the States in "Operation Condor" (and we still do not know everything today), perhaps it will take a long time before we learn about what is happening today – also with State concealment" (2006, p. 17).

Nevertheless, the law is made to reverse the vicious cycle of combatting terror with terror, as it was seen to be the main argument of both Argentinian and Brazilian military *juntas*, and establish the imperative of the rule of law and the right of having a right, given that "it has been proven that the State itself planned (at the highest hierarchical level) and

carried out crimes in a systematic and massive way, victimizing people subject to its jurisdiction (and even subject to the jurisdiction of other States, as in Operation Condor)" (IACtHR, 2006).

In this light, the case Goiburú and others *versus* Paraguay gained great visibility and set a precedent of the need to turn the rule of law a true reality for people. Although reparations would be directed to victims' families, it can be concluded that, at least symbolically, the trial embraced all victims of human rights violations during the dictatorship rule, if only considered that, to this day, no significant domestic trial has ever taken place.

3.3. Transitional Justice in Central America

3.3.1. Contextualization

According to John Weeks (1986), since the end of the colonial domination of Spain, Central America has been marked by the reliance on agricultural goods to maintain a stable economy that could guarantee prosperity at the domestic level and potential competition with other countries at the international trade arena. Starting from the second half of the XIX century, the willingness of exporting goods at the cheapest rate have motivated a quasi-feudal relationship between landlord and peasantry, with several episodes of coercive labour systems in Guatemala, El Salvador and Honduras, and all of them not only allowed but also fostered by the governments. Oligarchic regimes were well established in Central America – the coffee aristocracy, the banana companies and the cotton capitalists – and therefore were responsible for managing modernization according to their prevailing interests of land ownership and maintenance of the ruling social and political system (Weeks, 1986).

The United States had an increased interest in the region because of Central America's large fruit production combined with their characteristics of political instability and weak institutions since the end of the colonial period. Episodes of Liberal *versus* Conservative disputes in Central America and military dictatorship rules came to an extent in which North American imperialism was perceived as a stabilizing factor for economy, and therefore not only well-accepted by the countries, but also a reason of competition among them for the conquest of US satisfaction.

This period in Central American history is pejoratively called as “the Banana Republics”: while the strong presence and influence of the US United Fruit Company as the main trade ally of Central America since its foundation in 1899 was responsible of having almost full economic control of the countries, the “republics” response was merely of subsistence. It was only after the second half of the past century that the imperialist relationship between the partners began to crumble. According to Bucheli (2008), senses of nationalism began to spread in the region, beginning with a workers strike in Honduras and national plans of agrarian reform and economic independence arising in Guatemala.

In addition to this initially shy uprisings, the Cuban Revolution of 1954 helped to create a new perception on the region, meaning that the US policies towards Central America had to change. Following the developments of the Cold War, Central America was still an important economic hub, and therefore it should also reaffirm its alliance with the West. According to Robert Holden (1999), the two features of the new US campaign in Central America were modernization and security for geopolitical purposes, similarly to the country’s initial behaviour in South Vietnam and Iran.

In the name of these features, a relation of patronage from Washington to its Latin clients would take place, much more to provide the means to strengthen their surveillance capacity of tackling and neutralising communism rather than pure modernization purposes. As a result, the military hierarchies in Central America would receive support to align with the oligarchies and prepare local armies to protect the regime against peasantry and civilian uprisings and, if needed, to manipulate the political sphere to achieve these goals, in what John Weeks called the “militarization of politics” (1986, p. 46).

As Holden noted in his study, “for almost everyone involved in the transfer of the technology of modern surveillance, any linkage with the antidemocratic character of the institutions of rule seemed irrelevant, if not non-existent” (1999, p. 3). As seen, the effect of this posture in South America was the rise and strengthening of military dictatorships to annihilate guerrilla groups and other subversive elements. However, in Central America the rise of guerrillas was not only stimulated by abstract Marxist ideals, but mostly fuelled by the concrete need of overthrowing the oligarchic regimes and rearranging the distribution of land and wealth.

Although the leftist spirit had some connotation on the posture of the *guerrilleros*, Weeks (1986) warns that, contrary to the "saviours *versus* subversives" dichotomy found in South America, the Central American core aspect of dispute was more distant to mere ideology and much more related to the fight against the historically established despotic oligarchic regime. In this sense, contrary to the contexts of South America, many countries in Central America were marked by armed conflicts that eventually had escalated to civil wars during the second half of the XX century, for example in Guatemala, El Salvador and Nicaragua.

Therefore, Transitional Justice in Central America appeared in a region marked by severe violations of human rights in official and institutionalized armed conflicts and civil wars. For the purpose of this study, the next section will develop on the contexts of transitional justice only in the region of the Northern Triangle of Central America, comprehended by El Salvador, Guatemala and Honduras.

3.3.2. Episodes of Transitional Justice in the Northern Triangle: El Salvador, Guatemala and Honduras

3.3.2.1. El Salvador

As seen in the previous topic, by the end of the Second World War and during the Cold War, Central America was still ruled by the oligarchic regime of concentration of lands and wealth, which was heavily protected by local armies controlled by the corruptive governments and partially financed by the United States. According to David Mason (1999), hidden in a discourse of capitalist modernization, the Salvadoran government launched an agricultural campaign to manage the exportations of goods and income flows in a way of reassuring the oligarchic regime, and therefore diminishing life conditions for the peasantry.

The immediate consequence of this new economic rule was the forced dispossession of peasants and hunger, since no productive land was left for the families to cultivate their own subsistence needs. Adding to this context the geographical impossibility of internal migration, given the limited land extension of the country, by the end of the 1970s and beginning of the 1980s it was not only logical that a fierce mobilization against the ruling regime would take place.

The *Frente Farabundo Martí para la Liberación Nacional* (FMLN) emerged in this context as the insurgent group against the *status quo*. It was not merely formed by oppressed peasants strongly inclined to revolution, but also by rural and urban intellectuals, politicians and "civilian diplomats" that together formed a volatile resistance group. In this sense, they were not a traditional guerrilla group, because along with military expertise, they also had national and international alliances and a variety of human resources (Chávez, 2015). Once the group was formed, the conflict now had its two poles well established: on one side, the FMLN; on the other, the rural elites, the government and its institutions, the army and the United States.

The government mission was to protect and maintain the oligarchic rule at all costs, since it was a functioning system that guaranteed wealth, land and power to the country's elites. Since the first request of the FMLN was of power-sharing, the opponent's reaction was of no negotiation. The disagreement soon escalated to a civil war with no prospects of ending, on one hand due to the growing support of the insurgency group by other minor democratic and revolutionary forces; and on the other hand because of the irreducible posture of the government of full repression against the guerrilla and all its supporters and sympathizers, heavily sponsored by the US.

As Mason suggests (1999), with the rapid escalation of deaths provoked by the government, there was no other possibility left for civilians but to get actively involved: at some point, fear of repression by both sides would force people to choose a side in the conflict. With the portrait of the civil war perfectly outlined, violence and human rights violations of all kinds – torture, rape, forced disappearances, kidnappings and so on – have continued to subsist regardless of the President in charge. It was only after the end of the Cold War that favourable conditions for a cease-fire would emerge: FMLN's loss of relevant external allies due to the collapse of the Soviet Union (CJA, n.d.), and the shift of US foreign policy, since the upcoming Bush administration would not recognize El Salvador as a relevant piece of the current international dynamics so as to justify the military sponsorship (Chávez, 2015).

Hence, the peace negotiations started in 1989 and evolved to the Chapultepec Peace Accords of 1992, putting an end in 12 years of a civil war that caused the death of approximately 75,000 civilians. The agreement was mediated by the United Nations and had the scope of tackling not only a truce between the FMLN and the government, but

also of building the conditions for a long-lasting cooperation between both parties regarding common wishes for the country.

According to Mason (1999), one important factor that bolstered the reliance on the peace agreement was the prior deployment of the *Mision de Observadores de las Naciones Unidas en El Salvador* (ONUSAL). That is to say, instead of having one biased shadow of the US superpower behind the Salvadorian government, the UN had brought general international visibility to the conflict by establishing its position amidst the conflict as a neutral observer.

Among its most crucial resolutions, while it was agreed that the FMLN would be disarmed and demobilized – as part of the Disarmament, Demobilization and Reintegration process (DDR) –, on the other side of the bargain it was defined that the government would develop a National Reconstruction Plan for the next five years considering the opponent's suggestions and recommendations. Moreover, despite the dissolution of FMLN as an insurgent group, it would be reintegrated in El Salvador as a legitimate political party and its former participants would be reinserted in the civil and political Salvadorian life, therefore solving the neural point that have sparkled the civil war in the first place (Segovia, 2009).

In this light, transitional justice measures were formally inaugurated in the country following the peace accord. For example, in order to guarantee the reintegration of FMLN among the civilians, two laws were approved by the Legislative Assembly: the Law on National Reconciliation and the Law on General Amnesty. This is particularly relevant if considering that impunity was the one unnegotiable advantage claimed from both parties. As Segovia argues, "each side obtained impunity through the implementation of amnesty laws, which they secretly negotiated with one another. In this sense, the Salvadoran case clearly reflects the serious obstacles justice faces in transitions from war to peace" (2009, p. 28).

Nevertheless, the *Comisión de la Verdad Para El Salvador* (CVES) was inaugurated in 1992 to investigate the episodes of human rights violations committed by both parties during the civil war. Unlike the truth commissions established in South America, the CVES was designed by the UN as an *ad hoc* Truth Commission formed by three experts appointed by the Secretary-General, all of them foreigners (one Colombian, one Venezuelan and one Slovak). The mandate lasted for eight months and the final

recommendations included strong judiciary reform – from legislative changes to limiting powers of the Supreme Court and the President – and the implementation of a National Civilian Police, a new independent organ that should assume functions that used to be of military jurisdiction (Buergenthal, 1994).

To this day, no substantial reparation or trial ever took place in El Salvador regarding the crimes and human rights violations committed during the civil war. The closest progress to that was made in 2016 by the Supreme Court's decision of overturning the Law on General Amnesty. This was the first step needed for several civil society organizations to start working on claims and files to judicially request reparations for victims. This process is being closely monitored by the UN Office of the High Commissioner for Human Rights (2020).

3.3.2.2. Guatemala

Different from the context of El Salvador, in which the uprisings that escalated to the civil war had internal roots, in Guatemala the reasons behind the internal conflict were imported from abroad. During the first years of the Cold War, the US United Fruit Company was not only still managing a high set of economic control in Guatemala, but also had strong ties with the White House. Hence, the company took advantage of its political influence to claim for military intervention in Guatemala under the argument of preserving the national interest, since preserving the "American way of life" was intertwined with healthy foreign investments, which would only be maintained if eradicating communist subversion (Immerman, 1980).

In order to guarantee the complete dissolution of any subversive threat, military intervention was at bay. The Caracas Declaration of Solidarity of 1954 was a document launched by the United States and signed by most of the parties of the Organization of American States, in which agreed on the possibility of adopting "appropriate measures" to end communism in American territory. It came as no surprise that Guatemala was the only country that voted against the resolution. On the contrary, the country started to prepare itself for the imminent intervention, by requesting foreign help of war supplies of Soviet countries.

However, the United States have never formally invaded Guatemala. Instead of a "boots on the ground" policy, the strategy was more of planting the seeds with indirect support towards a domestic action against communism. The idea proved to be correct: by

indirectly targeting president Jacobo Árbenz Guzmán as a potentially communist – for example, by sponsoring secret reunions of speeches of such kind for civilians –, the tensions escalated to a *coup d'etat* in 1954 and the polarization of the population: on one side, a renewed right-wing dictatorship ruled by Miguel Ydígoras Fuentes and supported by the United States; on the other side, groups of civilians – students, intellectuals, and even former military personnel – willing to overturn the new regime and set Guatemala free of oppression, mostly inspired by the Cuban revolution. The failed attempt of c*oup* against Fuentes is believed to be the formal the starting point of the civil war, one at least three times worse than the Salvadorian, since it lasted 36 years and have affected more than 200,000 people (Janzen, 2008).

According to Roman Krznaric (1999), the entire period of the war was marked by successive c*oups* and changes in the government, yet the polarization remained central regardless of the new president. The violence that took place from 1978 until 1983 under the commands of General Fernando Lucas Garcia and General Efraín Rios Montt is considered the deadliest period of the war, so much that four smaller insurgency groups that used to act singly against the government and oppression decided to merge and create the guerrilla group *Unidad Revolucionaria Nacional Guatemalteca* (URNG) in 1982, as an attempt to defeat the national army and stop the massacres of population, mostly indigenous communities (Janzen, 2008).

The peace process in Guatemala have generated the Peace Accords of 1996, but not without years of discussion and successive failures of international mediation. According to Krznaric (1999), at least from 1990 on it could be seen many attempts of domestic civil society organizations to put an end in the conflict, most of these efforts mediated by foreign actors such as religions organizations, political parties, trade unions and small business groups from different countries, such as Ecuador, Costa Rica, Mexico and Spain.

Different from the peace agreement of El Salvador, the Guatemalan peace accord was not a singular document, but the twelfth attempt of ending the conflict, after the failure of eleven other documents drafted under the scope of international mediation. According to Janzen (2008), the victorious aspects that made the accord of 1996 successful were the reference to indigenous rights, agrarian development and the establishment of a truth commission.

Similar to the context of El Salvador, one main characteristic of the agreement was the provision of URNG's withdrawal of guns in exchange of its incorporation in the electoral system – again, as part of the Disarmament, Demobilization and Reintegration process (DDR). In addition, the truth commission created to investigate the extension of the human rights violations perpetrated during the war was not domestic, but instead affiliated internationally. The United Nations Commission for Historical Clarification (UNCEH) was adopted right at the end of the conflict and its mandate lasted until 1999, with the launch of the final report.

According to David Stoll (2022), the final document is considered a milestone for the transitional justice process in Guatemala for two main reasons: first of all, because it concluded that, contrary to the initial prevision of 40,000 deaths, the conflict in reality was five times deadlier, which helped to create the grounds for the build of civil memory and reparation. Second, because the report concluded that the percentile of "fault" in the killings and human rights violations was divided in 93% for the government as opposed to only 3% for the URNG, and of all identified victims, 83% of them were Mayan indigenous. Because of these findings, the report boldly concluded that the actions perpetrated by the government against the indigenous communities constitute genocide.

Among the achievements of the UNCEH, the greatest was its capacity of gaining victim's trust and engagement on the truth-seeking process, which would later develop to the creation of a national reparation program (ICTJ, n.d.). The formal acknowledgement of the commitment of genocide had also paved the way for pursuing justice through law enforcement: in 2013, after the hearing of nearly 100 witnesses, the Guatemalan Supreme Court have decided to convict former General Efraín Rios Montt of acts of genocide and crimes against humanity against the Ixil indigenous community. The trial was a first-of-its-kind in the region and set the precedent for trials against current or former heads of State (Human Rights Watch, 2013).

In this sense, it can be said that the first years of the transitional justice process in Guatemala have gathered somehow fruitful prospects for the country towards the idea of non-repetition. Reconciliation was symbolically achieved if only considering the conviction of Rios Montt, and more concretely through, so far, 15 sentences of the Inter-American Court of Human Rights in specific claims brought to litigation; and by the National Reparation Program, whose main scope was of financially compensating victims of the war according to the type of human right violation suffered (Gómez, Martínez,

2019). However, this conclusion fits only for the case of non-repetition of political violence, and therefore apart from criminal violence. This aspect will be addressed in the next chapter.

3.3.2.3. Honduras

Different from its neighbours, Honduras' recent past is not marked by civil war, however the roots for its economic and political instability are similar. Just as El Salvador, by the beginning of the 1950s the country was still divided on one side by the peasantry and on the other by an oligarchic regime with absolute control of goods to export and the management of foreign investment. As soon as the Cuban Revolution of 1954 represented a threat to the ongoing system, the military forces arose in the country justified by their unique capability of countering the spread of communism – meaning, by the same argument adopted by other Latin American States, as seen.

Not contrary to other national armed forces in the American continent, the Honduras military regime took power after a *coup d'etat* and heavily sponsored by the United States. From 1954 until the beginning of the 1990s, the country has lived under the yoke of the *juntas* headed by different commanders through time, with minor civilian-elected governors in between, whose governments were not conducted without being deeply undermined by military-oriented pressures.

According to Prof. J. Mark Ruhl (1996), at least four main reasons stand by for the collapse of the military regime. The first two reasons are shared by other Latin contexts, as previously seen: the end of the Cold War and consequently the removal of the communist threat in the world, which produced the immediate effect of a major change in the US foreign policy to cut military aid for Honduras, just like many other neighbours, since the region was no longer essential nor primordially interesting to achieve the new goals at the international arena.

The third reason was the growing general civilian dissatisfaction with the wrongdoings committed by the *junta*, which promoted the rise of antimilitary coalitions formed of students, trade unions, human rights advocators, and businesses, whose main purpose was of unveiling the violations perpetrated by the ongoing system to destroy the credibility of the regime. Lastly, and following the civilian movements from below, the private sector was responsible for attacking the economic trenches of the regime: since the communist threat was no longer a reality, there was no need of providing sponsorship and bribes to

the military to guarantee favouritisms and protection against subversion (Ruhl, 1996). All in all, the end of the Cold War vanished the legitimate pillars that could justify civilian's acceptance and tolerance of the repressive regime of the *juntas*.

Differently from El Salvador and Guatemala, there was no Honduran guerrilla group with such prominence in the country. On the contrary, this case has more similarities with the Southern Cone contexts previously analysed, since it was not until the first formal investigations of the previous military regime that the real extension of the human rights violations perpetrated began to be seen.

One starting point for investigations was the case Velásquez-Rodríguez *versus* Honduras brought to the Inter-American Court of Human Rights in 1986. In this opportunity the Court has concluded that not only the regime has violated the victim's right to personal integrity by committing arbitrary detention, but also the Honduran justice system was completely unable to properly conduct an investigation on Rodríguez's whereabouts whatsoever (IACtHR, 1986).

Following the first glimpses of institutional violence and repression against the Honduran people, the National Commissioner for the Protection of Human Rights in Honduras – as part of the Centre for Justice and International Law – launched in 1994 a report, with the help of the Human Rights Watch, on the wrongdoings mostly perpetrated by the military branch Battalion 3-16. According to the investigations and pieces of evidences, this division was responsible for committing torture, arbitrary detention, forced disappearances and executions, in parallel with a biased justice system that either from action or omission did not ensure the safeguard of victim's basic human rights.

Among the recommendations, the organization claimed for the implementation of an official national truth commission, the launch of reparations programmes, the domestic trials of perpetrators, and the restoration of civic trust with the new democratic regimes (Human Rights Watch, 1994). Indeed, in 2000 the Honduran Supreme Court has invalidated the amnesty laws that have prevented the few accused military personnel of the 3-16 to be convicted for human rights violations, which paved the way for further domestic trials, in addition to the release of financial compensations for a minor number of families of victims (CJA, n.d.).

Nevertheless, the relevance of such transitional measures have been fading out as opposed to the political and economic turmoil that still haunts the country. For example, the

democratically elected government of 2009 have suffered a *coup d'etat* and got replaced by the military personnel – some of them linked with the former 3-16 branch – under the argument of protecting the Constitution and the no re-election rule (Green and others, 2013). The political instability generated with such new government that has never been formally recognized by any of the American States' parties, as well as the global economic crisis of the same year are some of the seeds that turned Honduras as the most violent country of the Americas, as it will be seen in the next chapter.

