

**Transitional Justice: The Key to Democracy, Development, and Sustainable Peace within Transitioning Societies in Latin America**

**BRIANNA WEISSMAN\***

Transitional justice is a key player in international law. It is an important tool utilized by societies that are transitioning from repressive regimes to democracies. It has a long history that traces back to the post-World War II period and began to take official shape in the late 1980s through the 1990s. Transitional justice is not an institution. Rather, it is number of different measures that aim to achieve justice for those who have been subjected to gross human rights violations. Transitional justice can take place in the form of both judicial and non-judicial measures, including truth commissions, reparation programs, criminal prosecution, institutional reforms, and memorialization efforts.

The implementation of transitional justice measures has played a significant role in Latin America. Many transitional justice measures were pioneered in Latin America. The question of “whether trials of leaders in the style of Nuremberg could be successfully followed in the Americas” was first asked in Argentina (Teitel, 2003, p. 75). In response to this question, truth commissions were first utilized in Argentina. Truth commissions typically succeeded in Latin America. They were best used “where the predecessor regime disappeared persons or repressed information about its persecution policy” (Teitel, 2003, p. 79).

Latin America is the region that has the longest history of practicing transitional justice measures, such as truth commissions and human rights trials. These measures have proved to play a pivotal role in Latin American countries transitioning from repressive military governments, where impunity reigned, to democracies. The case studies of Chile, Argentina, Guatemala, and Colombia demonstrate the importance of transitional justice measures to the advancement of democracy, respect for human rights, and the creation of sustainable peace.

**The history of transitional justice**

There is no clear point in history where transitional justice emerged. However, there is a consensus that the term gained recognition and meaning in the late 1980s through the 1990s. The field of transitional justice is defined as “an international web of individuals and institutions whose internal coherence is held together by common concepts, practical aims, and distinctive claims for legitimacy” (Arthur, 2009, p. 324). Transitional justice is the brainchild of people from different backgrounds. These include policymakers, legal scholars, journalists, lawyers, human rights activists, and comparative politics experts.

An important milestone in the formation of transitional justice was the 1988 Aspen Institute Conference, which “sought to clarify the political, moral, and legal challenges that those seeking justice for state crimes faced in the democratic transitions in the 1980s” (Arthur, 2009, p. 349).

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\* Brianna Weissman graduated Ramapo College in May 2020 and is an incoming first year student at Elisabeth Haub School of Law at Pace University.

Conference participants discussed, among other issues, international law obligations to punish human rights violators, whether states have a minimal obligation to reveal past violations, and how a society should deal with addressing human rights abuses carried out by armed forces.

Alice Henkin, the conference's organizer, noted in the Conference Report that participants agreed that there was no general obligation under customary international law to punish human rights violators (Arthur, 2009, p. 352), but there was an obligation for states to establish the truth regarding past violations. There was much debate among attendees regarding the role of discretion and prudence. Some argued that political judgement held importance in developing transitional justice policies, others became frustrated with such an idea. Lastly, it was decided that there should be a specific set of measures for dealing with human rights abuses by the military.

The field of transitional justice was furthered in 1995 with the publication of Neil Kritz's *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Kritz set forth a definition of transitional justice, proclaiming that it was "something undertaken by 'emerging democracies'—states that had undergone a change of regime" (Arthur, 2009, p. 331). The book recalled the experiences of countries such as Chile, Czechoslovakia, and Belgium as they successfully transitioned from repressive regimes to democracies. Telling these stories was thought to benefit countries who were going through the process themselves.

Timothy Gorton Ash, in his review of Kritz's work for *The New York Review of Books*, argued that "no word or phrase existed in English that captured the full range of all [of transitional justices'] attending processes" (Arthur, 2009, p.332). He asserted that historians are the only group capable of serving justice to the past. Ash's critique revealed what had been missing from Kritz's book: the 1980s German *Historikerstreit* (historians' debate). At the time, the historians' debate was "a sophisticated, and highly public, conflict about how to interpret the Nazi era and the Holocaust" (Arthur, 2009, p. 332). More importantly, it aimed to decide both how and when "the memory of such events might be 'overcome' or 'mastered,' and a more positive image of German history accepted" (Arthur, 2009, p. 332). Kritz's proposed term, by contrast, was associated with short-term political problems that could be solved in a transitional period.