3.4. Conclusion

This chapter aimed at providing contextualization of transitional justice practices in Latin America. After observing the dynamics of power between the military *juntas* and civilians in South America and Honduras, as well as the interactions between government and *guerrilla* groups in El Salvador and Guatemala, it is possible to conclude that all of the conflicts and repressive regimes share similar roots that led to human rights violations and wrongdoings, although the historical backgrounds are quite diverse between the Southern Cone and the Northern Triangle.

The timeframe analysed for all contexts was the second half of the 20th century. The Cuban Revolution had a pivotal influence in flaming the US foreign policy towards indirect control of Latin American countries, orchestrated by sponsoring the oligarchic regimes in Central America and the military governments in South America, all as part of a package of ideological alliance. Regardless of the method, it can be concluded that the United States have financed most of the conflicts – with both human and monetary capital – as part of an international strategy of gaining power in the Cold War's framework.

In all contexts the background of the Cold War and the Western fight against communism were prominent factors that led to the spread of culture of violence, albeit more prominently in the Southern Cone, while in the Northern Triangle the common roots of years of power imbalance between oligarchic regimes and peasantry was the determinant aspect of the escalation of war. The methods of political violence – kidnappings, forced disappearance, torture, arbitrary detention – have installed the patterns of gross violation of human rights that eventually led to the need of Transitional Justice as the only possible tool to re-establish a well-functioning and human rights oriented democratic order in all countries analysed.

Needless to say, such realisation was only possible after the end of the Cold War. Despite the special characteristics that led to the fall of the dictatorships and the end of the civil wars, it was not until the eradication of the communist threat that a transitional to peace could be developed. Civil society had a strong influence in some cases more than others, for example in Argentina and Honduras, and the creation of truth commissions had a strong impact in re-shaping a common memory of the past towards reconciliation.

All of the countries have managed to provide, to some extent and each one considering its own past, the institutional changes necessary to establish a new era for democratization and respect of human rights. Transitional justice, hence, has proven to be the accurate tool to re-organize a chaotic unlawful state of things so to build the conditions for a prosperous future. If thinking about retributive justice, the fine line between trials and amnesty laws was in some cases difficult to define. Some countries had the ability to push for trials right in the first years of transition (ex.: Argentina) or later on with help of the Inter-American Court of Human Rights (ex.: Guatemala), however the prominent rule at the domestic legal system is of impunity (ex.: Paraguay, Brazil, El Salvador). Nevertheless, important legislative changes were adopted somehow by all countries, some with deeper consequences, such as the draft of a new Constitution (ex.: Brazil and Paraguay), and some with the implementation of a peace-agreement (ex.: El Salvador and Guatemala). Interestingly, the cases of the Northern Triangle called for a prior round-table of negotiations instead of a top-down legislative change.

However, after around 20 years of transition, how prosperous can one call the Latin American region in terms of human rights? Considering the historical framework developed in this chapter, it is safe to say that the institutional violence of the second half of the 20th century that was present in the countries analysed have come to an end. Nevertheless, instead of a prosperous human-rights-oriented future, Latin America is still haunted by alarming levels of criminality and violence at all levels, domestically and regionally. In this sense, if only considering that both sub-regions have adopted transitional justice almost simultaneously, and have managed to end institutional violence despite their different historical backgrounds, what is the missing point of this theory that has led all these countries to such poor records? These questions shall be addressed in the following chapter.

Chapter 4: the (in)success of Transitional Justice in Latin America

4.1. Introduction

The previous chapter presented a historical framework of six Latin American countries that have used transitional justice mechanisms to overcome an ongoing situation of mass violation of human rights, notably due to military dictatorships and civil wars. Although it could be concluded that, indeed, these countries have successfully managed to put a formal end in the repressive regimes/political violence – mostly by legislative changes or peace accords –, one could easily question the effectiveness of such measures, if only briefly analysing the data on the levels of criminality and corruption in the regions studied.

In this sense, the present chapter aims at exploring the main features of the new democratic/peaceful institutions established in the two sub-regions of Latin America previously analysed (the Southern Cone and the Northern Triangle), in order to portrait the *de facto* situation of the countries in a post-transitional justice era. It will be seen that criminality, corruption and international organized crime are constant values in the regions, so entrenched in the new institutions that it might be reasonable to say that there is an ongoing, undeclared and institutionalized unlawful state of things in these countries, with little or no counter-insurgency from these new-born democratic/peaceful systems.

4.2. After Transitional Justice: main trends of the new era

The historical frameworks analysed in the previous chapter prove that many Latin American countries have followed Huntington's (1991) theory of the third wave of democratization. As the 21st century emerges with renewed constitutional pacts and internationally-sponsored peace agreements in some countries, the establishment of democracy and strong institutions have much to thank the transitional justice apparatus. This is particularly true if considering that the pursuit of truth, reparation and non-repetition, from trials to symbolic compensations, as well as the ongoing redress of the past so to provide healing and strengthening the civic trust are all consequences of the application of transitional justice in contexts of mass repression of human rights, and which were all essential tools to overcome the wrongdoings of the past, as seen in the previous chapters.

However, aside from all the formal merits provided by transitional justice, the current political, economic and social environments of the "post-third wave of democratization" countries challenge such optimistic view. According to Thomas Carothers (2002, p. 09), "by far the majority of third-wave countries have not achieved relatively well-functioning democracy or do not seem to be deepening or advancing whatever democratic progress they have made". Since these countries' institutions are not fully stable democracies, nor are fading out to authoritarianism yet, they should be placed in what he called "the grey zone".

Indeed, this is the zone where many Latin American countries are found. Focusing on the two Latin sub-regions previously studied, after analysing the many achievements of transitional justice in each domestic background, what should be expected from the countries would be a prevailing sense of governmental stability on one hand, and people's credit and trust on such institutions on the other, all accompanied by low levels of institutionally-related criminality, since a new democratic order is ideally at place.

In this path, the grey zone seems to be the appropriate place to the countries studied because instead of all such predictions, the countries are still facing high levels of criminality, governmental instability and popular discredit. The difference is merely of terminology: where one still has c*oup d'etat* (e.g. Honduras in 2009), another has impeachment (e.g. Brazil in 1992 and 2016); where one used to have guerrillas, now it has gangs (e.g. El Salvador, Guatemala). Despite each country's particularities, criminality and corruption are repeated trends in all of them, as it will be seen, and that is why Carothers' theory seems to be accurate for Latin American contexts. But in order to understand the violence spectrum that haunts the Latin American countries, first it is important to highlight its common roots.

4.2.1. The unaddressed question of economy

According to Zinaida Miller (2008), one huge pitfall of the transitional justice paradigm is the lack of address to economic factors that generated the conflicts and violations of human rights in the first place, as well as little or no reference to it as part of the transitional process to democracy. In both the sub-regions analysed, the new institutions have paid more attention to civil and political rights, as an immediate response to the wrongdoings perpetrated against civilians, yet the economic sphere of the conflict – much present in the Northern Triangle and which, as seen, was a factor of dissatisfaction and

riots by the first insurgency groups – was not properly addressed. Such omission is not related to a lack of ratification of international economic pacts nor the absence of new constitutional laws dealing with this aspect, but instead of a straight-to-the-point measure of financial reorganization of the country so to eradicate poverty and social vulnerability.

This thematic is relevant because it constitutes a major blank space on transitional justice theory. As Rama Mani states (2008, p. 259), "we cannot divorce criminal violence from social injustice, from the rising inequality, discrimination and economic stagnation that breed despair on one side and stoke intolerance on the other". That is to say, if the Latin American countries today are still concentrated in Carothers' grey zone, this has much to do with the insufficient economically-wise transformative aspect of transitional justice, as populations will still resort to criminality and violence to escape the economic instability and poverty inherited by the previous regimes.

According to Professor Lars Waldorf (2012), there are four main reasons why transitional justice does not enter the economic debate. First of all, the "naming and shaming" *modus operandi* of all transitional justice mechanisms against civil and political violations is easily achievable, less expensive and more instantaneous if disregarding the economic rights of people, which is more porous and widespread across the population. Second, there is a tendency in both domestic and international courts of narrowing down to tackle only criminal offenses, as opposed to other forms of structural violence.

Third, as part of the neo-liberal agenda, transitional justice prioritizes the goals of strengthening democracy, fair elections and the rule of law, once again taking economic measures for granted. Lastly, if only analysing the conceptual framework of transitional justice, it can be seen that this theory is relatively new and emerged as a response to wrongdoings visibly perceived as committed by authoritarian regimes/civil wars; that is to say, this theory did not have embryonic time to develop itself so to properly address all the roots of the conflicts.

Nevertheless, even if economic and financial reorganization were part of the transitional discourse, they cannot be framed as an ordinary concern. According to Gready and Robins (2014), among the several reasons why it should be addressed by transitional justice mechanisms is because it holds the highest level of importance within a post-repression population. That is because the immediate effects of a repressive regime or a civil war would be of financial insecurity inside households, especially if considering that the many

of the families' main providers were either killed, kidnapped or forcibly disappeared. In other words, once the political violence stops and a new democratic order is at bay, it is not the majority of people who would have the luxury to care about the top-down reorganization of the legal framework; on the contrary, most of them would find their households deeply compromised by financial insecurity – if not also combined by a perpetuating and hopeless grief (Slimovich, 1992).

In this sense, if the question of which kind of economic reality – in terms of employment perspectives, financial stability and security – is left for survivors is not immediately addressed by the transitional justice pact, it will represent a dark shadow of the past blinding people on how to properly move forward. This environment is favourable for the spread of criminal violence and opportunistic behaviour from gangs and other branches of organized crime, and this point can be statistically proved.

According to the 2023 Global Organized Crime Index, if comparing the level of criminality in the six Latin countries object of study with their levels of GDP *per capita*, the numbers show that the higher the amount of US dollars by person, the lowest will be the level of criminality (Argentina leading this position), whereas the opposite is also truth, with Honduras being the poorest of all countries and yet the second most violent, just behind Paraguay, which is has an intermediate GDP compared to all the other countries. Moreover, the same database provides that the entire Northern Triangle and Paraguay have the highest levels of criminality combined with the lowest level of GDP growth, whereas Argentina assumes an intermediate position and Brazil assumes the highest level of GDP meanwhile it is the third most violent, just behind Honduras and Paraguay.

In this sense, Miller's (2008, p. 280) argument seems appropriate,

> (…) the failure to include economic concerns in transitional justice mechanisms tends to make transition into a political rather than an economic story, limiting knowledge of the economic underpinnings of conflict, narrowing the story of regime change and quelling discussion of development plans by quarantining them within the state and the executive rather than making them part of the transitional justice conversation.

The argument of "narrowing the story" seems appropriate. Indeed, the political feature of transitional justice – meaning, the existence of a repressive regime perpetrating political violence through gross violations of human rights – is unquestionable, perhaps the core

element that gives the reason for the need of transition in the first place. However, one cannot ignore the link between the consequences of poor economic prospects and instability/social vulnerability, at cost of taking part of the roots of the conflicts for granted (e.g. the social inequalities between civilians in El Salvador and Guatemala and the oligarchic regimes, whose tensions have eventually escalated to war). And by doing so, once transitional justice is at the table with a major blank space on the socio-economic development of the newly democratic societies, the political change to be achieved may not be enough to guarantee prosperity and stability for the country – although it may be very sufficient from the political point of view, if only considering the proper substitution of repressive regimes/civil wars to democratic order. On the contrary, precisely because economy is in the corner, political interests may rise mostly represented by the new post-transitional elites, which will flourish in such fertile environment of reshaping institutions and power dynamics.

4.2.2. The emergence of elites and legitimization of corruption

As seen in the previous chapters, the grant of reparations, the use of trials and even the creation of truth commissions will necessarily represent financial constraints for the new emerging order, and therefore will require a careful management of resources. Moreover, amnesty laws will be granted according to the level of influence that perpetrators still have during the transition to democracy, as well as the number of trials and accountability to be hold upon them. That is to say, the true implementation of transitional justice requires not only the will of the new institutions, but some level of consensus among its leaders.

Contrary to one might argue, such leaders are not merely the new democratically-elected president and its crew, in the case of the Southern Cone, nor the *guerrilla* groups incorporated in the political system, as in the Northern Triangle. In fact, these are not much well-positioned in the redesigned power balance as the transitional justice classic theory would argue, because they fade out in comparison to the countries' domestic elites.

In the case of El Salvador, Guatemala and Honduras, the weight of elites can be traced back to the US United Fruit Company and the oligarchies. These people had no direct governmental role, yet the local governments were heavily dependent on their economic strength to maintain and perpetuate power. Currently, as it will be seen in the next topics, the oligarchies were replaced by a different cluster of elites: no longer involved with the

export of fruits and cotton, but with drug trafficking and organized crime, the Northern Triangle's gangs have so much influence in the political and socio-economic life of population that are becoming to be seen as similar to non-State armed groups (Cantor, 2016).

In the Southern Cone, the elites that used to be concentrated in the military personnel are nowadays more porous, as they are spread among heads of criminality hubs (one example is in the Tri-Border Area, which will be explained further), political parties with extremely high levels of corruption aligned with business partners from the corporative world, and a dubious renewed justice system, whose impartiality is questionable if opposed to the amount of judicial activism hat has been exercised.

That is why McAuliffe (2019) states that "even the most sensitive bottom-up and grassroots forms of participation will have limited effects on political or economic life without conscious engagement and dialogue with elites"; since they hold a privileged position in the power balance and therefore have the resources – monetary and human capital – to decide which transitional justice measure will be given preference to, and which ones will never leave the paper. Elites – either the ones emerging from the organized crime or the corruptive world of politicians and business partners – will dictate the feasibility of transitional justice according to their own interest in perpetuating such privileged position within the country, most notably regarding their political and economic power, and these efforts come by carefully administrating the wills of the population, in what Brian Grodsky called the "calculus of how much people are willing to pay for transitional justice" (2015, p. 12).

Tracing a parallel with the Western Balkan region, Professor Roberto Belloni (2020) wrote a significant book about the born and growth of elite cartels in those countries, as well as the international community's impressions about its influence. According to his findings, because the region had been suffering from endless and almost hopeless wars and humanitarian crises, and the international community was repeatedly failing to cease the hostilities and re-settle peace, after the establishment of the Dayton Peace Agreements, stability should be protected and ensured at all cost.

That is to say, international leaders were not ignorant about the emergence of elite cartels and corruption inside the countries, but they chose to adopt a deviant position in this regard. When the question of the new-born system of rents and patronage operated by

elites hit the international arena, such phenomenon was purged under the dependency discourse, meaning that it was justified by the dependence syndrome developed by the Balkan population, which to some extent legitimized the growth of such elites. However, in reality, Belloni suggests that the external actors were not only aware of this possibility right in the early stages of transition but deemed it acceptable in exchange of the stabilization power that this new system could potentially provide, and that is why "corruption was not an aberration caused by the presence of a few dishonest public officials: it was structural, and became standard operating procedure" (2020, p. 57).

In this sense, because post-transitional justice communities are usually extremely vulnerable by the terrors of the recent past due to the mass violation of human rights, a new era of stability is a conditional factor for short and long-term healing. This is particularly why elites are not an underground community: not only most of the ordinary population recognizes its existence and influence, but they also tolerate them in exchange of the stability they provide. On one hand, while the population is embedded in a *panem et circenses* policy – wantonly or by ignorance –, the elites grow stronger and trade stability goods with each other, so to maintain the s*tatus quo.* This phenomenon is explained by Di John and Putzel (2009, p. 14) as "elite bargain":

> When powerful individuals and groups become privileged insiders and thus possess rents relative to those individuals and groups excluded (and since violence threatens or reduces those rents), the existence of rents makes it in the interest of the 'privileged insiders' to cooperate with the coalition in power rather than to fight. In effect, limited access orders create a credible commitment among elites that they will not fight each other.

The practice of elite bargains is strictly linked with a poor management of economy, from the standpoint of the lack of oversight on the destination of resources that leads to such hazard, or the complete reliance of such goods on a limited number of hands, whose power would be so prominent that the management of such resources would be impossible without some opportunistic behaviours from those elite members. That is why, at the political level, the emergence of elites and their bargaining activities within one another are the roots of the endemic spread of corruption within post-transitional justice countries, since on one hand it is perpetrated by powerful actors in a spirit of coordination and protectionism, and on the other it is a phenomenon somewhat tolerated or wantonly ignored by the post-transitional community. And just as in the Western Balkans region, similar patterns of corruption are seen in Latin America.

According to the 2023 Corruption Perceptions Index, all of the six countries studied have scored under 40 points in the 0-100 scale of corruption (100 being highly clean and 0 being heavily corrupted). Except from Argentina and Brazil, who are still part of the "flawed democracies" group, all the other countries are categorized under the "non-democratic regimes" group, after a general compilation of their peers' domestic political situations. Such results are very similar with the numbers of the year 2000, with little change in the ranking during the years.

Moreover, the Americas Barometer in 2021 has conducted a study on the belief of Latin American populations that the wealthy casts of population somehow "buy" the elections in their respective countries: the results of the survey show that Paraguay and Brazil have the highest levels of distrust on the electoral process. In the same light, another study made by the same organisation on the level of satisfaction with the democratic rule show that, except from El Salvador, all five countries demonstrate poor belief on democracy, with Honduras, Brazil, Paraguay and Guatemala varying from 38% to 30% of level of satisfaction. That is to say, the overall performance of the new institutions proclaimed by transitional justice in these countries is alarmingly weak, most notably due to the presence of corruption and elites.

Interestingly, it is important to remind the economic trends previously analysed on these countries, so to prove the tight relation between their economic performance with the levels of corruption and criminality: indeed, although corruption is an independent factor, in the sense that could be experienced by any kind of government, it is perhaps more evident and well-established in countries with poor economic records, and the examples of Latin America fall under this conclusion. Therefore, the next sections will be devoted to explain how corruption, criminality and elites are all intertwined concepts within the broader scope of the abovementioned unaddressed question of economy.

4.2.2.1. The Southern Cone: elites and corruption fed by "progressive" governments

After transitional justice, the elites were no longer found in the figures of military personnel, as in all three countries – perhaps more prominently in Argentina –, the work of civilian-led organisations and truth commissions have led to a general discredit of this category, as the masses would now rely their faith on democratically-elected regimes.

However, since the post-transitional debate was merely political, as the question about which kind of economy would be left for societies was not addressed by the transitional

justice debate, this aspect would be automatically handed to the new governments, regardless of their expertise on the subject. Hence, despite the first round of democratic elections, the result was the severe economic crises suffered by all the three countries right after the overturn of the military dictatorships: Argentina and its hyperinflation dilemma in 1989, the fiscal crisis in Brazil during the 1990s, and the financial crisis of Paraguay in 1995.

In the case of Argentina, Cooney (2007) explains that in 1984, by the time Raúl Alfonsín took power as the first democratically-elected president, the country was submersed in high numbers of external debt especially with the International Monetary Fund (IMF), which in the previous regime had provided heavy sponsorships and loans. Therefore, since no economic plan was designed by the transitional justice agenda, the new government's economic policies were implemented with no secure plan of success. In 1989, the inflation rate had reached almost 5,000% with immediate consequences on people's well-being: social vulnerability, poverty and violence were resumed as features of the country, which pushed Alfonsín to resign presidency six months in advance of the end of his mandate.

In the Brazil of 1989, the first directly elected president after the military dictatorship, Fernando Collor de Mello, also arose in power with the economic agenda of combatting inflation and public debt. The strategy was of freezing the accounts and confiscating the money of all Brazilians in what was called the "Collor Plan" of 1990. With no money circulating in the country, the stagnation of economy led to a huge recession and fiscal crisis, aligned with the discredit in the new-born democratic institution. As a result, the first post-transitional justice president was also the first to suffer an impeachment process, in 1992 (*Câmara dos Deputados do Brasil*, 2006).

Lastly, in Paraguay, the first decade of post-transitional justice also did not bring any socio-economic consistency by the new democratically-elected governments. According to Peter Lambert (2000), the transitional justice process was so weak that was not able to eradicate the legacy of corruption and criminality inside the Stroessner's dictatorship. In addition, contrary to the full expectations of the country, the launch of the MERCOSUR in 1991 (the Southern Common Market agreement) did not prove to boost the Paraguayan economy as much as predicted, as the country's benefits got overshadowed by the other members' grandeur. The financial crisis of 1995 was a result of the fragility of the

economy and the post-transitional institutions, combined with the growing levels of poverty and social vulnerability.

These scenarios represented one substantial crack in the new democratic spectrum that allowed the emergence of new elites and the spread of corruption. Elites, in this context, would emerge as the invisible hand behind the new governments elected due to their progressive discourse. According to Weyland (1998), by appealing to the masses, these new governors bond with the population with promises of ending the oppressive system and addressing social vulnerability as part of a personal agenda. The relationship established would be quasi paternalistic, in the sense that, on one hand, the population would rely almost entirely on their new charismatic life-saviour president, and on the other, the new government would do whatever it takes to hold such image and deliver only the smallest amount of resources deemed necessary to hold credibility.

Therefore, the new elites would not be in the figure of the president *per se*, but his/her many hidden partners: businessmen, the media, lower-ranked members of national Congress, and so on. Consequently, elite bargains to hold on power would be the standard practice. According to Professor Wagner Pinheiro Pereira (2017, p. 305), the new corrupt governments based on clientelism, patronage and high levels of corruption that spread around the Southern Cone can all be classified as examples of neo-populism, which is embedded in the denial of "the elementary values of representative democracy, by placing emphasis on demagogic leadership, clientelistic relationships and manipulation of the masses".

Indeed, the governments ruled by the democratically-elected Carlos and Cristina Kirchner in Argentina from 2003 to 2015, Luiz Inácio Lula da Silva from 2002 to 2010, and Fernando Lugo from 2008 to 2012 in Paraguay are all examples of such model of polity, especially if considering that none of them had any immediate link with the economic crises of the first years of post-transitional justice in the countries. Instead, they were portrayed as the life-saviours of an economically weakened community, the ones whose model of government and public policies could potentially solve all the problems related to such fragility.

Nevertheless, because of the scenario of social vulnerability in which every country found itself by the time of those round of elections, both the new governors and their many elites arose in power altogether. That is why the many corruption scandals that were revealed

throughout the years unveiled the corruption not only inside the political parties, but also involving many particular enterprises – for example, the Brazilian construction company *Odebrecht* – and businessmen linked with the governments. Examples of such corruption scandals include the "*los cuadernos de la corrupción*" in Argentina, and the scandals of "*mensalão*" in 2005 and Car Wash in 2014 in Brazil, as well as the ongoing scandals involving the *Colorado* political party in Paraguay.

4.2.2.2. The Northern Triangle: elites and corruption as the standard practice

Similar to the patters found in the Southern Cone, the new post-transitional justice dynamics involving the Northern Triangle region are also marked by the presence of corruption and elite bargain, however with some structural particularities. As seen in the previous chapter, instead of military dictatorships, the mass violation of human rights in El Salvador and Guatemala was originated from civil wars, notably insurgent groups of civilians unsatisfied with the government's protective policy towards the oligarchies. The formal end of hostilities and the beginning of transition was heavily dependent on external actors, since both countries' truth commissions were created and conducted by foreign experts appointed by the UN, and the most prominent trials were held by the IACtHR.

The road to democracy was initiated by the peace agreements, whose main provision was the incorporations of the guerrilla groups into the political systems of each country, in exchange of their submission to a de-militarization process of handing over the weapons. However, the scenario is still far from bright. According to Professor Terry Lynn Karl (1995), the Northern Triangle's polity is somewhere in between authoritarian and democratic. What he called "*democraduras*" (in English, the beginning of the word "democracy" mixed with the final syllable of "dictatorship") is explained by the fact that the post-transitional justice societies are still lacking equilibrium between the forces of the new democratic institutions and the elites from the past, and such tension is a major stalemate for the achievement of a tolerable power bargain at the political level. This situation is the crack in the post-transitional justice prospect that allowed the spread of corruption.

In El Salvador, this imbalance is illustrated by the National Civil Police (PNC) force. Created in the realm of the 1992 Peace Accords, the main objective was the establishment of a civilian-led national police as an alternative to the ones administrated by the previous repressive regime which consequently were responsible for mass violations of human

rights. However, contrary to the agreement's provisions, the PNC was gradually incorporating former *guerrilleros* and military personnel, which as a result led to the legitimization of an elite squad inside what was supposed to be an impartial organism detached from the past (Ávalos, 2014). Soon the PNC begun to form criminality networks oriented by the hidden interests from these elites and favoured by the weak system of self-control from the institution, in such a level that by 1996, only four years after the promulgation of the peace accord, only 15% of the population had confidence on an impartial and secure service delivered by the PNC, while all the rest of the population was aware of its corruptive and criminal spirit (Call, 2003).

In Guatemala, the past elites of the civil war period still managed to hold on to their privileged position inside the negotiation table. According to Illmer (2022), because economy was not given the amount of attention needed to tackle the core elements of oppression that first sparkled the insurgency groups, the peace agreement was heavily influenced by the invisible hands of the business elites who, in the name of the international neoliberalist agenda, have pushed for many economic measures that are still conducting governments to a unilateral wealth and land distribution. The immediate result was the restoration of corruption through rent-seeking practices at national and municipal levels, with little or no counter-measure made by the justice system due to the heavy impact of business and criminality elites in this area, to whom the illicit system is more favourable, and therefore shall remain untouched.

Lastly, in Honduras, corruption was a standard and public practice since the beginning of the post-transitional justice arrangement. According to Mark Ruhl (2010), the system of patronage jobs, popularly known by "*chamba*" was such an entrenched tendency inside the political arena that the exponential growth of criminality and violence in the country was directly linked with population's full discredit on democracy, and hopes for the restoration of authoritarianism would be perceived as one efficient way out. The 2009 *coup d'etat* was the immediate consequence of that scenario, which severely diminishes the credibility of transitional justice in the country, inasmuch corruption and elite bargains are the dominant ruling trends, and democratic institutions are deemed helpless to protect the rule of law.

Given these perspectives, it seems accurate to say that elite bargains and corruption have been the standard practices in the Northern Triangle regardless of the peace accords and alleged restoration of democracy and rule of law. Although transitional justice practices

were correctly used so as to end the hostilities in the countries, the mere cessation of conflict was not enough to ensure a peaceful and long-lasting functional political and socio-economic environments. In this sense, the critique conducted by Angelika Rettberg (2015) can be a relevant summary of the dynamics in the region:

> (…) the legacy of armed conflict has contributed to chronic institutional weakness and unbalanced government budgets, creating a climate in which crime could flourish, civilian justice fails to take hold, and democracy does not enjoy the legitimacy it does in other countries. Clearly, the era of guerrilla insurgencies has passed; however, the conditions for ongoing violence and social and political unrest remain.

That is to say, one major flaw on transitional justice process was the inability of predicting the rise of elites covered in different political and economic arrangements, as well as not thoughtfully considering the historical weight of corruption as standardized practices in the region. As a result, not only the countries are still emerged in corruptive institutions directly linked with the democratically-elected governors and their allegedly refreshed institutions, but the scandals behind these dynamics and the consequent political turmoil deriving from it are the features that help decrease the levels of the credibility of the rule of law both domestically and internationally. And that is why those countries are farther from democracy as they are closer from being the "*democraduras*" pointed by Terry Karl (1995).

4.2.3. Criminality

According to the 2023 global study on homicide published by the United Nations Office on Drugs and Crime (UNODC), the Latin American and Caribbean region has the highest homicide rate in the world and it might hold this position at least until the year 2040. That is because, according to the 2023 World Bank Atlas on Sustainable Development Goals, interpersonal violence is responsible for 20,1% of the amount of deaths in Latin America, while in the second most violent region, North America, the percentile is only of 5,7%. That means that the Latin region is approximately four times more dangerous than any other region in the world regarding homicide rates.

This explains the results provided by the 2021 Americas Barometer report, which states that the natives of all countries studied have low levels of trust on the safeguard of basic rights by their respective governments, varying from 55% of reliance in El Salvador to only 22% in Honduras. One explanation to this behaviour relies on the statistics provided

by the 2023 Global Organized Crime Index, which states that the level of counter-insurgency by these countries (the so-called "resilience" level) is equally poor: considering a scale of 0 to 10 of resilience, Argentina is the only country whose State response to criminality is above 5, while all the other countries are below this mark.

Therefore, it seems that transitional Justice have failed with Latin America once again. As previously seen, the economic blank space left during the application of the theory has been paid at high cost by the countries, especially in the Southern Cone, with the formation of elites and endemic spread of corruption. Corruption has always been a matter of social life in South America, and transitional justice was not able to overcome it, since instead it fostered this disease by leaving new economy prospects behind. The same can be said regarding the Northern Triangle, albeit that region is even more volatile when it comes to the criminal reflects of corruption, as it will be seen.

In the case of criminality, transitional justice failed by not addressing the patterns of structural violence contained in all of the six countries studied. By "structural violence" it shall be understood the result of patterns of inequality and social vulnerabilities that both trigger and perpetuate direct violence against people (McGill, 2017) and indirect violence from top-down practices, such as white-collar crimes – in this study, corruption at the governmental level and its official institutions. It is therefore comprehended by the social injustices that build and sustain a particular society and whose asymmetries cause direct harm to people and a long-lasting state of wrongdoings (Evans, 2015).

If considering structural violence as one immediate result of socio-economic inequalities, the statistics can prove why Latin America has always been haunted by such high levels of criminality. According to the World Bank database, the rates of intentional homicides in the six Latin countries has not suffered major changes since the year 2000: except from El Salvador and Honduras, which had high peaks of criminality in specific years, all the others remained more or less at the same level. This means that, since the methods of transitional justice have disregarded economic features, one consequence would be little or no progress on tackling criminality. Even worse, instead of diminishing structural violence, this omission can be strictly linked with the rise and strengthen of organized crime perpetrated by gangs and illicit hubs of criminality.

When it comes to domestic criminality, one important distinction has to be done. While interpersonal violence committed randomly by individuals is related to a violation of

specific provisions of each domestic criminal law, these episodes have no similarities with organized crime. According to Borba and Cepik (2012), there are two main differences between ordinary and organized crime: first of all, while the first one generates a direct damage to one specific person – for example, robbery, homicide –, organized crime operates with actions that generate a diffuse damage. Moreover, while ordinary crime is usually committed by a common person (apart of his social aspects of vulnerability) at one relevant and singular moment, organized crime is committed by professionals, meaning that the activities are coordinated towards a bigger goal related to profit, the members obey a chain of command and the illicit system prevails on time.

For the purpose of this research, the prominence of ordinary crime is not relevant, because it is a social practice that can be tracked in every society, regardless of its historical features. The case of organized crime, on the other hand, holds a special link with the many failures of transitional justice, and therefore shall be analysed.

4.2.3.1. Organized crime in the Southern Cone

For most of the citizens of South America, criminality is not an alien feature. Just as corruption, it is embedded in everyday life of people as another common pattern of the countries' history. In the case of ordinary criminality, it is so well structured in the Latin countries that it does not cause shock or any level of fear different than the one already personally cultivated by citizens, especially the ones living in widely-known violent cities, such as Rosario, Rio de Janeiro and Aripuanã. However, when it comes to organized crime in the Southern Cone, the Brazilian criminal factions seem to overshadow any other minor Argentinian and Paraguayan organizations.

According to Michel Misse (2010), the first formally recognized criminal organization in Brazil was born during the dictatorship rule. The first illicit activities of today's *Comando Vermelho* (CV, in English, Red Command), one of the biggest organized groups in Brazil, took place during the repressive regime as a counter-insurgency of leftist political prisoners demanding specific rights that were not being observed in jail. Bank robberies were the first illicit actions committed with the goal of collecting funds for the organization, whose leaders would coordinate the crimes from inside the prison.

After the fall of the dictatorial regime and the international expansion of the drug market, the CV's illicit activities migrated to Rio de Janeiro's slums to operate in the area as the main sponsor of cocaine. As a highly profitable activity, while this organization would

soon become the pioneer of coordinating drug trafficking, the community living in the slums prior and after their arrival would not object the activities. On the contrary, by the time the CV managed to become institutionalized within the communities, the exercise of social control would be inevitable. As a consequence, Misse (2010, p. 19) suggests that the illicit activities would gradually become inherited in the locals' cultural background, to an extent that

> [It] was forming – in a generally deprived social environment, of other strong collective identifications – a symbolic reference of local identity, even for young people not directly involved with trafficking, which makes them identify with the Command, sometimes with the same degree of support that fans have for their football clubs.

In this sense, the spread of organized crime in Brazil would not be a simple matter of hierarchic structure of coordinated actions towards the achievement of certain profits for the group. Big organizations such as the CV would have enough influence to interfere at the very local level of slums up until the entire country and abroad. Needless to say, much of this power would not be able to be exercised if not with the help of powerful allies, such as politicians and a parcel of corrupt police officers.

According to Carmo and Magalhães (2022), criminal organizations in Brazil share the same life cycle: they were born inside the prisons during the military regime during the 1970s; they would develop and reach maturation until the 1990s; they would achieve full development until 2005 with the formal division of profits and coordination of activities inside and out of prisons; and lastly, from 2006 on, they are currently consolidated as a strong illegal institution acting in the margins of the democratic and lawful State. If considering this approach, it can be noted that, while transitional justice was entirely preoccupied with the restoration of the rule of law, it certainly did not consider the parallel States that were emerging in the shadows of the previous regime. That is to say, if criminal organizations have reached their fourth and ongoing "consolidated" stage, this has much to do with the strengthen of corruption and economic vulnerabilities of the post-transitional nation.

That is because, according to Beare (1997), the ability of a criminal enterprise to flourish over time is strictly linked with its capacity to corrupt: by bribing politicians, members of the judiciary system and police officers, big organizations such as the CV can receive the guarantees of remaining invisible to any lawful counter-insurgency to their activities. The price paid of such immunity would be usually huge amounts of money to fund electoral

campaigns and the negotiation of some level of stability regarding the levels of criminality. Therefore, if on one hand the criminal groups use their power of influence to obtain advantages at the institutional level, on the other hand the corrupt governors and their many elite partners would use their side of the bargain to deliver negotiated results for the voting community and also remain in power. In the Southern Cone, where corruption and criminality are both cultural features perpetuated over time, with little or no counter-attack during the transitional justice procedure, all these dynamics remain in exercise to this day, nothing but "business as usual".

As argued by Filho (2008), corruption and clientelism are two strategies that are being used by the government since the re-democratization period, which enables the creation of a system of briberies and money-laundering beneficial to the criminal enterprises and the governments simultaneously. Adding to this culture a poor legal framework unaddressed by transitional justice and the growth of economic vulnerability in the first years of the new democratic regime, any illegal activity would soon become attractive because of its prospects of "easy money" as opposed to a weak judicial reprimand. That is why, along with the CV, around 50 other smaller criminal organizations were born and spread in all Brazilian territory, most of them created independently inside different prisons, and others as smaller branches of CV. However, the biggest criminal organization in Brazil, and consequently of the entire Southern Cone is PCC.

Founded in 1993 by eight prisoners of the main prison of Taubaté, São Paulo, the *Primeiro Comando Capital* (in English, First Capital Command) was initially motivated by the same reasons as the CV, meaning, to claim for the unattended rights inside the prison system, yet soon its influence had escalated throughout the entire State of São Paulo. The group was responsible for many coordinated rebellions inside prisons, including the one conducted simultaneously in 29 prisons in 2001, the so-called "mega-rebellion" (Dias, 2011). With the exponential growth of adhering members inside and outside prisons, the PCC soon migrated to all Brazilian territory and abroad.

Not surprisingly, the key element of such exponential growth was and still is the ability to corrupt: according to Coutinho (2019), federal investigations prove that the PCC has been financing electoral campaigns and pushing towards the election of specific mayors and congressmen, who in exchange would impose stalemates to the approval of harsher laws against the organization's activities. The example brought by Coutinho was the attempt of approving a State law in 2016 for blocking telephone signals inside prisons,

which is one of the main communication tools of the organization. Not only the approval process was stalled for months, but when it eventually got concluded, the factual adjustment of prisons to block the signals was never implemented.

In this scenario of growing infiltration of criminal enterprises in the political system, the consequence was that by 2020, organized crime was already spread in all 26 Brazilian States and its Federal District, with both the PCC and CV expanding their networks and presence in key localities, such as border areas with other countries or maritime zones. At least from the standpoint of the growing influence of PCC, it can be said that it is no longer a mere criminal organization, but it has already achieved the stance of a drug cartel: its evolution from excessive violence inside prisons to an invisible outdoors expansion with the use of corruption has enabled the enterprise to obtain territories across the Brazilian States and establish their own criminal code and code of conduct, parallel to the national one. As Stahlberg suggests (2022), the many peculiarities of the PCC and their intelligent *modus operandi* could even boost the organization to the level of a mafia, if only the levels of State infiltration continue to rise over time. This is the current framework that enables to conclude the PCC as the biggest criminal organization in Brazil, and currently of the entire Southern Cone, as it will be seen.

4.2.3.1.1. The Tri-Border Area: special case of international joint criminality

Aside from its many pitfalls, one huge achievement of transitional justice in the Southern Cone region was the spread of a spirit of brotherhood among its countries. According to Pion-Berlin (2000), because of the historical tensions between the countries, it was precisely the transition from repressive to democratic regimes the pivotal factor that enabled a new round of diplomatic negotiations among them, in a refreshed and joint *animus* of cooperation and peace. What first begun as a bilateral agreement between Argentina and Brazil to stipulate the use of nuclear power in the region for peaceful means only, soon escalated to broader negotiations, culminating on the establishment of the MERCOSUR in 1991.

The MERCOSUR is an economic agreement created originally by Argentina, Brazil, Paraguay and Uruguay (Venezuela was accepted to join in 2013 but it is currently suspended from the bloc, while Bolivia was formally accepted to join in 2023 but it is still in the process of concluding the adhesion protocols) with the main scope of creating a free-trade zone of regional cooperation among the South American States. Different

from the organization of the European Union, the MERCOSUR did not create a unique code of laws to be observed by all of the members; instead, the juridical regime of this group is of an inter-governability based on the general principles of international law (Gomes et al., 2018).

Nevertheless, regarding the combat of transnational organized crime, the bloc has created the Specialized Reunion of Public Ministries (REMPM), which is a commission designed for the main scope of "enhance[ing] joint actions for the prevention, investigation and repression of organized crime, drug trafficking and terrorism, among other punishable acts" (REMPM, 2006). This resolution follows the joint effort observed in all four permanent members of the bloc to tackle the growing presence of these crimes in the region, notably since the year 2005, when all members have formally ratified the provisions of the UN Convention Against Transnational Crime, the so-called Palermo Convention (UN, n.d.).

The preoccupation of combatting transnational organized crime in the region exists mostly because of the levels of criminality observed in the Tri-Border Area (TBA), which is the encounter of the adjacent lands of Argentina, Brazil and Paraguay, represented by the Argentinian city of Puerto Iguazú, the Brazilian city of Foz do Iguaçu, and the Paraguayan cities of Ciudad del Este and Presidente Franco. In this specific spot, the criminality rates are so high that the TBA was upgraded by the Terrorism, Transnational Crime and Corruption Center (TraCCC) to the level of a global illicit hub.