Transitional justice has been practiced far before the term was officially coined. Ruti Teitel, a professor of comparative law at New York Law School, breaks down the evolution of transitional justice in three phases. The first phase took place in the postwar period, following World Wars I and II; the second phase took place following the Cold War; and the third phase is referred to as the 'steady-state' phase, and is what we are currently in. Each phase is unique and builds upon the others to develop what is now known as transitional justice.

The first phase of transitional justice is the postwar phase. It "encompasses the post-World War II model of justice," but "the history begins earlier in the century, following World War I" (Teitel, 2003, p.72). This phase is characterized by international involvement in judicial proceedings and assertion of the rule of law. Justice came in the form of national trials and monetary sanctions, both of which were criticized. After World War I, there were unsuccessful national trials, such as the Leipzig War Crimes Trials. Additionally, monetary sanctions against Germany are posited as a leading cause for their involvement in World War II.

Following World War II, transitional justice was approached differently. As the post-World War I national trials had been unsuccessful, the focus shifted towards “international criminal accountability for the Reich’s leadership”. This “turn to international criminal law and the extension of its applicability beyond the state to the individual” was a breakthrough for transitional justice (Teitel, 2003, pp. 72-73).

The second phase is referred to as the post-Cold War period. This phase began with the triumph of the United States over the Soviet Union and the “attendant proliferation of political democratization and modernization” (Teitel, 2003, p. 75). At this point, leaders were wary to host trials such as the Nuremberg Trials, in fear that they may not be successful. For the most part, international involvement was minimal in this phase. This was intentional, as it would prove the competency of new regimes.

The post-Cold War phase can be characterized by truth commissions and restorative justice. Truth commissions served to “investigate, document, and report upon human rights abuses within a country over a specified period of time” and were desirable for their “ability to offer a broader historical perspective” compared to trials (Teitel, 2003, pp. 78-79). In the postwar phase, transitional justice efforts had the goal of asserting the rule of law. In this phase, the goal shifted to fostering peace within transitioning societies. The actors in this phase also changed. Political and legal actors shifted to actors with moral authority, such as human rights groups. Legal action was no longer the main goal.

By the late 1990s, “there were persistent calls for apologies, reparations [and] memoirs ... all related to past suffering and wrongdoing” (Teitel, 2003, p. 85). The international community had previously adopted the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In this phase, it became clear that transitional justice would not be time sensitive. Here, the question of state sovereignty and jurisdiction were commonly raised. It was argued that transitioning societies may not be competent to hold their own trial or truth commissions, despite the benefits of doing so.

The third and final phase is referred to as “steady-state transitional justice” (Teitel, 2003, p. 89). This phase is characterized by the normalization of transitional justice. We see the creation of the International Criminal Court and a turn back to international involvement. The ICC has the lofty responsibility of prosecuting “war crimes, genocide, and crimes against humanity as a routine matter under international law” (Teitel, 2003, p. 90). The goal of this phase remains to advance human rights protections while still asserting the rule of law.

### **Transitional justice methods**

Transitional justice measures take different forms, both judicial and non-judicial, including criminal prosecutions, truth commissions, reparation programs, institutional reforms, and memorialization efforts. Each of these measures has the ability to contribute restorative justice or retributive justice to societies undergoing transitions. When implemented properly, these mechanisms are useful to victims seeking democracy, development, and peace within their societies.

#### *Criminal prosecutions*

Criminal prosecutions are one of the most commonly used and understood transitional justice measures. Criminal prosecutions can develop the rule of law, put an end to impunity, and act as a deterrent for future crimes. Evidence collected during criminal prosecutions also helps to create accurate historical records of atrocities, making them difficult to deny. Most importantly, criminal prosecutions can aid in the development of stable institutions for newly transitioning societies.

Criminal prosecutions as a transitional justice measure are most commonly held for three crimes: war crimes, genocide, and crimes against humanity. War crimes are serious violations of international humanitarian law, such as mutilation, torture, sexual slavery, unlawful confinement, and unjustified destruction of property. These laws are codified in treaties such as the Geneva Conventions of 1949 and the Rome Statutes. Genocide, defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, encompasses acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (Article II). These acts can include inflicting severe mental or bodily harm, killing, and attempting to prevent births. Crimes against humanity can also occur during both armed conflict or a time of peace. Crimes against humanity are most commonly directed towards civilian populations by state actors. The founding statutes of institutions such as the International Criminal Court and some international criminal tribunals lay out the framework of what constitutes a crime against humanity: extermination, torture, rape, forced disappearances, and murder all constitute crimes against humanity.