The TraCCC is a research centre of the George Mason University that has been studying the criminal dynamics of many illicit hubs worldwide, including the TBA. In their latest report of 2023, the results showed that the most significant illicit markets observed in the TBA are the trafficking of drugs, weapons, people, natural resources and cigarettes. While Argentina performs relatively low in the levels of criminality, Brazil and Paraguay are above the global standard of illicit markets and hold an impressively high rate in at least three types of crimes: trafficking of weapons, crimes against nature, and trafficking of cocaine and cannabis.

The illicit activities held in the TBA are mostly coordinated by the PCC. According to Coutinho (2019), the enterprise has been using the banking system of many countries to make money-laundering and finance the illegal activities inside the Brazilian territory and from the TBA to its foreign partners. Recent investigations have demonstrated that the

PCC has close ties with the Lebanese and Palestinian terrorist groups Hezbollah and Hamas by protecting their arrested members inside Brazilian prisons and selling bombs and explosives regionally manufactured, in exchange of weapons necessarily coming to the territory via the TBA and the trade of explosives outgoing from there to the Middle East (Levitt, 2016).

In this sense, the coordinated transnational crime actively participates in the international roots of criminality, notably from the TBA to the Brazilian ports of Itajaí, Paranaguá and Santos, and from there to Europe, the Middle East and Africa. Moreover, because of the institutional weakness of the region and its characteristic open-door policy of welcoming migrants from around the world, many foreign mafia groups, such as from Taiwan, Russia, China and Japan have also found their share of profit in the TBA. That is to say, the region is so famous for its fertile group for criminality that the illicit activities are orchestrated in a competitive environment by South American and foreign groups.

The four main reasons for the facilitation of the flourish of national and transnational criminality are money-laundering, corruption, geography and market vulnerabilities (TraCCC, 2023). Needless to say, except from the geographic aspect of the TBA, which is marked by the encounter of the rivers Iguazú and Paraná and therefore challenge the infrastructural development of the area, all the other factors are heavily linked with the poor management of the rule of law and democratic institutions in all three countries.

That is because, as previously seen, transitional justice did not promote such a strong imposition of the rule of law, neither it was able to break with the vicious cycle of poor political management. Corruption, the hidden influence of elites and the growing relevance and infiltration of organized crime are all factors inherited by the previous repressive regimes (Arellano, 2013) and that today are still heavily contributing for the failure of any official response against the series of the unlawful events taking place in the TBA, either from the countries individually or from the MERCOSUR as a bloc.

4.2.3.2. The Northern Triangle: the rise of gangs

Following the patterns evidenced in the Southern Cone, the countries of the Northern Triangle are also facing escalating levels of violence and human rights violations, mostly because of the rise of gangs and transnational organized crime. However, different from the dynamics observed in the TBA, these criminal institutions have never been hidden from public scrutiny, and it comes as no surprise that the illicit hub of El Salvador,

Guatemala and Honduras is one of the most violent of the world, and their individual criminality performances domain higher positions in comparison with other regions of the American continent.

Regarding the effects of transitional justice in the region, Bowen (2019) suggests that all three countries can be considered as "impunity States", since neither of them have managed to impose strong democratic institutions rooted in the rule of law after the civil wars; instead, corruption and criminality have prevailed over time. The blind spot for this consequence relies heavily on the formation of gangs, or the locally-called *maras*: according to Fogelbach (2011), it is estimated that, right after the end of the civil wars in the Northern Triangle, 307 gang cells spread in El Salvador, 434 in Guatemala and 112 in Honduras.

The birth of gangs can be traced back to the years of the civil wars and repressive regimes, when many citizens were sent to Los Angeles during the civil war either to seek prosperity and send remittance to their families, or simply to escape domestic retaliations. However, the city of destination was another harsh environment: on one hand because of the ruling presence of street gangs of Latin immigrants; and on the other because of the violence inside prisons coordinated by the Mexican mafia. With no escaping route for the newcomers, the protection offered by a gang of their own soon was seen as the strongest way out. In this sense, by the time the citizens of the Northern Triangle were deported by the US government due to their criminal records, they would come back as professional gangsters affiliated with the new-born *Mara Salvatrucha*, also known as MS-13, created initially by Salvadorans, as well as the *Barrio 18*, also known as M-18.

In Guatemala, the shift from political to criminal violence has evolved parallel to the transitional justice process to an extent that it is being perceived as even deadlier than the repressive regime. The country has proved to be a hotspot of criminality mostly because of the unaddressed question of economy during the transitional justice process. After the civil war, most of the families were left completely unstructured and financially compromised. Prospects of future benefits coming from education did not seem enough to stimulate most of the youth to remain in school, and the urgent need of any source of income would eventually drag the majority of the adolescents to join gangs (Fogelbach, 2011).

While the levels of murders and kidnappings are skyrocketing and orchestrated by gangs deeply involved with transnational organized crime and regional drug cartels, the mirrored impunity rates are corroding the population from the bottom-up, turning them into impatient citizens willing to put an end at such undeclared war at all cost. If on one hand the State is portrayed as completely insufficient to protect people from criminal violence, and on the other the birth and growth of gang cells and their oppressive presence is widespread across Guatemala, a parcel of the remaining population is stimulated to counter-attack with a "justice by their own hands" policy. As a result, lynching is not an alien practice at the community-level (Wolf, 2014), and according to Janzen (2008), even the restoration of death penalty has already been debated by the post-transitional justice governors.

Similar scenario is found in El Salvador. Since no substantial trials or reparations related to the civil war have taken place, in addition to the fragile economic prospects for the citizens, the country became the fertile ground for the native MS-13 to flourish and coordinate criminality in the region (Wolf, 2014). Moreover, the social vulnerability faced especially by the children of the war is a huge driving factor of criminality, since young people would eventually join a gang due to its possibility of social and economic prosperity (Fogelbach, 2011).

In addition, because the MS-13 had developed abroad, it returned as a sophisticated organization, both politically and economically well structured, with the potential to merge with minor criminality cells that survived outside the radar of the peace agreement and the DDR process. According to Farah (2013), this was the first step of the development of transnational organized crime in the region, and such process started early in 1994, only two years after the Salvadoran peace accord.

Lastly, the Honduran case holds some similarities with the evolution of violence seen in Brazil. According to Wolf (2014), one key aspect of the country that enabled the formation and evolution of gangs was the poor conditions inside the prison system. Because young delinquents and deportees were all kept together behind bars, in addition to the lower levels of infrastructure – overcrowding and overall poor performance of basic services – recruitment to gangs was easier, as well as facilitated by the always present feature of corruption. At some point, the national police system would recognize their complete lack of means of controlling the detainees, meaning that some level of

negotiation with gangs would become the easiest and perhaps less violent stabilizer factor for everyone involved with the prison system.

Aside from the prison sphere, the ones living freely in the country, just as in El Salvador and Guatemala, would also face social vulnerabilities of many kinds at the post-transitional justice era. While surviving families would have to live in a state of social, educational and economic poverty, the new democratic Honduras was not able to provide basic needs to its population, not in the form of opportunities, nor with any sort of reparation during the transition to democracy (Fogelbach, 2011).

In this perspective, it can be said that criminality in the Northern Triangle countries has common features: social vulnerability of many kinds, poor economic prospects, severe distrust on official institutions due to the high levels of impunity and corruption and a well-known corroded prison system, combined with the illicit profits and dimensions of protection offered by gangs, drug cartels, money laundering and other branches of illicit market. However, as pointed by Cruz (2015), although these are relevant aspects, they are not entirely responsible for the criminality in the region. If that was true, then, also countries such as Haiti and Nicaragua would have demonstrated similar criminal records, yet these countries are nowhere near the rates of the Northern Triangle.

Instead, these factors are the consequences of the weakness of the specific rounds of transitional justice in those countries: for example, the mere fact that the incorporation of *guerrillas* was the decisive factor for the promulgation of the peace agreements in El Salvador and Guatemala, *per se*, was the circumstance that poisoned the entire new democratic system from a rule of law standpoint: "the same elites and representatives who negotiated the reforms weakened the new institutions by scrapping or overlooking the need for accountability and monitoring, allowing the rot of corruption to spread and preparing the ground for criminal infiltration" (Cruz, 2015, p. 48). Indeed, it is safe to say that these countries are neither repressive regimes nor democracies, but something in between, as what Terry Karl (1995) has called the "*democraduras*".

The gangs and transnational organized crime enterprises are nowadays acting in parallel with the State institutions and have proven to be equally or even more sophisticated, sustainable and intelligent than the domestic official organisms when it comes to dominate the illicit markets and criminal violence. The evolution of criminal organizations and the inefficient State response have reached such a level that competition

with foreign actors is also taking place. For example, the Atlantic route of drug trafficking usually coordinated by Honduras is currently being jeopardized by the Mexican mafia who wish to expand business in the region, while many minor criminal factions in Guatemala are competing on the market of illicit goods to seek partnerships with Colombia and Mexico (Farah, 2013).

With this unchanging panorama of violence, it comes as no surprise that the outbound migration flows are growing. According to the Americas Barometer report of 2021, 32% of Salvadoran people, 36% of Guatemalan and 54% of Honduran people have the intention to emigrate, most of them to the United States. In addition, the UN World Migration Report of 2022 shows that all three countries are among the top 10 Latin American and Caribbean countries which have the higher numbers of asylum seekers and refugees. It was estimated that, by the end of 2020, at least 450,000 natives of the Northern Triangle have sought asylum abroad (IOM, 2022).

4.3. Conclusion

As seen in the previous chapter, all six countries studied have suffered with mass violation of human rights during the regimes of the pre-transitional justice era. Kidnappings, assassinations, torture, forced disappearances and political violence were key factors in all of them, perhaps more prominently during the civil wars in Central America and the military dictatorship in Argentina. As the new democratic order seems to have been implemented in the countries after transitional justice, the memory of the past is still alive and represents the milestone of what can never happen again: indeed, the *Nunca Más* discourse is still being obeyed, as no dictatorial regime nor civil war between government and guerrillas are taking place to this day. However, while it can be said that the six countries, to some extent, successfully managed to implement the democratic values and the rule of law, this conclusion does not automatically imply that they are being completely safeguarded and well enjoyed by the Latin communities.

The new democratic order in all six countries was established upon fragile grounds. As showed in this chapter, the fundamental aspect of economy for the recovering communities was completely disregarded by the new transitional paradigm. The immediate aftermath of this gap was the perpetuation of a state of vulnerability within the affected communities, and therefore the growth of opportunistic behaviour from elites, corruptive governments and criminal enterprises.

As seen in the case of the Southern Cone, all three countries were found in severe economic crisis by the end of the dictatorial regimes, and the lack of adequate response right after the establishment of democracy was the factor that opened the gate to the rise of neo-populist governments and its bargaining elites. Meanwhile in Brazil, since the growing waves of criminality spreading during the dictatorship were completely disregarded by the transitional justice discourse, the criminal enterprises born in the previous regime found their ways of flourishing at the margins of the democratic rule, skyrocketing profits from illicit goods and therefore dominating entire shares of communities all the way to the institutional level – legislative, judiciary and executive powers – as well as the international corridor of crime in the TBA.

Similarly, in the Northern Triangle, the peace accords in El Salvador and Guatemala, as well as the alleged imposition of democracy in Honduras have left the civilians with no economic prospects to recover from the wars/institutional instability while ignoring the exponential growth of gang cells all over the region. Corruption in the police forces and at the institutional levels have only proved that population, once again, cannot trust on their own governments to provide basic well-being. Affiliation of the youth to the *maras* would be, therefore, the natural consequence for those whose economic and social vulnerability was already achieving its highest peaks.

In this sense, it can be said that the transitional justice apparatus was not enough to perpetuate an ongoing respect of democratic values and the rule of law in the countries studied. The strength of criminal violence in all spheres – from the governments through white-collar crimes to the lower belts of society through criminal enterprises – and its alarming impact on the statistics of today and of the short-term future can corroborate the fact that perhaps all these countries could be already suitable for another round of transitional justice. However, if that is the case, it seems that the implementation of the classic theory will be just as flawed as the first one. Hence, the next chapter will explore the prospects of a reinterpretation of transitional justice and the possible ways forward for the Latin American countries to leave, once and for all, the grey zone of "*democraduras*".

Chapter 5: rethinking Transitional Justice in Latin America

5.1. Introduction

Throughout the previous chapters of this study, the theory of Transitional Justice was explained as a framework of measures and strategies that a renewed democratic government could use in order to overcome the situation of mass violation of human rights towards reconciliation with the past and the guarantee of non-repetition. Indeed, this theory was explored by the governments of all six Latin American countries object to this study, regardless of their justifications to do so, if to overcome a dictatorial regime or to end hostilities during a civil war. However, as the last chapter showed, the long-lasting establishment of the rule of law, democracy and full respect of human rights seems not to be clear on the horizon of the Latin people. On the contrary, it seems that criminal violence and corruption have never been more present in their daily life than nowadays.

In this light, considering that the reasoning constructed so far along the study points to the inconsistencies of the classical model of Transitional Justice applied in the selected countries, this last chapter will focus on the possibility of reinterpreting its main features in order to find a common denominator that could potentially deliver solid and long-lasting results, if only this modern theory gets to be applied in a renewed round of transitional justice in the countries studied. Therefore, the chapter will explore the new venues that must be considered by the transitional justice paradigm and try to sketch how the result of such theoretical metamorphosis should look like.

As it will be seen, the reinterpretation of transitional justice can be possible if elasticizing its original scope and range of mechanisms, with some dialogue with the modern theory of transformative justice, albeit not entirely reliant on it. The chapter will conclude with the statement that rethinking transitional justice does not mean abandoning its classical approach, but instead working on the flaws exposed in the previous chapter in order to conduct a plausible evolution of its terms to better fit the claims of the contemporary era.

5.2. The dead end of Transitional Justice

As seen in the previous chapter, while the application of transitional justice was enough in the short-term to deliver a feasible human-rights oriented type of solution to overcome the wrongdoings of past regimes/civil wars, it certainly did not foresee the impact that the structural gaps of the new-born democratic regimes – precisely, the lack of attention to

the kind of economy left for the civilians – would have on the success of the theory in the medium to long-term period. In the Southern Cone and Honduras, it is unquestionable that transitional justice was able to install a new era of rule of law and democratization, as well as some sort of compensation for victims and accountability to perpetrators of the past military rule. However, if considering the alarming rates of corruption in those new democratically-elected systems, as well as the skyrocketing influence of national and transnational criminal enterprises in the region, one cannot conclude that transitional justice has entirely succeeded in delivering and safeguarding the full range of human rights in a daily basis.

Similar conclusion can be drawn in El Salvador and Guatemala. Indeed, transitional justice was rightly used to restore peace and put an end in years of civil war in both countries, although it had to rely much on international help to do so. Nevertheless, the levels of corruption within the newly-established peaceful and democratic institutions and the rates of criminality within the national gangs have no prospect of lowering anytime soon. On the contrary, it seems that there was a shift from political to criminal violence, to such an extent that violence *per se* has never left the background of citizens and it is rooted as a permanent feature of the life inside the Northern Triangle region.

Therefore, as previously seen, after transitional justice, all six countries are found somewhere between Carothers's concept of the grey zone (2002) and Karl's idea of *democraduras* (1995). Because transitional justice was built upon fragile grounds, the road to democratization of all countries was marked by the birth and growth of elites, organized crime and corruptive governments and institutions. To this day, these characters are so well entrenched in the political sphere of the countries – within political parties, corruptive politicians, top criminal leaders, and so on – that it is safe to say that any result to be delivered by the legacies of transitional justice will previously be calculated and subject to bargaining prior to its implementation, as a matter of risk management of how much the new institutions would be willing to pay for it *versus* the amount of impact that such deliverable would represent to the elitist *status quo*. That is why Latin America have always been struggling to truly achieve a sustainable and human-rights oriented self-development.

In this path, it seems that the classical theory of transitional justice has found itself into a dead end, which was already predicted by Huntington's theory of the third wave of democratization. According to his findings (1991), four relevant reasons can explain why

transitional justice would not thrive after democratization: the weakness of the new-born democratic ideals within the emerging elites; economic stagnation; political polarization promoted by leftist populist governments legitimized by the life-saviour discourse, as approached in the previous chapter; as well as the rise of middle-class groups willing to counter such political expressions.

Indeed, all of these four elements have triumphed in the Latin American selected scenarios, and therefore following Huntington's predictions. Since the post-transitional governments did not consider the economic prospects for the new democratic society, the consequent economic crisis have pushed the Latin people to a crossroad: either to rely on the illusion of any sort of financial stability provided by adhering to criminal enterprises and gangs, whose assets prove to be much more immediate than the ordinary path of education and insertion in the licit labour market; or to rely on populist governments to provide for all their needs, despite the corruption and elite bargains long operated within them. While it is only rational that such choice is being made on a daily basis by civilians, political polarization has achieved its highest peaks in Latin America, which can be illustrated by, for example, the last electoral disputes held in Argentina (2023), Brazil (2022) and El Salvador (2019).

Figure 2. The dead end of Transitional Justice

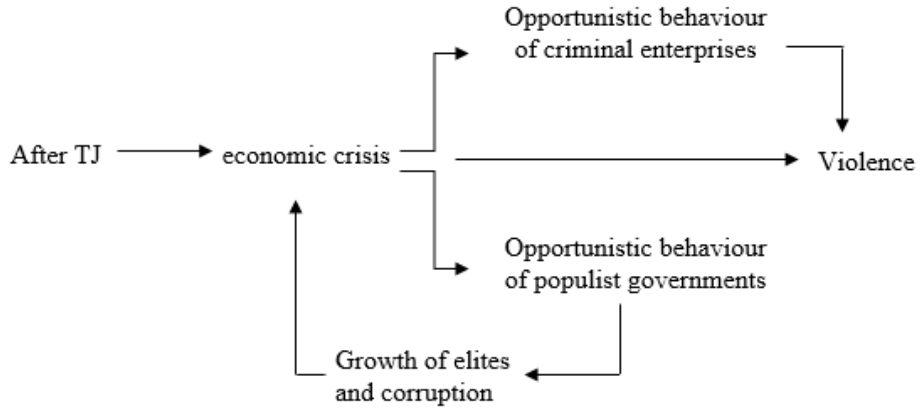


Figure 3 draws the representation of the dead end of transitional justice in all six countries analysed, in the sense that, either because of the rise of populist governments right after the democratization process (more prominently in the Southern Cone) or because of the emergence of criminal enterprises (in Brazil and all countries of the Northern Triangle), all paths have ended in the patterns of violence, all explored and statistically confirmed during the last chapter.

Interestingly, in countries which the immediate response to the economic crisis was the rise of populist governments (e.g. Argentina, Paraguay, Brazil), the intermediate step of the growth of elites and corruption would create the illusion of violence being in the second plan, not a matter of strict preoccupation right after democratization. That is one precise factor that enabled the development and spread of criminal enterprises, as they were growing in the shadows of the corruption scandals that overtime had driven the population's eyes off this concern. Different scenario is seen in the Northern Triangle, where the oppressive permanence of the *maras* has always been prominent, and therefore rapidly leading the countries to a panorama of violence.