Criminal prosecutions can take place in a number of different courts, including domestic courts, hybrid courts, and institutions such as the International Criminal Court (ICC). Domestic courts are the most beneficial venues for criminal prosecutions as a transitional justice mechanism. The use of domestic courts “helps to ensure that parties understand the law, witnesses have easy access to the courts, and public awareness is maximized” (US Department of State, 2016a). This is not an easy task, as many societies going through transitions most often do not have the resources to effectively hold prosecutions. Latin America has an extensive history of successfully using domestic courts for criminal prosecutions.

Hybrid courts “combine domestic and international elements,” “may be staffed by a mix of international and domestic judges, prosecutors, and court officials, and they may apply elements of both international and domestic law” (US Department of State, 2016a). Hybrid courts are usually created within the affected country, which allows the society in question to remain in charge, while assistance from international actors can be provided where it is needed.

Lastly, criminal prosecutions can be held at the International Criminal Court. The Rome Statute created the ICC and gave it power to “investigate and adjudicate cases of individuals accused of responsibility for war crimes, crimes against humanity, and genocide” (US Department of State, 2016a). There are a few limitations on the ICC. The Court only has jurisdiction over crimes that occurred after its creation on July 1, 2002, and only over countries that are parties to the Rome Statute. Currently, there are 123 state parties to the Rome Statute. The ICC is also a court of last resort, meaning countries should only turn to the ICC if authorities are either unwilling, or unable to carry out prosecutions domestically. The ICC lacks a police force, so when warrants are issued, countries are responsible for capturing and turning over criminals, which is

often difficult to accomplish. Despite these challenges, the ICC has delved into cases in places such as Kenya, Sudan, and Libya.

There are a number of things to consider when using criminal prosecutions as a transitional justice measure. Prosecutions must remain impartial and independent. This is often difficult for domestic trials because many of the legal actors may have been involved in the conflict themselves. Due process is another important factor in these trials. One of the main purposes of prosecutions are to “reinforce the norm that each person, regardless of his or her position, is subject to the rule of law and benefits from legal protections” (US Department of State, 2016a). The assurance of due process can be difficult for domestic courts and in transitioning societies with weak traditions of due process. Criminal prosecutions can also require extensive amounts of resources. Often times countries are not able to provide these resources, which include time, money, judges, prosecutors, and investigators. Despite many obstacles, criminal prosecutions can be a very helpful tool to transitioning societies. They can aid in the development of the rule of law in countries while helping victims gain justice.

### *Truth commissions*

Truth commissions are one of the oldest and most effective transitional justice mechanisms. They are a non-judicial measure “designed to investigate and report on past situations involving large-scale and often systematic atrocities” (US Department of State, 2016d). Truth commissions can either be put together by the state where the atrocities took place, or by the United Nations. They are generally made up of a combination of international and national actors, and have been utilized by over 30 countries around the world.

Their main goal is to “collect statements from a broad array of stakeholders including victims, witnesses, and perpetrators” (US Department of State, 2016d). They try to identify any possible patterns within the abuse and discover the causes of such violence. At the end of the truth commission, a public report is issued which provides recommendations for ways in which future abuses can be avoided and sustainable peace and stability can be achieved.

There are many advantages to using truth commissions, such as their focus on victims. Unlike prosecutions, truth commissions do not focus on punishment. Instead, they provide a safe place for victims to have their stories heard. Victims can come forward confidently because “truth commissions can be given the authority to engage with victims under conditions of anonymity and confidentiality” (US Department of State, 2016d). Truth commissions also have the ability to provide an accurate historical record of the events that occurred.

There are a few guiding principles for truth commissions. First, a truth commission “should be designed and implemented in a way that demonstrates that it is free from political manipulation, treats all sides fairly, and is open to public scrutiny” (US Department of State, 2016d). The process should be as transparent as possible, and findings and recommendations should be made public. Second, during the development and operation of the truth commission, it is essential that a number of groups are included. These groups include women, children, victims, and other smaller, more marginalized groups. Their involvement increases participation and knowledge of the process. Lastly, truth commissions are most effective when paired with other transitional justice measures. They are only able to provide recommendations on how a

society should proceed, but it is up to the people to prosecute criminals and provide for victims.

### *Reparations*

Reparations, also commonly referred to as reparative justice, is another commonly used transitional justice measure. Reparation programs focus on acknowledging the needs of victims or redress, and seek to address “the consequences as well as the cause of violations in material and symbolic ways” (US Department of State, 2016c). Reparations are the most meaningful way for justice to be given to victims, but they are also usually given last priority.

There are a number of different types of reparations. The first type is restitution. The goal of restitution is to restore the victim to their original status, prior to the violation. Examples include returning property or jobs which may have been taken. Monetary compensation is another form of reparation. Compensation is often provided to those who have suffered both mental or physical injury and require medical services. Rehabilitation is a form of reparation which “seeks to mend the harm suffered, usually through medical and psychological care as well as legal or social services” (US Department of State, 2016c). Satisfaction is a type of reparation which includes official recognition of the harm done and suffering caused. This can take the form of a public apology, memorials, or conducting searches for missing persons.

On December 16, 2005 the U.N. General Assembly adopted and proclaimed the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. According to this document, “the party responsible for the violation or abuse is primarily responsible for providing reparation.” Challenges associated with reparations include ensuring that each victim is addressed fairly and their needs are met, making sure victims are given the opportunity to fairly participate, and dealing with disparities such as class and gender.

### *Institutional reforms*

Institutions such as the judiciary and armed forces, including police and military, are generally a main perpetrator of human rights violations and sources of repression. Reforming such institutions is a vital transitional justice measure to ensure violations will not take place in the future. The International Center for Transitional Justice defines institutional reforms as “the process of reviewing and restructuring state institutions so that they respect human rights, preserve the rule of law, and are accountable to their constituents” (ICTJ).

Institutions should be restructured to increase both legitimacy and integrity. The implementation of oversight bodies should ensure accountability to (civilian) governance within different state institutions. Institutional reforms can also include the creation of new legal frameworks, primarily constitutional amendments or international human rights treaties. Providing education to employees of these institutions on different human rights standards is another way in which transitioning societies can reform their institutions.

Perhaps one of the most important examples of institutional reforms is the process of lustration and vetting. Lustration is defined by the United States Department of State as “a policy put in place by post-conflict or post-authoritarian governments to

remove from public institutions personnel who have been implicated in activities that call into questions their integrity and professionalism.” Vetting is the process which implements lustration policies. A thorough vetting process will generally include examination of “current personnel while also developing screening procedures to prevent the future recruitment of personnel implicated in abuses” (US Department of State, 2016b).

Institutional reforms are an important key to transitioning societies. Processes such as structural reform, implementing oversight bodies, and lustration and vetting are often overlooked. However, they are some of the most essential processes in ensuring non-recurrence of grave human rights abuses and atrocities.

### *Memorialization efforts*

The use of memorialization has become an increasingly popular transitional justice mechanism. Memorials can include monuments, museums and other historic sites. Societies transitioning out of oppressive regimes where human rights abuses occurred “see public memorialization as central to justice, reconciliation, truth-telling, reparation, and coming to grips with the past” (Brett et al, 2007, p. 1). Victims of violence believe that “memorialization initiatives were the second most important form of state reparation after financial compensation” (Brett et al, 2007, p.2). Memorial sites serve as forums for conversations which allow citizens to learn about their societies’ past. Memorials can come in a number of different forms. Different memorialization efforts can include museums, architectural work, other forms of art, and mass graves where ceremonies to honor victims are held. Construction of these memorials is often initiated by the government at fault as an effort to prove that they acknowledge the past and their wrongdoings.

There is no single transitional justice measure that can best help a society transition from a repressive regime to a democracy. Each measure, including criminal prosecutions, truth commissions, reparation programs, institutional reforms and memorialization efforts, is most effective when implemented together with others. If successful, these measures have the ability to bring about restorative and/or retributive justice to societies who have been subjected to mass human rights violations.

### **The issue of impunity**

The issue of impunity looms heavily over Latin America and poses a severe threat to the success of transitional justice measures. Impunity is often defined as “freedom from accountability or punishment for state crimes or abuses of power,” and is often considered “a fundamental cornerstone of [a] state’s terrorist machinery” (McSherry and Mejia, 1999, p. 1). After military regimes were pushed out by new leaders seeking democracy and order, impunity often became institutionalized. This was commonly done through legislation such as amnesties, executive decrees and executive pardons. Efforts to counter impunity have been implemented, but impunity remains an issue in achieving complete transitional justice goals.