Even if considering the biggest institutional efforts of the countries to detain the spread of corruption and criminality, the gross reality of violence remains untouchable. Perhaps Brazil in the Southern Cone and El Salvador in the Northern Triangle have managed to cause some sort of turmoil against their criminal leaders. While the Brazilian institutions have merged iron-fist policies with due process, the first through police operations within the biggest slums to dismantle the criminal enterprises (Carvalho, 2013), and the latter through the 2014 Car Wash operation under the scope of due process, in El Salvador much attention has been given to president Nayib Bukele's posture of zero tolerance and mass imprisonment of gang members, which ultimately represents a great example of iron-fist policy (Insight Crime, 2023). However, regardless of the strategy, if through due process or iron-fist policies, these counter-insurgencies are still fading out in comparison to the skyrocketing numbers of criminality, which leads to the conclusion that, after transitional justice, all paths have driven towards the spread of violence.

Parallel to this diagram, the theory launched by Juan Albarracín and others (2018) on the destiny of criminal agents after democratization can be complementary to this approach. According to their study, after transitional justice is operated in the country and democratization is on the horizon, perpetrators of past human rights abuses have two logical solutions: either to remain in government or to build/foster parallel criminal organizations. If the first path is chosen, the expected outcome of transitional justice would be of using the refreshed institutions' apparatus – such as the rule of law and the power of the new democratic system – to maintain peace and respect of human rights. However, once inside the renewed institutions, it is easier for former perpetrators or their sympathizers to use these same tools to benefit and protect criminality. Lastly, if fighting organized crime is still the option chosen by the new governors, either iron-fist or due

process policies can be taken, although their effectiveness on properly annihilating the criminality waves still remains to be seen.

Figure 3. The destiny of criminal agents after democratization (Albarracín and others, 2018, pp. 787-809)

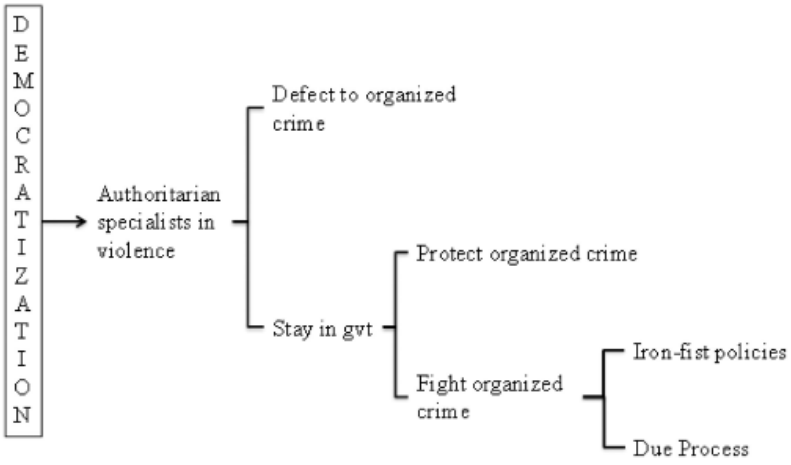


Figure 1. Trajectories of authoritarian specialists in violence after democratization

Through this lens, it is possible to see that, in either case, democratization will eventually be diluted over time by the power of organized crime, on one hand, as opposed to the shallowness of the institutional measures of counter-insurgency, on the other. Examples of the application of such diagram can be seen in Brazil and El Salvador. As seen in the previous chapter, the Brazilians CV and PCC were born in the realm of the military dictatorship with no immediate repression after democratization – to the extent that, currently, these enterprises coordinate transnational organized crime within the TBA and abroad (Levitt, 2016). As for El Salvador, the members of FMLN were incorporated to the new democratic order as a political party, yet the new institutional agencies – more prominently the PNC – got embedded with former *guerrilleros* and their techniques of violence (Call, 2003). That is why, either in the case of Brazil and its blended iron-fist and due process strategies, or in the cases of El Salvador and Guatemala and their iron-fist policies, the prospects of a turning point in public security are still a challenge (UNODC, 2023).

In this light, either from the standpoint of the patterns observed in the countries right after transitional justice approached by Figure 3 or of the paths followed by criminal agents developed by Albarracín and others (2018), the type of transitional justice that was operated in all six countries analysed was not able to flourish in the long term, as it got

caught in a maze that throughout time has led democratization to the fatal end of an alarming escalation of corruption and violence.

5.3. Sketching a renewed Transitional Justice

Throughout this research it was seen that the classical theory of transitional justice is strictly associated with political change and restorative justice (Teitel, 2002). From the standpoint of the dimension of "transition", all of its main mechanisms – trials, truth commissions, amnesties, reparations and lustration policies – were designed to create the grounds for the process of absorbing the democratic values through the incorporation of the rule of law and accountability to perpetrators. From the standpoint of the "justice" dimension, the theory seeks to promote reconciliation with the past and guarantees of non-repetition, in a sense of respecting the collective memory of the affected community and building civic trust.

However, the six countries analysed during this study are proves that the classical approach of transitional justice did not deliver a properly transformed society guided by the paths of democracy, human rights and the rule of law. The mere fact that these countries managed to overcome dictatorial regimes/civil wars, *per se*, was not enough to ensure a healthy social environment for people to live, if only considering the high levels of criminality, corruption and economic instability. Therefore, if considering the many flaws and blind spots of the theory in the selected countries, one might argue that the classical view of transitional justice has to be renewed to overcome its own pitfalls and deliver a solid and long-lasting human rights approach to the post-transitional countries.

According to Rama Mani (2008), there are four main areas of concern that should guide or at least orbit around the brainstorming of a reinterpreted theory. First of all, transitional justice must be connected with social injustice and the deep triggers of the conflict, otherwise any deliverable of the process will be deemed superficial and short-lived. Second, transitional justice should tackle the sponsorship elements of past war economies and the impact of their legacy to the forthcoming economic era. Third, there has to be a consideration of the costs of applying the transitional justice's methods for the post-conflict society, notably if considering both the individual economic prospects of victims and the capability of the national treasure to afford the measures. Lastly, the theory's rhetoric should necessarily be prepared to the waves of criminal violence. While the first

two measures can be said to have investigative nature, the last two are focused on the practicalities behind long-lasting results.

One interesting aspect of these guidelines is that all of them are somehow connected with the economic dimension of transitional societies, which points to the hint that a refreshed theory of transitional justice should necessarily involve economic prospects within either its target or mechanisms. Nevertheless, they all share the same background of delivering a true restorative justice and human-rights oriented perspective for the transitional countries. In this sense, if a reinterpretation of this classical approach is at bay, it is important to add new features instead of shortening the pre-existing ones, and therefore not deriving much from its core ideals, otherwise the nature of transitional justice – and, consequently, its entire historical evolution – would be jeopardized.

That is why the proposal of this study is to reinterpret the classical theory's targets and elasticize the coverage of its mechanisms according to the theoretical framework developed so far, as an attempt to tackle the main flaws observed about it and therefore suggesting an alternative to the dead end of violence, without pointing to the complete substitution of such classical approach.

5.3.1. The target: taking a holistic approach

The examples illustrated by the six elected countries of this study point to the use of transitional justice either to overcome military dictatorships (the Southern Cone and Honduras) or civil wars (El Salvador and Guatemala). Therefore, the common feature of all scenarios was the need of political change and restorative justice, which accompanies Teitel's view on the subject (2002). However, if considering that after democratization the common root followed by all countries was economic crisis, perhaps narrowing the target to only political change may compromise the effectiveness of long-lasting prosperity. Indeed, after years of political violence, it is logical that the new democratic era will be placed amid economic chaos and social vulnerability; and that is precisely why transitional justice should not derive its attention about it.

As seen in the previous chapter, the core assumption of the failure of transitional justice is strictly related to the absence of economic measures under its radar. The ultimate target of building refreshed democratic institutions, *per se*, is not enough to prevent new cycles of violence to grow, since the lack of a solid economy will drive communities either to join/foster criminality or to rely on elites and corruptive governments to fulfil their needs.

As stated by Frankzi and Olarte (2014, p. 217), “rather than providing a language for an emancipatory project of justice, it [transitional justice] is confined within the limits of institutional democracy and marginalises questions of social equality”.

The notion of “emancipatory project of justice” deserves attention. When transitional justice is applied, the main intention is to set the country free of the institutionalized repressive forms of violence or the civil wars that were proliferating a state of gross violations of human rights. Through these lens, the theory is applied with the strategy of achieving the emancipation, through democratization, of the community from these form of marginalisation. However, while restorative justice will be the expected deliverable of such process, little attention is given to social dimension of justice. Needless to say, the lack of social justice is closely linked with social violence, which is greatly responsible for the endemic spread of violence within a community (Mani, 2008).

If only considering the type of community left right after the end of a repressive regime/civil war – meaning, one caught in unemployment, forced displacement and evictions, with very limited economic resources for rebuilding infrastructure and tackle poverty –, it is logical to conclude that tackling social justice has much to do with economic welfare. As argued by Muvingi (2022), there is a romantic overview that post-transitional societies hold on to civil and political reconstruction at the highest and most important values, while in reality these set of rights are not so well positioned on the priority scale.

On the contrary, he concludes, “savings and loan schemes in the villages may achieve more in bringing people together through supporting each other than criminal trials or preaching reconciliation” (2022, p. 251). That is to say, in a context of deep economic stagnation and vulnerability, there will be a very limited amount of people that would be able to devote their entire attention narrowly to the restorative aspects of justice. Restoring the economic balance is, therefore, essential to empower citizens to effectively participate in the transitional process towards democratization. That is why the classic target of transitional justice should be expanded so to include economic dimensions.

Following Mani’s abovementioned first area of concern for the renewed theory, one valid suggestion of reinterpreted target of transitional justice could be of including both political and social violence. However, such strategy reveals to be quite challenging. First of all, while political violence is concrete and institutionalized, social violence is more

porous and abstract, since it can be found everywhere in the community, regardless of the person's level of involvement in the hostilities/repression. Second, social violence could be a pre-existing condition of the country and sometimes can have a very thin causal link with the ongoing political violence, which can make it difficult to be tackled under a precise methodology such as transitional justice. Third, while political violence has clear perpetrators, which facilitates the pursue of accountability (e.g. military *juntas* and *guerrilla* groups), social violence is endemic and a product of social injustice, and this factor can be traced back to a system of oppression and inequality caused not by one-to-one individuals but rather due to a historical weight.

In this light, perhaps including social violence as part of the static target of transitional justice could be problematic. One feasible way out of such dilemma could be of imprinting the idea of such dimension by broadening the target to include tackling political violence with a holistic approach. This way transitional justice experts could receive the legitimation needed to advance their studies beyond political violence and through the reasons behind it, although with no specific mandate about all the venues to be pursued, at risk of turning the project endless and even more costly. This idea was already proposed by prominent scholars on the matter, such as Louise Arbour (2007, p. 03):

> Transitional justice must have the ambition to assist the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to-but also beyond-the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that pre-dated the conflict and caused or contributed to it. With these aims so broadly defined, transitional justice practitioners will very likely expose a great number of discriminatory practices and violations of economic, social, and cultural rights.

By taking a holistic approach, transitional justice would be able to expand the classical view of delivering liberal values in a manner of including the transformations required not only to achieve democratization, but to align the post-transitional societies to a new and well-functioning economic order that holds substantial prosperity rather than a mere terminological resemblance with the Western models (Muvingi, 2022). From a practical point of view, targeting political violence with a holistic approach would be endorsing Mani's areas of concern without being trapped into the universe of social justice, while managing to include the economic dimensions that triggered the violence in the first place

and also haunt the feasibility of any long-lasting deliverable that the theory would be eager to impose. As stated by Waldorf (2012, p. 174),

> For transitional justice scholars and practitioners, holism appears to offer a way out of hard dilemmas (truth versus justice, peace versus justice). It also promises to replace competition over donor funding (transitional justice versus development) with complementary linkages (transitional justice and development).

In this path, transitional justice advocators have already been rehearsing what this new holistic approach should look like. For example, Zinaida Miller (2008) has developed a logical three-step methodology to transitional justice leaders in order to consider the economic environment of post-conflict countries: first, there must be a study on the economic aspects prior to and during the war/repressive regime that eventually triggered the wrongdoings or in any way have allowed the subsistence of repression. Second, transitional justice leaders should calculate the socioeconomic aspects of the nation-building process during the political transition; and lastly, there has to be a review on the action-plan for the future regarding economy. If all these three aspects are debated during the round of transitional justice, there might be a plausible chance of disrupting the dead end of the theory right at the beginning.

Similarly, Wendy Lambourne (2014, p. 22) argues that such holistic approach of transitional justice should be strictly linked with the degree of effectiveness of peacebuilding, since it "implies a commitment to establishing the security, legal, political, economic, structural, cultural and psychosocial conditions necessary to promote a culture of peace in place of a culture of violence". This is precisely true if considering the emergence of criminal enterprises in the countries analysed, which are not only skyrocketing the level of criminality within its geographical borders and beyond, but also portrait the Latin American regions with such culture of violence.

Furthermore, a holistic approach of political violence would enable the transitional justice practitioners to promote the discussions about the key elements that triggered the conflict and threat its long-lasting resolution under the same umbrella of transition. Regarding economy, this possibility is not a mere facilitation of debate, but it could be particularly relevant for the community-level acceptance of any new economic measures designed for the Latin American contexts, since they would be linked with the transition process and therefore coming from a domestic will of change, instead of a foreign imposition. The importance of this notion of acceptance can be traced back to 1990, when the United

States, the World Bank and the International Monetary Fund developed a set of ten economic rules designed for many Latin American countries in the realm of the third wave of democratization, with the target of conducting their economic prosperity in the shadows of the Western free-trade neoliberal market (Cypher, 1998).

The so-called Washington Consensus was an international attempt to re-align the Latin economy, although it was seen by many locals as another North-American attempt of exercising control in the region (Goldfajn and others, 2021). Needless to say, the plan did not succeed in the two sub-regions analysed, otherwise a different and more prosperous scenario would be seen nowadays. Instead, this is one example to prove that the profile of Latin American countries is of debating economy within its borders, either because of the traumatic historical experience of extreme foreign interference (e.g. the US United Fruit Company in the Northern Triangle) or because of the failure of such modern example of economic imposition.

That is why, under the scope of transitional justice, allowing its practitioners to debate the intersection of economy with political violence would be a safer way of rethinking the right mechanisms to be used to fulfil the transition to a strong and long-lasting rule of law. Hence, a reinterpreted version of transitional justice could broaden its main target in order to include tackling political violence with a holistic approach. This approach could extend the mandate of the theory beyond the conflict itself so to include the roots of violence (e.g. social injustice, economic constraints) and therefore brainstorming the best mechanisms at disposal to deliver a true political change, one that could truly transform the community bottom-up.

5.3.2. The mechanisms

Perhaps more important than setting the target of a mission is to develop the strategies for its accomplishment. As seen during this research, there are five main mechanisms that can be explored by transitional justice practitioners in order to achieve the goals of political change: trials, truth commissions, reparations, amnesties and lustrations policies. All of them were administrated during the transition process according to the *de facto* situation of the countries and the feasibility of each one in leading the community towards restorative justice. Nevertheless, they have failed to solidify the credibility on the new democratic order and its institutions (Daly, 2001).

In this light, if expanding the classical target of transitional justice to the volatile concept of a holistic approach, simultaneous substantial changes should arise within the pre-existing mechanisms of the theory to better fit its reinterpreted goal. Considering Mani's abovementioned areas of concern of the new transitional justice theory (2008), while the reinterpreted target dealt with the first one regarding social justice, the mechanisms should deal with the other three, meaning, investigating the previous and forthcoming impact of war economies; weighting the costs of applying the theory in a post-conflict society; and tackling the future waves of criminal violence.

Given that trials, amnesties and lustration policies correspond to an individual reprimand to perpetrators, these measures may not offer much debate for reinterpretation. On the contrary, truth commissions and reparations can evidently be operated with a holistic approach, if only considering their power of reaching many levels of the community at once, as well as the different actors that they involve for their implementation. In this sense, while it is only logical that Mani's remaining aspects could all be well covered by truth commissions, given its investigative core nature, some attention should be given to a reinterpretation of reparations just as well.

5.3.2.1. Truth commissions

As seen in the previous chapters, truth commissions are non-judicial bodies with investigative mandate to pursue the truth behind the experiences lived by victims and survivors during the repressive regimes/civil war. They are usually conducted by civilians and civil society organisations (e.g. CONADEP in Argentina, CNV in Brazil), although some examples show that they might be internationally sponsored to act in the particular country (e.g. ONUSAL in El Salvador).

However, truth commissions have failed "to investigate fully the socioeconomic background to the conflicts in question, to elucidate the structural violence of the past or to fully grapple with the economic aspects of transition" (Miller, 2008, p. 276). According to Waldorf (2012), truth commissions have narrowly extended their mandate over crimes against humanity and other criminal offenses, and therefore not examining the socio-economic factors that triggered such actions, nor even the perspectives of the post-transitional communities. The few ones that did – for example, the one in Guatemala – wrongly positioned these causes into the historical context of the document, away from the spotlights of fact-findings and recommendations. Therefore, if considering a holistic

approach of the political violence targeted by transitional justice, truth commissions can be useful to perform an investigative role not only on the right to truth regarding victims and survivors of the immediate human rights violations, but also on the roots that generated the conflicts in the first place.

In this light, it is important to question the limits of the investigative nature of truth commissions. It is known that they have the power of suggesting legal and institutional measures to bring accountability to perpetrators and ameliorate the victim's suffering by asking for reparations and developing reconciliation, all based on the findings of the past abuses (Freeman, Hayner, 2003). However, considering their strong investigative apparatus, they might be suitable for building a database on socio-economic vulnerability of the post-transitional communities, as an attempt to trace the future outcomes of such inconsistencies in the future years of the democratic order. They can be a venue for attracting attention on the victim's losses beyond the criminal sphere, which has been proven perhaps to be even more preoccupant (Robben, 2007).

The question that should be invoked to truth commissions cannot be narrowed to practical violations of rights, such as kidnappings, forced disappearances, torture and arbitrary executions. These organisms should be able to move past the raw criminality and equally embrace psychological and social offenses. As reminded by Salimovich and others (1992), these violations are of particular relevance because they were potentially imprinted on the children of the repressive regimes/civil wars, meaning that there is an intergenerational component of such abuses: while criminality have ideally ended with the new democratic order and has caused individual harm, psychological wounds and socio-economic vulnerability do not fade out with time; instead they have the power to accompany victims throughout the years and hunt new generations in an unmeasurable time-lapse.

Following this idea, truth commissions should have their mandate expanded to investigate the weight of past abuses on the survivors and the possible outcomes of the socio-economic vulnerabilities that will undeniably be presented in the upcoming post-transitional years. That is why, when Mani (2008) suggests that a new interpretation of transitional justice should take into consideration the weight of war economies, the costs of applying its mechanisms and the future criminality waves, truth commissions should be likewise reinterpreted in order to accommodate all these new desires at once.

However, the immediate challenges of such measure would be twofold. First of all, this would consequently increase the already high costs of truth commissions, meaning that more valuable nation-building resources and sponsors should be involved. In addition, tackling sensitive topics such as poverty, education and psychological abuses strongly threaten the fulfilment of the investigative task considering the time and budget constraints, meaning that a final document – if ever published – could be weak and incomplete (Waldorf, 2012). In this sense, it seems that the success of truth commissions in exercising a wider and more comprehensive mandate that could follow a holistic approach is heavily intertwined with the political will of the new order, which, as seen, has a strong influence on the outcomes of such mechanism (Freeman, Hayner, 2003).

One possible way out of these stalemates is by fractioning the mandate of truth commissions. Instead of delivering one singular final document, this organism could be redesigned in order to have two distinct phases, the first one carrying the traditional scope of unveiling the truth for victims and perpetrators, and a second one focused on the potential harms that the legacy of conflict and repression could represent in due time. Hence, a renewed truth commission would ideally contain these two steps, each one producing an individual final report and limited to different time and budget constraints, in a way of respecting the financial reality and the possibilities of the workforce of its practitioners.