It was initially feared that undertaking the prosecution of war criminals within Latin America would be too difficult, and that simple forgiveness by victims would be the only way for societies to be able to move on. At the same time, powerful national and international groups were pushing to end the reign of impunity. During the period following the Cold War, “a new balance of forces was developing in the international

arena, more conducive to liberal democratic and human rights and more hostile to military regimes” (McSherry and Mejia, 1999, p. 4). In the late 1980s, the United Nations began to take interest in the issue of impunity. At the same time in Latin America, tribunals were being held to raise awareness of the issue. Latin America took a huge step in November 1989 when “a Permanent People’s Tribunal on Impunity for Crimes Against Humanity in Latin America was held in Bogotá, with delegates from many countries, to present a picture of Latin America as a whole” (McSherry and Mejia, 1999, p. 6).

Despite being recognized as a major human rights issue by 1990, impunity continued to reign throughout Latin America. The existence of impunity within societies undergoing transition has a psychological impact on survivors of authoritarian regimes. Surviving victims of violence are forced to remain neighbors with the people who mercilessly killed their mothers, fathers, brothers, and sisters right in front of them. Villages are often made up of “approximately 1,000 people, most of whom are related in one way or another, these men were known and continued to be the authorities of the village[s]” (Zur, 1994, p. 15). People were exposed to mangled, tortured bodies, knowing that the people responsible were walking freely.

The impact is even worse for survivors who do not know who the perpetrators are. These survivors are left constantly questioning what has become of their loved ones. This uncertainty often prevents people from mourning the loss of their loved ones. Victims are left with “an awareness of their own powerlessness; the lack of power stems from the all-embracing might of the powerful which is stabilized in various social strata and supported by the situation of impunity in which they operate” (Zur, 1994, p. 15).

Dr. Paz Rojas, a doctor who works with the Corporation for the Promotion and Defense of Human Rights of the People, has done extensive research on this subject. He has observed in victims of such violence that there is an “appearance of psychosomatic diseases, psychotic decompensations, neuropsychological alternations, such as problems in the process of development and learning in children and psycho-organic disorders in adults” (Rojas, 1999, p. 19). He observes that a victim’s whole perception of the world around them can be significantly altered. Within his studies, “90% had no history of serious diseases and were in good health up to the time of their detention” (Rojas, 1999, p. 19). He refers to this study of impunity and crimes as ‘the study of the ailments of the soul.’

Dr. Rojas asserts that the two pillars which support the reign of impunity are a lack of justice and absence of truth, and “these two absences pervert the highest mental functions” (Rojas, 1999, p. 20). This lack of truth and justice, two predominant values in human beings, shifts morality greatly, affecting how people think and interact with others. In many of his patients, communication is nearly impossible. Many victims were no longer able to enjoy any economic, social, or cultural rights. Many victims expressed “that they did not any longer feel like a whole person with rights” (Rojas, 1999, p. 27).

### *Impunity in Latin America*

Just as Latin America has led the way with implementing transitional justice measures, it has also allowed impunity to reign. Following Argentina’s ‘Dirty War,’ a presidential pardon and multiple amnesty laws provided impunity to members of the armed forces who were responsible for human rights violations. It became clear that impunity would be present in Argentina when the ‘Full Stop’ law was passed by former



President Alfonsín in 1986. The law worked to halt all trials of members of the armed forces. In 1987 he passed the 'Due Obedience' law which "created the irrebuttable presumption of 'due obedience' for certain ranks of the security personnel below senior command rank who committed such acts ... from 1976-1983" (Crawford, 1990, p. 18).

It was not until 2005 that Argentina's Supreme Court overturned the "two amnesty laws [which] had blocked the prosecutions of crimes committed under the country's military dictatorship" (Human Rights Watch, 2005). Earlier, in 2003, Argentina's Congress passed a law which annulled both the 'Full Stop' law as well as the 'Due Obedience' law. While these advances were incredibly significant to the advancement of justice in Argentina, there are still instances where war criminals are not being tried for their crimes. So, while impunity is no longer the 'norm,' it is still prevalent.

Guatemala is another Latin American country where impunity prevails. Following the end of the country's 36-year conflict, impunity prevented the delivery of justice. In the early 2000s, the government of Guatemala sought assistance in establishing the International Commission Against Impunity in Guatemala (CICIG). The aim of the Commission is to "investigate illegal security groups and clandestine security organizations in Guatemala—criminal groups believed to have infiltrated state institutions, fostering impunity and undermining democratic gains in Guatemala since the end of the country's armed conflict in the 1990s." In early January of 2019, the government made a decision to end CICIG, deeply threatening the possibility of justice in the country.