While the first phase has the power to delimitate the extension of the violence caused by the previous regime and shed the light on the need of reparations and specific public policies, the second one would hold an informative nature of blind spots in the post-transitional society that could be considered by the new democratic rulers in order to promote social progress. Nevertheless, it seems that, either way, truth commissions would always face the challenge of fitting in the contemporary political will, which may not always conduct to social change, if only considering the power of elites and their valuable *status quo* in the new era. That is why a reinterpreted version of transitional justice mechanisms should not rely entirely on truth commissions.

5.3.2.2. Reparations

Similar to trials, reparations have the connotation of individual reprimand, as both of them represent a direct constraint on the perpetrator's personal life – either by limiting his liberty or his economic patrimony. Embedded in the notion of direct compensation, they

have the power of bringing a concrete sense of justice to victims and survivors because it makes a quantitative measure of how much the victim was affected by the past violation of rights. The core element of reparations is to reset the economic or moral loss of a person and therefore the *status quo ante*, meaning, the factual reality lived by the victim prior to the abuse. Regardless of the strategy, if through money or symbolic measures, the main idea is of restitution (Masiko-Mpaka and others, 2022).

As seen in the previous chapters, reparations can be severely harmed by the economic prospects of the new democratic rule, so much that a person can be judicially entitled to such remedy, although this right may never leave the paper, let alone be truly implemented. That is why many post-transitional countries have adopted symbolic reparations, such as the removal of *honoris causa* titles of former military dictatorship personnel in Brazil, and the creation of the MEVES museum in Paraguay.

In this light, considering that post-transitional justice societies struggle to restore the economic balance of the country in the first years of the new democratic era, perhaps focusing on individual reparations is counter-productive. According to Walforf (2012), the individualistic approach of reparations can cause polarization between beneficiaries to a certain level of competition among them, and although this remedy may contribute to the restoration of the casuistic *status quo ante*, little it contributes to an overall improvement of social welfare. Similarly, Miller (2008) argues that the individual claims and competitions of who should be payed and how much this compensation should be contribute to the strong negative impact in deriving the attention away from the question of economy; not to mention that, just like reparations narrow the benefits to the ones named, say, by truth commissions, it also narrows the perpetrators involved.

Adding this challenges to the fact that, on one hand, since its birth transitional justice is doomed with scarce resources, and on the other the fact that symbolic measures alone will not promote the transformation of the community, a good way out of this maze is to promote collective reparations. As observed by Kora Andrieu (2014, p. 96),

> (…) collective reparations have come to be seen as an effective way to redistribute the goods of society by giving priority to the group that was previously marginalised. They considerably extend the definition of 'victims' to include not only individuals who experienced physical violence directly, but also those whose lives were mutilated in the day-to-day web of regulations in which the atrocities took place. They aim to compensate for the effects of such social ills as corruption, forced displacement, lack of healthcare, hunger or disease. This redefinition of rights, defended by many transitional justice

> experts, implies a radical break with the way that they have been conceptualised and implemented since their creation.

Through this perspective, collective reparations could deliver not only specific remedies to victims and survivors, but they could also build the axes of a true transformation of the community, one that could tackle socio-economic vulnerabilities, and hence aligned with a holistic approach of transitioning out of a scenario of political violence. As noted by Waldorf (2012), there are three main advantages of focusing on collective reparations: they are more likely to encourage a sustainable cycle of income and wealth; they can strengthen the financial institutions needed to tackle poverty; they are more likely to attract international sponsorship. This last aspect is interesting when dialoguing with the cases of the Northern Triangle, where the entire transitional justice process was conducted by the international community.

Examples of collective reparations could include public policies related with education and the labour market, especially if considering that the main driving factor of criminality is the lack of economic prospects. Such approach would be aligned with the idea of transitional justice as a product of justice for the future, which entails not hunting individualistic monetary compensation, but instead the social changes needed for the true long-term commitment with democracy and its institutions (Gray, 2010).

5.3.2.3. New tools

Apart from the traditional mechanisms, a reinterpreted version of transitional justice should count with new tools that could facilitate the achievement of its goals, or at least move its outcomes away from the dead end previously discussed. If reviewing all its five pillars, it can be seen that much attention is given to the individual sphere of retributive justice (e.g. trials, reparations and lustration policies), while the core idea of collective restorative justice fades out to the background of the victim *versus* perpetrator dichotomy. In this sense, a revised transitional justice should include mechanisms that would consider the true restoration of human rights, not only anchored in the reconciliation with the past, but by settling the solid grounds for a prosperous future.

As seen in the six study cases, from the standpoint of social and economic development, democratization alone is not enough to promote such prosperity. Because economy was an unaddressed theme, criminality and corruption levels have skyrocketed to such an extent that the success of transitional justice in resetting democracy is blurred by the alarming inconsistencies of such regime, just as well as its credibility is questionable. As

observed by Miller (2008, p. 280), “since transitional justice mechanisms (…) are discursive tools just as much as they are instruments of accountability or reconciliation, they may frame the conflict in one dimension without providing an alternative vocabulary”. That is why a reinterpreted theory should launch at least two new mechanisms: one focused on economic measures, considering that one prominent driving factor of criminality is economic vulnerability and the illusion of financial stability through criminality; and one focused on anticorruption measures, since this factor is a great discouraging characteristic of the post-transitional justice institutions.

Starting with the economic measures, Professor Ismael Muvingi (2022) lists several socioeconomic components that are strictly related with structural violence – the main characteristic of all six post-transitional countries. Relative deprivation is the first one listed, as a consequence of the draft and implementation of peace agreements weighted with elitist views only, and therefore not considering the concerns of the poor, which ultimately leads to the vicious cycle of poverty regardless of the kind of governance. Another interesting feature listed is greed and grievance, in the sense of the profits of violence by perpetrators and the rational choice of the youth in joining gangs or betting in the strength of the new institutions (figure 3, the dead end of Transitional Justice).

In this sense, although a reinterpreted view of truth commissions and reparations could facilitate the restoration of economy, one specific mechanism designed uniquely for the management of socioeconomic features may be more valuable given the complexity behind such topic. As observed by Rama Mani (2008), the key linkage between transitional justice and socioeconomic justice should be development. Development is the feature that encompasses all layers of justice – social, cultural, legal – and therefore should be deemed essential and a priority of the new order. This understanding could be translated by a specific branch/Ministry within the democratic government responsible to tackle development issues with a collective perspective; one that could manage domestic resources and attract international sponsorship on this regard.

Needless to say, if high amounts of resources should be entrusted to one singular organ, the need for anticorruption measures appears to become even more evident. One interesting study on the need of a specific mechanism to tackle this practice was conducted by Professor Kora Andrieu (2012). According to her findings, the creation of a specific anticorruption mechanism could enhance truth-seeking by unveiling the corruptive features of past regimes and the depth of relevance of such practices in the

forthcoming order, and hence would act in parallel with the traditional venues of transitional justice. However, she observes, there has to be a clear distinction between what is a matter of transition and what is a matter of governance: lack of transparency and financial accountability, for example, are concerns rooted in the new era – boosted by elites and populist governments, as previously seen –, and not a question of transition.

Nevertheless, the line that separates transitional justice from the long-lasting results it wants to achieve has much to do with what Carranza (2008) calls structural inequities, the ones responsible for the chronic condition of poverty and social vulnerability in a community – which, as seen, is very prominent in Latin America: "by allowing these structural inequities to persist through evasion, the field of transitional justice can rightly be accused of creating and then frustrating expectations of meaningful change" (2008, p. 330). That is to say, if transitional justice practitioners deeply want to see the product of such theory well-positioned as the grounds and venues for the new institutions, it might as well tackle such inequities at once, or else the achievement of such goals would be poisoned.

Brainstorming what a new anticorruption mechanism would look like has to consider the resources – human and non-human – available in each case during the transition process. Just like in the six countries analysed, in which there is no consensus to which tools should be adopted, when, and by which organ, any new mechanisms specifically designed to tackle socio-economic aspects of post-transitional societies and anticorruption should be discussed internally by the transitional justice practitioners and the new-born institutions. Needless to say, as noted by Freeman and Hayner (2003), the biggest problem that derives from such porosity is the reliance on political will.

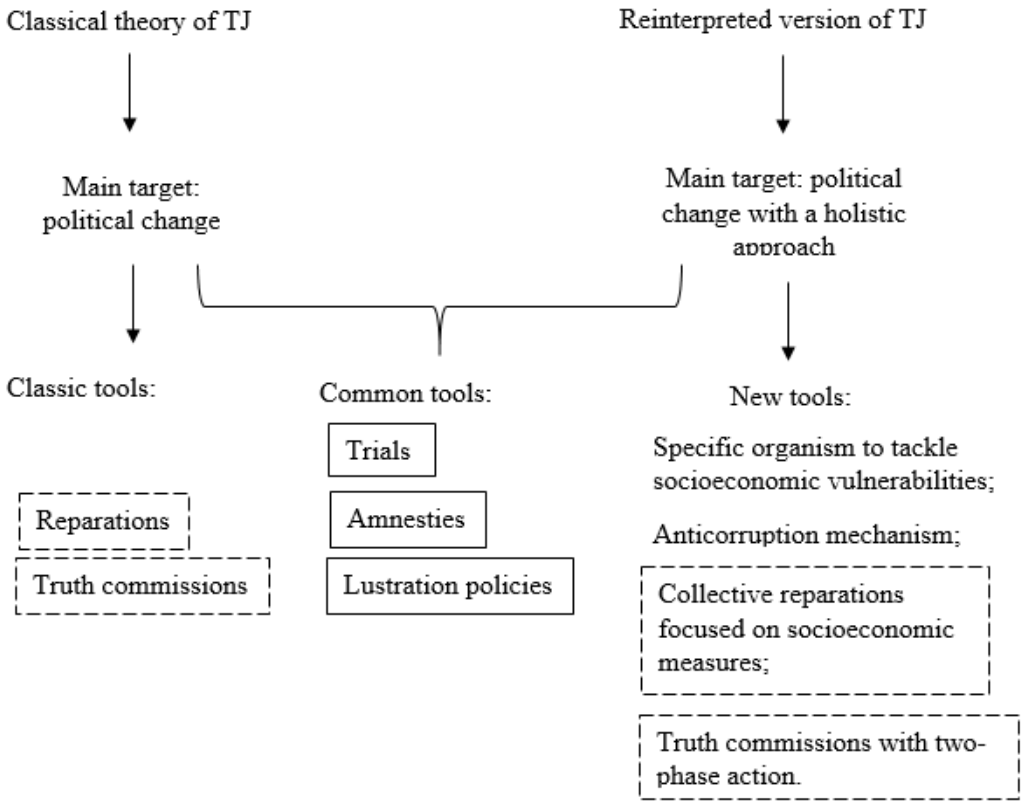
Even if considering these new tools as part of the reinterpreted version of the pre-existing mechanisms, polity will always blur or boost the success of transitional justice. Such conclusion is a premise of this process and therefore its outcomes are calculated: in some cases, the biggest achievement would be a peace agreement rather vague and omitted in relation to land property and share of wealth (e.g. El Salvador, Guatemala); in others, the new democratic order would struggle for years to bring accountability to perpetrators (e.g. Brazil) or it would even have to count with international courts to do so (e.g. Honduras, Paraguay). Nevertheless, the necessity of adding the features of structural violence/inequity – meaning, the socio-economic aspects of justice that were always present in the communities during and after the repressive regime/civil wars – or at least

brainstorming its baselines is what guarantees that transitional justice will eventually be reinterpreted to be more efficient and long-lasting when applied again.

5.4. Possible outcomes

Considering the theoretical framework developed so far, it is safe to say that the most important venues of a reinterpreted version of transitional justice gravitate around tackling socio-economic justice. Since the traditional application of economy did not consider this area of concern, the entire results were doomed to failure, as demonstrated with figure 3. In this sense, according to the argumentation constructed so far, a reinterpreted theory of Transitional Justice could be sketched as such:

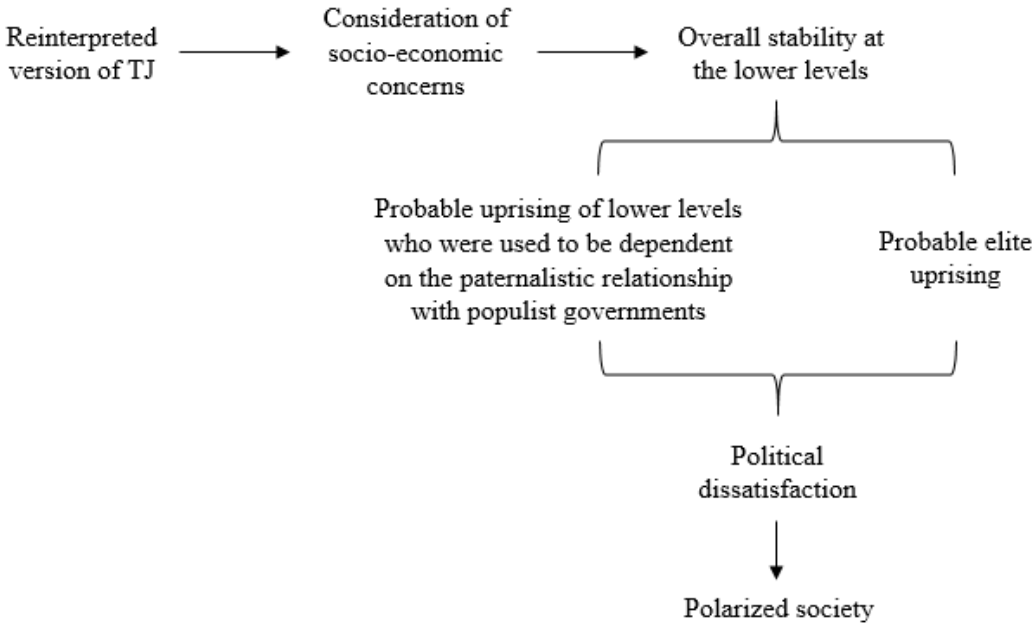
Figure 4. Comparative diagram between the classic and the reinterpreted views of Transitional Justice



According to this diagram, it is possible to notice that although the target of the reinterpreted version of transitional justice would be elasticized to include the holistic approach, the dialogue between the two theories would remain preserved because of their common tools, albeit the classical mechanisms of reparations and truth commissions would suffer changes with the reinterpretation, and two other new tools would emerge in order to tackle the wrongdoings and blank spots of the classical approach. This

reinterpretation would facilitate a broader brainstorm on the question of transition with both political and socioeconomic lenses, in an attempt to promote the structural changes needed at the bottom-up level to properly fill the post-transitional country with the human rights discourse. However, this does not automatically imply that a reinterpreted theory would have no thorns. If only considering the traditional prominence of elites within the new democratic institutions and the culture of corruption well-established in Latin America, even a reinterpreted version of transitional justice would face considerable challenges.

Figure 5. Possible outcomes of the reinterpreted version of Transitional Justice



First of all, while the logic consequence of trying to strengthen socio-economic justice for the lower levels of community according to its confirmed importance would be some level of stability – if considering a scenario which socio-economic vulnerabilities would be heavily downsized –, at least two reasonable events would potentially take place: on one hand, the overall dissatisfaction of the dominant elites who, to this day, still hold a powerful capacity of boycotting the democratic institutions (e.g. the Executive and Legislative powers); and on the other hand, the dissatisfaction of part of the lower levels of community who still portrait politicians as life-saviours and feed the endemic syndrome of external dependency (Belloni, 2020). This dichotomy would immediately result in an overall status of political dissatisfaction and therefore strong political polarization that could potentially stratify the community and enhance the beginning of,

once again, political violence. That is to say, either a traditional or a neoclassic approach of transitional justice would eventually lead to new areas of concern: while the first has led to corruption and criminality, the latter could potentially lead to another round of political violence.

Nevertheless, it is always important to remind the target of transitional justice. This theory was designed to promote political change and conduct the country from the unlawful state of things to a human rights oriented one, featured in strong institutions and sharing the liberal values of its Western peers. At any point should this theory be expected to provoke perpetual results, let alone flawless outcomes. Even a reinterpreted target that considers a holistic approach is not designed to speculate on every possible negative outcome and develop strategies to tackle them. On the contrary, one should not forget that the basic element of the theory is of action during a transition; meaning, it should be accompanied by other theories and action plans to ensure the duration of its achievements. That is why it is important to quote Kora Andrieu: "one should not give transitional justice quasi-magical powers to 'transform' or 'regenerate' societies" (2012, p. 553).

From another point of view, it is interesting to remind that healthy democracies are the ones with strong political competition. If a reinterpreted version of transitional justice would probably lead to political dissatisfaction, such outcome *per se* is not as harmful as the socioeconomic vulnerabilities that haunted the classical theory. The key distinguishing point between both versions of transitional justice relies on the fact that perhaps a reinterpreted version could lead to some negative but remediable outcomes, since the lower levels of community would not be poisoned by endemic criminality, neither the higher levels would be extremely condemned by corruption.

5.4.1. Towards Transformative Justice?

One interesting aspect of the reinterpreted version of transitional justice that was developed in this study is regarding its similarities with the theory of Transformative Justice. Indeed, this theory was born as an academic response to the many failures that the classical approach of transitional justice has repeatedly demonstrated over the years – perhaps most notably in Latin America, as seen. Since it was designed as an alternative theory to fill the gaps left by transitional justice, its main focus is rather on transformation than transition, because while the latter concept is narrowly portrayed in abandoning one

status to enter another, the first one calls for the bottom-up blossoming of the community and a true metamorphosis within its values, culture and well-being.

In a study developed by Evans and Wilkins (2017), the main shortcomings of transitional justice were summed up to five: the focus on individual victims and perpetrators; the focus on direct violations only; the narrow coverage of a static list of civil and political rights (and little or no attention to other classes of rights, such as socioeconomic); the uncertainty generated by not facing the grounds of the conflict; and the time and budget constraints. Interestingly, as seen in the previous chapters, this study proved to be accurate, since all of these concerns have appeared in the processes of transitional justice in the six Latin American contexts, which eventually led to the dead end of the achievements of the theory. That is why scholars have already started a debate on the efficiency of such theory and on whether it may be time to replace it by a brand new one.

As seen in the contexts of Latin America, one main flaw of the transitional justice theory was its inability to operate a change in the mind-set of civilians. There was never a heavy reliance on the new-born democratic institutions (e.g. the level of trust in the PNC in El Salvador) neither a sense that economic vulnerabilities would ever be tackled (e.g. poverty in Guatemala and Honduras). That is extremely relevant if considering the abovementioned rational choice made by many vulnerable families regarding the ways of obtaining profit, if by joining the lawful path or by association with gangs; and the many examples of people opting to the second option because of the feelings of belongingness and stability (e.g. gang associations in Brazil).

The idea of Transformative Justice appears in this context as a possible way out. As observed by Erin Daly (2001, p. 74), "a nation in transition is the same nation with a new government; a nation in the midst of a transformation is reinventing itself. Because transformation entails a recreation of the culture, it fulfils the promises of reconciliation and deterrence that transition alone cannot achieve". Transformative Justice, hence, could potentially deliver better and stronger outcomes for the post-transitional society, because it would be able to ideally provoke the structural changes needed to ensure the long-lasting prevalence of human rights, and therefore, ultimately, the conditions for any transitional justice goal to prosper in time. According to Daly (2001, p. 83),

> In a transformed society, the people will not only have democratic elections or a constitution, they will actually believe in democracy, human rights, and the principles of constitutionalism. Institutions that are part of transitional justice must then do more than restore or even advance; they must actually foster

> change in the society, leaving it qualitatively different than it was when they found it.

According to Wendy Lambourne (2009), transformative justice should be guided by six principles: the recognition of significance of symbolic justice and rituals; it has to be historically-oriented to deal with the past while it is future-oriented to be prospective; it should enhance ownership and capacity building; it should focus not only on institutional reforms but also structural transformation; it should connect transformation with reconciliation; and lastly, it should operate with a holistic approach. If contextualising such elements to the reinterpreted model of transitional justice developed so far, many similarities can be noted, especially regarding the second, third and last principles.

However, one may not argue on the complete substitution of one by the other. There is a need of always reminding the core aspect of transitional justice, meaning, the idea of facilitating a transition. If considering that the true meaning of "transition" means moving from one standpoint to another, it is only logical to assume that transitional justice was never designed to deliver perpetual outcomes, neither to become the lifeline of new democratic communities. Similarly, if considering that "transformative" means substantially changing one standpoint for another completely different, barely linked with its previous nature, the idea of transformative justice would fall in the gap of a complementary approach, perhaps one suitable for the post-transitional justice era. Ultimately, while transitional justice is the vehicle to carry the community from repression to democracy, transformative justice is the vehicle that subjects the new-born democratic community to a metamorphosis that would ideally evolve its status to a truly human-rights oriented one, with little or no vulnerability left to haunt the survivors.

Through this logic, considering that, on one hand, transitional justice must essentially be short-termed and strictly related with transition to political violence to democracy – essentially Teitel's (2002) view of political change –, and on the other the fact that transitional justice and transformative justice have different principles and features, the conclusion should be that both theories are compatible yet singularly important. They should not be merged into one unique theory; neither transitional justice should be replaced by transformative justice. On the contrary, perhaps a reinterpreted version of transitional justice could embrace some aspects of the other theory, yet without losing its

identity of transitioning. According to Evans (2016), the relationship between both theories can be summarized by the following diagram:

Figure 6. The relationship between transformative and transitional justice (Evans, 2016, p. 08)

Perhaps the reinterpreted version of transitional justice would broaden the common area between both circles, although one circle would never overlap the other, if only considering that, in the end, "transition" and "transformation" are similar yet not synonymous. In this sense, both theories should be independent from one another, yet allowing some level of dialogue between them: while transitional justice will ultimately lead to inconsistencies regardless of the model adopted – if classical or reinterpreted –, transformative justice could emerge as a twin theory to be implemented in the aftermath of the transition. Ideally, both theories, if managed together and without overshadows, might have the power of delivering the dreamed strong and long-lasting human rights approach for the new societies.

5.5. Conclusion

This chapter aimed at exploring a reinterpretation of the classical model of transitional justice in order to overcome the main inconsistencies left by the application of the theory in the Latin American contexts previously analysed. The first notion that appears to guide the entire process of reinterpretation is the standpoint of the historical framework of transitional justice, meaning that a reinterpreted version of such theory should not derive

from its core ideals, or else it could lose sight from its fundamental target, meaning, the transition to democracy.

By enlarging the main target of transitional justice to include a holistic approach, the theory would be able to tackle the roots of the conflict and therefore provide perhaps a more comprehensive set of results, one that would cover the socio-economic vulnerabilities that, as seen, are the main driving factor towards criminality. In addition, by reinterpreting the pre-existing mechanisms of truth commissions and reparations, as well as designing one specific to tackle economic issues and another specialized in anticorruption, transitional justice would gain strength to deliver more prosperous results. However, as seen, this does not mean that a reinterpreted version would be flawless: just like its original approach, the new one could also drive the post-transitional community to hazardous scenarios, more prominently political polarization that could threaten the restoration of political violence.

In this light, despite the fact that Latin America is a troublesome region whose criminal rates and socioeconomic vulnerabilities are always flourishing instead of diminishing, one cannot hold the rounds of transitional justice uniquely accounted for it. Although the countries, to this day, still suffer with generalized violations of human rights, transitional justice was able to place the countries on the paths to democratization – although ones doomed to failure. Indeed, perhaps if a reinterpreted version of it had been used, different outcomes would have appeared, yet it is not possible to rely entirely on such approach to guarantee the prevalence of human rights in any territory, if only bearing in mind its transitional nature.

That is why a reinterpreted version of transitional justice, if ever applied, should count with its sibling theory of Transformative Justice. While it is natural that both theories would share similarities, they are different and unique mechanisms that could be placed alongside the road to democratization, one that requires the efforts of both these venues to prosper. For example, in the six countries analysed, perhaps a new round of transitional justice with the special bump of transformative justice should be in order. Although it is logical that such implementation would demand a valuable share of human and capital resources, it remains as an alternative to combat the rooted scenarios of corruption and criminality in the region.

Chapter 6: Conclusion

Transitional Justice is a complex theory from many standpoints. First of all, the main target of promoting political change, *per se*, is very delicate and challenging, if only considering that the countries in need of such transition are heavily accompanied by the fragmentation of its community, terrible episodes of human rights violations and a generalized state of socioeconomic vulnerability. In addition, from the standpoint of its many different mechanisms, the theory is quite porous in the sense that not every tool can be used at all circumstances, and one has to understand how to manage the volatile scenario of transition in order to rightfully use the appropriate one at the appropriate time. Lastly, from the standpoint of its results, this theory is curiously inconsistent: despite the strength of its theoretical approach – since it counts with the legacy of a historical evolution, as demonstrated in the second chapter of the study –, the outcomes of such practice are questionable: as seen throughout this study, it is not enough to achieve political change; as no democracy shall prevail upon fragile grounds.

The main objective of this study was of investigating the complexity of transitional justice in the specific context of Latin America. As already mentioned during the research, there was a preference for narrowing the Latin context in two sub-regions, the Southern Cone with Argentina, Brazil and Paraguay, and the Northern Triangle with El Salvador, Guatemala and Honduras. The option for such division was motivated both by the geographical spectrum – this way the scope of the study would embrace both South and Central America – and the reasoning spectrum, since although these are two different cultures, with different backgrounds and cultures, the outcomes of transitional justice were similar in all of them, which means that, for achievements or for failures, this theory proved to have patterns of limitations. And such patterns were analysed throughout the study in order to answer the four research questions/hypothesis presented in the first chapter.

The first question elaborated was regarding the use of transitional justice: did the six Latin American countries elected to this study succeeded in applying transitional justice to overcome repressive regimes? This topic was covered during the third chapter of the research, which provided the historical background of, first of all, the two Latin sub-regions and then of each specific country-case. It was possible to see that the paths to a generalized state of human rights violations were different for each sub-region, as in the Southern Cone the violence was motivated by the scenario of the Cold War and the fight

against subversion, whereas in the Northern Triangle there was a common background of social inequality and dissatisfaction with the prevailing oligarchic systems. Nevertheless, transitional justice has emerged in both contexts as the possible way out of such political turmoil, and it was not before its application that all six countries were able to see a brighter horizon of peace and the share of common democratic values of the Western world. From this perspective, the answer to the first question is affirmative: indeed, the six elected countries did manage to use transitional justice to overcome the repression caused by political violence.

Based on this premise, the second question of the research was elaborated to move one step ahead: is it true to say that peace and stability are automatic features that emerge after the transition from a repressive to a democratic regime is completed? The answer to this problem was constructed throughout the fourth chapter of the research. As demonstrated, after transitional justice, indeed all six countries have been experiencing the prevalence of institutions ruled by of democracy and the rule of law. Peace was somewhat achieved, in the pure sense of the end of hostilities and political violence, albeit stability coming from the democratic values seems to be an illusion.

The reasoning argued in the fourth chapter follows the idea of stability not coming from the rule of law, but instead from the intimidating presence of organized crime ruled by criminal enterprises, and corruption at the macro level orchestrated by elite bargains. The prove to such conclusion relies on the cases of the PCC and CV in Brazil and the *maras* in the Northern Triangle, and the corruption entrenched in the political life of these countries, either represented by examples of scandals involving elites and political parties (e.g. the operation Car Wash in Brazil, the *cuadernos de la corrupción* in Argentina), or else represented by the levels of distrust in the electoral processes and government institutions (e.g. the levels of distrust in the PNC in El Salvador). The dynamics prevailing in the Latin contexts is of on one hand the growing presence of such unlawful factors, in comparison with, on the other hand, poor official counter-insurgency at the top, as well as a certain level of tolerance or consented ignorance at the bottom levels of the community.

In this sense, the answer to the second research question is also affirmative: if considering the six country-cases analysed, it can be concluded that, indeed, peace and stability did emerge after transitional justice, and they are the automatic features deriving from the success of its application. This seems to be the appropriate answer in a short-term

scenario. That is why the third question, just as the previous one, was designed to keep going deeper on the overall analysis: is it possible to say that, in the long term, criminality and corruption are stability factors in the Latin American countries, much more than transitional justice? Following the argumentation explored in the fourth chapter, the answer to such question is also affirmative. Much more than the complete reliance on the democratic institutions, the communities living in the post-transitional Latin countries are much more aware of the flaws on their domestic systems than they are reliant on them. Meanwhile, at all levels of community but perhaps more prominently on the lower levels, the lack of economic perspectives is one huge driving factor of people, especially the youth, towards joining gangs and the criminal world. Therefore, the general stability observed in the country-cases is more inclined towards the rule of criminality and corruption, a market with such a skyrocketing influence domestically and abroad that is part of everyday life of all citizens, and is part of their identity as Latin people.

At this point, it is important to remind the main objective of the research, which is of studying the application of the classic theory of transitional justice in Latin America so to understand to what extent there is a need of reinterpretation of this process, since the stability proclaimed as a product of its application appears to be more related with corruption and criminality rather than strong institutions. From this perspective, the last research question of the study leads to this central target: is it possible to say that the classical theory of transitional justice *per se* was not enough to bring justice and peace to the countries studied, in such a way that it should be reinterpreted so to be more appropriate to their contexts? And just like all the other questions, the answer to this one is also affirmative.

The six case studies studied in the research have proved that transitional justice alone was not enough to ensure the health of the democratic institutions and values, and the abovementioned patterns of limitations are the reason why. The unaddressed question of economy in the broader sense, which in the narrow sense means the lack of attention of social injustice and on the prospects of practical healing of the survivors of the previous regime are the limitations that in all six scenarios have driven transitional justice to a dead end. These were the cracks on the post-transition context that enabled criminality and corruption to grow and flourish. Transitional justice is indeed flaw and doomed to failure in the long term, and that is why the reinterpretation of such classical theory emerges in this context as a possible alternative.

The reasoning of the fifth chapter of the research sustains the idea of reinterpreting the target and mechanisms of transitional justice in order to overcome the failures already proven to condemn its results. The strategy suggested is of elasticizing the classical target to include a holistic approach and also developing specific mechanisms that could tackle anticorruption and socioeconomic measures. This new sketch seems to be more comprehensive on the roots that have caused the political violence in the first place, as well as the legacies that would inevitably lead to the overshadow the new institutions and the democratic rule by corruption and criminality. Surprisingly, as the chapter demonstrates, such reinterpretation has a great correlation with the new theory of Transformative Justice, although they must be understood as two complementary approaches, since transitional justice is designed to act during transition times, while the latter should be used from the post-transition scenario on.

Through these lens, transitional justice should be reinterpreted because its classical approach is insufficient to promote the effective reconciliation, the idea of non-repetition and the prevalence of human rights. Even if from the standpoint of the peace as a mere cessation of hostilities, or from the standpoint of the "dirty stability" emerging from transitional justice, the conclusion is that, indeed, Latin America is stuck in a grey zone of weakness of institutions and poor prospects for the future, which can foster Joseph Borrell's comparison of the region to a jungle, mentioned in the first chapter. That is why, if considering the pessimist prospects of the Latin countries in terms of criminality and corruption, perhaps the idea of reinterpretation of transitional justice should be debated vigorously and warmly at the academic level in order to raise awareness of such possibility, since the future need of another round of transitional justice in those countries is yet to be seen.

BIBLIOGRAPHY

Book chapters, journals and magazine articles

Albarracín, J.; Tiscornia, L.; Trejo, Guillermo. "Breaking State Impunity in post-authoritarian regimes: why transitional justice processes deter criminal violence in new democracies". *Journal of Peace Research* 55, no. 6 (2018): 787-809.

Andrieu, K. "Dealing with a 'new' grievance: should anticorruption be part of the Transitional Justice agenda?". *Journal of Human Rights* 11, no. 4 (2012): 537-557.

Andrieu, K. "Political liberalism after mass violence: John Rawls and a 'theory' of transitional justice". *Transitional Justice Theories*. New York: Routledge, 2014: 85-104.

Arbour, L. "Economic and social justice for societies in transition". *New York University Journal of International Law and Politics* 40, no. 1 (2007): 1-28.

Arellano, D. B. "La Triple Frontera como polo de atracción de actividades ilícitas: condiciones endógenas institucionales e ilegalidad". *Atenea* 508 (2013): 101-120.

Arnoso, M.; Beristain, C.; Bobowik, M. "La Comisión de Verdad y Justicia en Paraguay: la experiencia emocional en los rituals de conmemoración y la eficacia percibida de la comisión". *Psicologia Política* 15, no. 32 (2015): 137-155.

Arnoso, M.; Beristain, C., Cárdenas, M.; Páez, D. "Paraguay: de las violaciones a los derechos humanos a la Justicia Transicional". *Salud & Sociedad* 5, no. 1 (2014): 98-114.

Arthur, P. "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice". *Human Rights Quarterly* 31, no. 2 (2009): 321-367.

Bauman, C. W.; Skitka, L. "Moral disagreement and procedural justice: moral mandates as constraints to voice effect". *Australian Journal of Psychology* 61, no. 1 (2009): 40-49.

Beare, M. E. "Corruption and organized crime: lessons from history*". Crime, Law & Social Change* 28 (1997): 155-172.

Belloni, R. "The Rise and Fall of Peacebuilding in the Balkans". Trento: Palgrave MacMillan, 2020.

Borba, P.; Cepik, M. "Crime Organizado, Estado e Segurança Internacional". *Contexto Internacional* 33, no. 2 (2012): 375-405.

Bowen, R. E. "The weight of the continuous past: transitional (in)justice and Impunity States in Central America". *Latin American Politics and* Society 61, no. 1 (2019): 126-147.

Braithwaite, J. "Survey article: repentance rituals and restorative justice". *The Journal of Political Philosophy* 8, no. 1 (2000): 115-131.

Braithwaite, J.; Makkai, T. "Reintegrative shaming and compliance with regulatory standards". *Criminology* 32, no. 3 (1994): 361-386.

Bucheli, M. "Multinational corporations, totalitarian regimes and economic nationalism: United Fruit Company in Central America, 1899-1975". *Business History* 50, no. 4 (2008): 433-454.

Buckely-Zistel, S. “Narrative truths: on the construction of the past in truth commissions”. *Transitional Justice Theories*. New York: Routledge, 2014: 144-162.

Buergenthal, T. “The United Nations Truth Commission for El Salvador”. *Vanderbilt Journal of Transnational Law* 27, no. 3 (1994): 497-544.

Call, C. T. “Democratisation, War and State-building: constructing the rule of law in El Salvador”. *Journal of Latin American Studies* 35 (2003): 827-862.

Cantor, D. J. “As deadly as armed conflict? Gang violence and forced displacement in the Northern Triangle of Central America”. Agenda Internacional 34 (2016): 77-97.

Carmo, S. A.; Magalhães, C. A. B. “Tríplice Fronteira: aspectos do crime organizado em Roraima”. *Boletim de Conjuntura* 12, no. 36 (2022): 76-100.

Carothers, T. “The end of the transition paradigm”. *Journal of Democracy* 13, no. 1 (2002): 05-21.

Carranza, R. “Plunder and Pain: should Transitional Justice engage with corruption and economic crimes?” *The International Journal of Transitional Justice* 2 (2008): 310-330.

Carvalho, F. L. “O emprego das forças armadas brasileiras no combate ao crime organizado do Rio de Janeiro (2010): um câmbio na política de segurança pública brasileira” *Military Review* (2013): 42-54.

Chávez, J. “How did the Civil War in El Salvador End?” *American Historical Review* (2015): 1784-1797.

Cooney, P. “Argentina’s quarter century experiment with neoliberalism: from dictatorship to depression”. *Revista de Economia Contemporânea* 11, no. 1 (2007): n.p.

Coutinho, L. “The evolution of the most lethal criminal organization in Brazil: the PCC”. *PRISM* 8, no. 1 (2019): 56-67.

Cruz, J.M. “The Root Causes of the Central American Crisis”. *Current History* (2015) 43-48.

Cypher, J. M. “The slow death of the Washington Consensus on Latin America”. *Latin American Perspectives* 25, no. 6 (1998): 47-51.

Daly, E. “Transformative Justice: charting a path to reconciliation”. *International Legal Perspectives* 12, no. 1,2 (2001): 73-184.

David, R. “What we know about transitional justice: survey and experimental evidence”. *Advances in Political Psychology* 38, no. 1 (2017): 151-177.

David, R.; Horne, C. M. “Lustration and the Personnel Reform of the State”. *Transitional Justice: theories, mechanisms and debates*. New York: Routledge, 2022: 122-142.

De Greiff, P. “Justice and Reparations”. The Handbook of Reparations. Oxford: Oxford Academic Press, 2006: 451-477.

Dias, C. C. “Estado e PCC em meio às tramas do poder arbitrário nas prisões”. *Tempo Social, Revista de Sociologia da USP* 23, no. 2 (2011): 213-233.

Elias, J. S. “Constitutional Changes, Transitional Justice, and Legitimacy: the life and death of Argentina’s Amnesty Laws”. *Hastings International and Comparative Law Review* 31 (2008): 587-646.

Eloranta, J. “Why did the League of Nations fail?” *Cliometrica Springer* 5 (2011): 27-52.

Evans, M. “Structural Violence, Socioeconomic Rights, and Transformative Justice”. *Journal of Human Rights* 15, no. 1 (2016): 1-20.

Evans, M.; Wilkins, D. “Transformative Justice, Reparations and Transatlantic Slavery”. *Social & Legal Studies* 28, no. 2 (2017): 137-157.

Farah, D. “Central America's Northern Triangle: a time for turmoil and transitions”. *PRISM* 4, no. 3 (2013): 88-109.

Filho, L. A. “The dynamics of drug-related organized crime and corruption in Brazil from a development perspective”. *Journal of Financial Crime* 15, no. 1 (2008): 49-59.

Fogelbach, J.J. “Gangs, Violence, and Victims in El Salvador, Guatemala and Honduras”. *San Diego International Law Journal* 12, no. 2 (2011): 417-462.

Franzki, H.; Olarte, M. C. “Understanding the political economy of transitional justice”. *Transitional Justice Theories*. New York: Routledge, 2014: 201-221.

Fukuyama, F. “O Fim da História e o Último Homem”. São Paulo: Rocco, 1992.

Gidley, R. “Illiberal Transitional Justice: the extraordinary chambers in the Courts of Cambodia”. *The State of Transitional Justice* (2019): 17-42.

Goes, I. “Between Truth and Amnesia: State Terrorism, Human Rights Violations and Transitional Justice in Brazil”. *European Review of Latin American and Caribbean Studies* 94 (2013): 83-96.

Goldfajn, I.; Martínez, L.; Valdés, R. O. “Washington Consensus in Latin America: from raw model to straw man”. *Journal of Economic Perspectives* 35, no. 3 (2021): 109-132.

Gomes, E. B.; Kesikowski, S. C.; Winter, L. A. C. “The Performance of the Common Market Group in relation to Transnational Organized Criminality”. *Brazilian Journal of International Law* 15, no. 2 (2018): 354-370.

Gray, D. C. “A no-excuse approach to Transitional Justice: reparations as tools of extraordinary justice”. *Washington University Law Review* 87, no. 5 (2010): 1043-1103.

Gready, P.; Robins, S. “From Transitional to Transformative Justice: a new agenda for practice”. *The International Journal of Transitional Justice* 8 (20140: 339-361.

Green, J.; Skidmore, T.; Smith, P. H. “Honduras: a country and a Coup”. *Modern Latin America* 8 (2013): n.p.

Grodsky, B. “Post-Communist Transitional Justice: lessons from twenty-five years of experience”. *Transitional Justice and Political Goods*. New York: Cambridge University Press, 2015.

Harmer, T. “The ‘Cuban Question’ and the Cold War in Latin America, 1959-1964”. *Journal of Cold War Studies* 21, no. 3 (2019): 114-151.

Hayner, F.; Mark, P. B. “Truth-telling”. *Reconciliation after violent conflict: a handbook.* Stockholm: International Institute for Democracy and Electoral Assistance, 2003: 122-139.

Holden, R. H. “Securing Central America against Communism: The United States and the Modernization of Surveillance in the Cold War”. *Journal of Interamerican Studies and World Affairs* 41, no. 1 (1999): 1-30.

Horne, C. “Lustration, Transitional Justice, and Social Trust in post-Communist countries: repairing or wresting the ties that bind?” *Europe-Asia Studies* 66, no. 2 (2014): 225-254.

Huntington, S. “Democracy’s Third Wave”. *Journal of Democracy* 2, no. 2 (1991): 12-34.

Illmer, P. “Defending Territory, Challenging Neoliberalism in Postwar Guatemala: Peaceful Resistance La Puya”. *Latin American Perspectives* 49, no. 6 (2022) 71-88.

Immerman, R. H. “Guatemala as a Cold War history”. *Political Science Quarterly* 95, no. 4 (1980): 629-653.

Janzen, R. “From Less War to More Peace: Guatemala's journey since 1996”. *The Canadian Journal of Peace and Conflict Studies* 40, no. 1 (2008): 55-75.

Karl, T. L. “The hybrid regimes of Central America”. *Journal of Democracy* 6, no. 3 (1995): 72-86.

Krznaric, R. “Civil and Uncivil actors in the Guatemalan Peace Process”. *Bulletin of Latin American Research* 18, no, 1 (1999): 1-16.

Lambert, P. “A decade of electoral democracy: continuity, change and crisis in Paraguay”. *Bulletin of Latin American Research* 19 (2000): 379-396.

Lambourne, W. “Transitional Justice and Peacebuilding after mass violence”. *The International Journal of Transitional Justice* 3, no. 1 (2009): 28-48.

Lambourne, W. “Transformative Justice, reconciliation and peacebuilding”. *Transitional Justice Theories.* New York: Routledge, 2014: 19-39.

Landsman, S. “Alternative Responses to Serious Human Rights abuses: of prosecution and truth commissions”. *Law and Contemporary Problems* 59, no. 4 (1996): 81-92.

Lanni, A. “Transitional Justice in Ancient Athens: a case study”. *University of Pennsylvania Journal of International Law* 32, no. 2 (2010): 551-594.

Laplante, L. J. “The plural justice aims of reparations”. *Transitional Justice Theories.* New York: Routledge, 2014: 66-84.

Lenta, P. “Amnesties, Transitional Justice and the rule of law”. *The Hague Journal on the Rule of Law* 15 (2023): 441-469.

Lessa, F. “Remnants of Truth: the role of archives in Human Rights Trials for Operation Condor”. *Latin American Research Review* 56, no. 1 (2021): 183-199.

Levitt, M. “Iranian and Hezbollah operations in South America: then and now”. *PRISM* 5, no. 4 (2016): 118-133.

Lutz, E. L. “Prosecutions of Heads of State in Europe”. *Prosecuting heads of State.* New York: Cambridge University Press, 2009: 25-45.

Mallinder, L.; McEvoy, K. “Amnesties in Transition: punishment, restoration, and the governance of mercy”. *Journal of Law and Society* 39, no. 3 (2012): 410-440.

Mani, R. “Editorial dilemmas of expanding transitional justice, or forging the nexus between Transitional Justice and Development”. *The International Journal of Transitional Justice* 2 (2008): 253-265.

Masiko-Mpaka, N.; Moyo-Kupeta, A.; Songa, A. “Reparations”. *Transitional Justice: theories, mechanisms and debates.* New York: Routledge, 2022: 143-167.

Mason, D. “Review: the Civil War in El Salvador: a retrospective analysis”. *Latin American Research Review* 34, no. 3 (1999): 176-196.

McAuliffe, P. “The problem of elites”. *Transitional and Transformative Justice: critical and international perspectives*. Abingdon: Routledge, 2019: 77-99.

McConnan, K.; McEvoy, K. “Victims and Transitional Justice: voice, agency and blame”. *Social and Legal Studies* 22, no. 4 (2013): 489-513.

McGill, D. “Different violence, different justice: taking structural violence seriously in post-conflict and transitional justice processes”. *State Crime Journal* 6, no. 1 (2017): 79-101.

Miller, Z. “Effects of Invisibility: in search of the ‘economic’ in Transitional Justice”. *The International Journal of Transitional Justice* 2 (2008): 266-291.

Minow, M. “Equality vs. Equity”. *American Journal of Law and Equality* no 1 (2021): 167-193.

Misse, M. “Crime Organizado e Crime Comum no Rio de Janeiro: diferenças e afinidades”. *Crime, Segurança e Instituições Estatais: problemas e perspectivas* 19, no. 40 (2011): 13-25.

Moffett, L. “Transitional Justice and Reparations: remedying the past?” *Research Handbook on Transitional Justice.* Northern Ireland: Queen’s University Belfast, 2017.

Mora, F. O. “From dictatorship to democracy: the US and regime change in Paraguay, 1954-1994”. *Bulletin of Latin American Research* 17, no. 1 (1998): 59-79.

Mousourakis, G. “Restorative Justice, Indigenous Custom and Justice Reform in New Zealand”. *South Pacific Studies* 36, no. 1 (2015): 1-32.

Muvingi, I. “Political economy and transitional justice”. *Transitional Justice: theories, mechanisms and debates.* New York: Routledge, 2022: 230-256.

Nino, C. S. “The duty to punish past abuses of human rights put into context: the case of Argentina”. *The Yale Law Journal* 100, no. 8 (1991): 2619-2640.

Olsen, T. D.; Payne, L. A.; Reiter, A. G. “Transitional Justice in the world, 1970-2007: insights from a new dataset”. *Journal of Peace Research* 47, no. 6 (2010): 803-809.

Olsen, T. D.; Payne, L. A.; Reiter, A. G. “The Justice Balance: when Transitional Justice improves human rights and democracy”. *The Human Rights Quarterly* 32, no. 4 (2010): 980-1007.

Pereira, W. p. “A política das multidões: populismo e neopopulismo na América Latina”. *Governança e Democracia Representativa.* São Paulo: Universidade de São Paulo, 2017: 301-322.

Pion-Berlin, D. “The fall of the military rule in Argentina: 1976-1983”. *Journal of Interamerican Studies and World Affairs* 27, no. 2 (1985): 55-76.

Pion-Berlin, D. “Will Soldiers follow? Economic integration and regional security in the Southern Cone”. *Journal of Interamerican Studies and World Affairs* 42, no. 1 (2000): 43-69.

Posner, E. A. “Transitional Justice as ordinary justice”. *Harvard Law Review* 117, no. 3 (2004): 761-825.

Quadrat, S. “Operação Condor: o ‘Mercosul’ do terror”. *Estudos Ibero-Americanos* XXVIII, no. 1 (2002): 167-182.

Robben, A. “The disappearance: despair, terror and fear”. *The ethnography of political violence: political violence and trauma in Argentina.* Philadelphia: University of Pennsylvania Press, 2007: 261-281.

Roett, R. “Paraguay after Stroessner”. *Foreign Affairs* 68, no. 2 (1989): 124-142.

Ruhl, J. M. “Redefining civil-military relations in Honduras”. *Journal of Interamerican Studies and World Affairs* 38, no. 1 (1996): 33-66.

Ruhl, J. M. “Honduras Unravels”. *Journal of Democracy* 21, no. 2 (2010): 93-107.

Salimovich, S.; Weinstein, E. “Victims of fear: the social psychology of repression. *Fear at the Edge”. Fear at the edge: State terror and resistance in Latin America.* Berkeley: University of California Press, 1992: 72-89.

Shank, G.; Takagi, P. “Critique of Restorative Justice”. *Social Justice for Workers in the Global Economy* 31, no 3 (2004): 147-163.

Sønneland, A. M.; Sveaass, N. “Dealing with the past: survivors’ perspectives on Economic Reparations in Argentina”. *International Perspectives in Psychology: Research, Practice, Consultation* 4, no. 4 (2015): 223-238.

Stahlberg, S. G. “From prison gangs to transnational mafia: the expansion of organized crime in Brazil”. *Trends in Organized Crime* 25 (2022): 443-465.

Stoll, D. “How the Guatemalan civil war became a genocide: revisiting the 2013 trial of General Efraín Ríos Montt”. *Journal of Latin American and Caribbean Anthropology* 27, no. 4 (2022): 528-539.

Strassner, V. “Argentina: Nunca Más – the long road to truth, justice and remembrance”. *After Dictatorship: instruments of transitional justice in post-authoritarian systems*. Berlin: Walter de Gruyter, 2023: 265-324.

Teitel, R. G. “Transitional Justice Genealogy”. *Harvard Human Rights Journal* 16 (2002): 69-94.

Van der Merwe, H.; Yusuf, H. O. “Origin, context and development of transitional justice”. *Transitional Justice: theories, mechanisms and debates.* New York: Routledge, 2022.

Van Noorloos, M. “A critical reflection on the rights to the truth about gross human rights violations”. *Human Rights Law Review* 21, no. 4 (2021): 874-898.

Waldorf, L. “Anticipating the past: transitional justice and socio-economic wrongs”. *Social & Legal Studies* 21, no. 2 (2012): 171-186.

Weeks, J. “An interpretation of the Central American Crisis”. *Latin American Research Review* 21, no. 3 (1986): 31-53.

Weyland, K. “The politics of corruption in Latin America”. *Journal of Democracy* 9, no. 2 (1998): 108-121.

Wolf, S. “Central American Street Gangs: their role in communities and prisons”. *European Review of Latin American and Caribbean Studies* 96 (2014): 127-140.

Zúquete, J. P. “Counterterrorism in Brazil: from dictatorship to democratic times”. *The Palgrave Handbook of Global Counterterrorism Policy*. London: Palgrave Macmillan, 2017: 275-294.

Reports, documents, papers

Americas Barometer. “Cultura política de la democracia em El Salvador y en las Américas”. United States of America: Agencia de los Estados Unidos para el Desarrollo Internacional, 2021.

Americas Barometer. “Cultura política de la democracia en Guatemala y en las Américas”. United States of America: Agencia de los Estados Unidos para el Desarrollo Internacional, 2021.

Ávalos, H.S. “Corruption in El Salvador: politicians, police and transportistas”. United States of America: Center for Latin America and Latino Studies, 2014.

Centre for Justice and International Law. “The Preliminary Report of the National Commissioner for the Protection of Human Rights in Honduras”. United States of America: Centre for Justice and International Law, 1994.

Comisión de Verdad y Justicia del Paraguay. “Informe Final”. Asunción: Comisión de Verdad y Justicia del Paraguay, 2008.

Comisión Nacional sobre la Desaparición de Personas (CONADEP). “Informe ‘Nunca Más’”. Argentina: CONADEP, 1984.

Corte Interamericana de Derechos Humanos. “Caso Goiburú y otros vs. Paraguay”. Costa Rica: CIDH, 2006.

Corte Interamericana de Derechos Humanos. “Caso Velásquez-Rodríguez vs. Honduras”. Costa Rica: CIDH, 1988.

Di John, J.; Putzel, J. “Political Settlements Issues Paper”. United Kingdon: UK Department for International Development, 2009.

Gómez, L.; Martínez, D. “A promise to be fulfilled: reparations for victims of the armed conflict in Guatemala”. Northern Ireland: Queen’s University Belfast, 2019.

Lasmar, J.; Singh, R. “A Tríplice Fronteira do Brasil: um centro de comércio ilícito com impacto global”. Brazil: Terrorism, Transnational Crime and Corruption Centre, 2023.

Organization of American States. “Caracas Declaration of Solidarity”. United States of America: US Governments Print Office, 1954.

Programa Registro Unificado de Víctimas del Terrorismo de Estado. “Fundamentos Conceptuales y Información Estadística: compilación”. Buenos Aires: Ministerio de Justicia y Derechos Humanos de la Nación, 2022.

Segovia, A. “Transitional Justice and DDR: the case of El Salvador”. New York: International Centre for Transitional Justice, 2009.

Transparency International. “Corruption Perceptions Index 2023”. Berlin: Transparency International, 2023.

United Nations. “Handbook on Restorative Justice Programmes”. Vienna: United Nations Office on Drugs and Crime, 2020.

United Nations. “Global Study on Homicide”. Vienna: United Nations Office on Drugs and Crime, 2023.

United Nations. “Homicide and Organized Crime in Latin America and the Caribbean”. Vienna: United Nations Office on Drugs and Crime, 2023.

United Nations. “Universal Declaration of Human Rights”. United States of America: United Nations, 1948.

United Nations. “The rule of law and transitional justice in conflict and post-conflict societies”. New York: Security Council, 2004.

United Nations. “World Migration Report 2022”. Geneva: United Nations, 2021.

United States of America. “Special report by the operations coordinating board to the national Security Council”. Washington: Office of the Historian, 1958.

Websites

Câmara dos Deputados do Brasil. *A perplexidade do brasileiro diante do confisco das contas bancárias e poupanças* < https://www.camara.leg.br/radio/programas/273499-a-perplexidade-do-brasileiro-diante-do-confisco-das-contas-bancarias-e-poupancas-05-44/>, (last view 08/03/2024)

Cambridge Dictionary. *Transition.* < https://dictionary.cambridge.org/dictionary/english-italian/transition>, (last view 01/12/2023)

Dudley, S. *Is Nayib Bukele’s ‘Iron Fist’ in El Salvador working?* < https://insightcrime.org/news/nayib-bukele-iron-fist-el-salvador-working/>, (last view 16/04/2024)

EEAS Press Team. *European Diplomatic Academy: opening remarks by High Representative Josep Borrell at the inauguration of the pilot programme* < https://www.eeas.europa.eu/eeas/european-diplomatic-academy-opening-remarks-high-representative-josep-borrell-inauguration-pilot_en>, (last view 26/11/2023)

Global Organized Crime Index. *Data explorer* < https://ocindex.net/explorer>, (last view 03/03/2024)

Governo Brasileiro. Comissão Nacional da Verdade < http://cnv.memoriasreveladas.gov.br/index.php/2-uncategorised/417-operacao-condor-e-a-ditadura-no-brasil-analise-de-documentos-desclassificados>, (last view 27/01/2024)

Human Rights Watch. *Argentina: amnesty laws struck down* < https://www.hrw.org/news/2005/06/14/argentina-amnesty-laws-struck-down>, (last view 27/01/2024)

Human Rights Watch. *Guatemala: Rios Montt convicted of genocide* https://www.hrw.org/news/2013/05/10/guatemala-rios-montt-convicted-genocide, (last view 11/02/2024)

International Centre for Truth and Justice. *Challenging the conventional: case studies – Guatemala* https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/guatemala.html#01/5, (last view 11/02/2024)

MERCOSUR. *Reunião Especializada de Ministérios Públicos do MERCOSUL (REMPM)* < https://www.mercosur.int/pt-br/temas/rempm-reuniao-especializada-de-ministerios-publicos-do-mercosul/>, (last view 17/03/2024)

Miller, D. *Justice.* < *https://plato.stanford.edu/entries/justice/#JustMappConc*> (last view 01/12/2023)

Ministerio de Cultura. *Qué es la CONADEP?* < https://www.cultura.gob.ar/que-es-la-conadep-9904/>, (last view 26/01/2024)

Ministério Público Federal. *MPF recomenda que a UFSM revogue títulos honoris causa concedidos aos marechais Costa e Silva e Castello Branco.* < https://www.mpf.mp.br/rs/sala-de-imprensa/noticias-rs/mpf-recomenda-que-a-ufsm-revogue-titulos-honoris-causa-concedidos-aos-marechais-costa-e-silva-e-castello-branco>, (last view 28/02/2024)

Oxford English Dictionary. *Transition.* < https://www.oed.com/search/dictionary/?scope=Entries&q=transition>, (last view 01/12/2023).

Presidência da República. *Ato Institucional n° 1, de 9 de abril de 1964* < https://www.planalto.gov.br/ccivil_03/ait/ait-01-64.htm>, (last view 29/01/2024)

Presidência da República. *Ato Institucional n° 5, de 13 de dezembro de 1968* < https://www.planalto.gov.br/ccivil_03/ait/ait-05-68.htm>, (last view 29/01/2024)

Presidência da República. Lei n° 6.683, de 28 de Agosto de 1979 < https://www.planalto.gov.br/ccivil_03/leis/l6683.htm>, (last view 29/01/2024)

Rettberg, A. *The legacies of armed conflict on lasting peace and development in Latin America* < https://www.un.org/en/chronicle/article/legacies-armed-conflict-lasting-peace-and-development-latin-america>, (last view 10/03/2024)

The Centre for Justice and Accountability (CJA). *El Salvador* < https://cja.org/where-we-work/el-salvador/#:~:text=Over%2075%2C000%20civilians%20died%20at,Salvador%20(1980%2D1992).>, (last view 03/02/2024)

The Centre for Justice and Accountability (CJA). *Honduras* < https://cja.org/where-we-work/honduras/>, (last view 13/02/2024)

The International Centre for Transitional Justice. *Justice. Truth. Dignity.* < https://www.ictj.org/>, (last view 27/11/2023)

United Nations. *United Nations Convention against Transnational Organized Crime* < https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en>, (last view 17/03/2024)

United Nations Department of Economic and Social Affairs. *Sustainable Development* < https://sdgs.un.org/goals/goal16>, (last view 27/11/2023)

United Nations Office of the High Commissioner for Human Rights. *Justice delayed but not denied: transitional justice in El Salvador* < https://www.ohchr.org/en/stories/2020/04/justice-delayed-not-denied-transitional-justice-el-salvador>, (last view 04/02/2024)

Walen, A. *Retributive Justice.* < https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=justice-retributive>, (last view 04/12/2023)

World Bank. *Atlas of Sustainable Development Goals 2023* < https://datatopics.worldbank.org/sdgatlas/goal-16-peace-justice-and-strong-institutions?lang=en>, (last view 27/11/2023)

World Bank. *Inflation, consumer prices (annual %) – Argentina, Brazil, El Salvador, Guatemala, Honduras, Paraguay* < https://data.worldbank.org/indicator/FP.CPI.TOTL.ZG?end=2022&locations=AR-BR-SV-GT-HN-PY&start=2022&view=bar>, (last view 03/03/2024)

World Bank. *Intentional homicides (per 100,000 people) – El Salvador, Honduras, Argentina, Paraguay, Brazil, Guatemala* < https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?end=2021&locations=SV-HN-AR-PY-BR-GT&start=2000>, (last view 12/03/2024)