Chile, ravaged by armed conflict for almost 20 years, had also had an amnesty law put into action during Pinochet's rule. The 1978 law "prevented courts from prosecuting military officials involved in the torture and killings of thousands of Chileans during the first five years of Pinochet's dictatorship" (ICTJ, 2014). Judges in Chile have not been following the law since 1998, but it still exists as codified law and is therefore still valid. Chile has made progress and as of 2013, "courts have convicted around 260 people from the Pinochet era for human rights violations, 60 of whom are currently serving sentences" (ICTJ, 2014). Despite not being used, the law has been debated greatly in parliament and still exists.

Colombia still faces ongoing human rights abuses and subsequent widespread impunity. It has been reported by Human Rights Watch monitors "that virtually 100% of all crimes involving human rights violations go unpunished" in Colombia (Giraldo, 1999, p. 31). There has been a significant increase in international pressure for this to change. In Colombia's peace deal with FARC, there are sentences for crimes against humanity which "range between five and eight years and prison time can be excluded if the accused person fully cooperates" in investigations (Betancur-Restrepo and Grasten, 2019). Attempts to bring cases in front of the ICC have taken place, but the Court has no jurisdiction over war crimes committed by FARC before November 2009, which is when the most severe abuses occurred. Until changes are made to the peace deal, impunity will continue to protect perpetrators of brutal human rights abuses in Colombia.

## **Argentina**

Argentina is a country with a deep and unique transitional justice history. Between 1930 and 1983, Argentina experienced short periods of weak democracy and six *coups d'état* and periods of military rule. In 1976, Argentina was undergoing what

became known as the “Dirty War,” carried out by their military dictatorship, which resulted in more than 30,000 deaths.

The 1976 coup was unique compared to earlier coups. It was led by General Jorge Videla, with the assistance of Leopoldo Galtieri, and served to overthrow the government led by Isabel Perón. The military put together “The Act of National Reorganization,” also known as the “Proseco.” This document laid out “a series of clearly defined political, social and economic objectives and strategies to be pursued by the regime,” including the “restoration of ‘proper moral values,’ national security, economic efficiency, and ‘authentic representative democracy’” (Pion-Berlin, 2004, p. 57).

Videla aimed to defend Argentina against leftist groups of any kind. Anyone whose values and ideas undermined his government was seen as a threat to Argentina. Journalists, scholars, intellectuals, union leaders, and certain politicians, all fell in this category. During the war, those who opposed the government were kidnapped and brought to detention centers where they were subject to gross human rights violations including rape, torture, beatings, and murder. These centers operated in secrecy, mainly as torture centers.

There are a number of documented forms of torture that occurred in these centers. ‘Softening up’ were sessions which generally included beatings in attempts to push those in question to cooperate. The use of electric shocks applied to various parts of the body including the temples, gums, teeth, ears, genitals, and breasts, became known as ‘the grill.’ ‘Wet submarino’ was the act of submerging the victim’s head in water until they were on the brink of drowning, while ‘dry submarino’ was the act of placing a bag over the victim’s head until they were on the brink of suffocation. Burying victims so that only their head was showing and then refusing them food or water was another common practice on the desaparecidos, a common term used to refer to those who disappeared.

The 2008 documentary *Our Disappeared (Nuestros Desaparecidos)*, directed by Juan Mandelbaum, reflects the impact on three generations of Argentinians. The film follows Mandelbaum, who was born and raised in Argentina, as he explores his country’s dark and troubled past. The film reveals stories of passionate young adults fighting for change who are kidnapped and brutally murdered, leaving behind parents and children desperate for answers and justice.

In 1983, Argentina’s military regime collapsed when Raúl Alfonsín won the 1983 presidential election with more than 50-percent of the vote. Alfonsín, the cofounder of the Permanent Assembly for Human Rights, brought hope to Argentina. Prior to entering politics, Alfonsín worked as a human rights attorney and “took a courageous stand by criticizing the junta that ruled Argentina from 1976 to 1983” (Kraul, 2019). Alfonsín took office during a time when Argentina was plagued with copious debts and no democratic institutions.

During Alfonsín’s first week in office, he created Argentina’s first truth commission. The Commission, called the National Commission on the Disappeared (*Comisión Nacional Sobre la Desaparición de Personas*) lasted nine months, from December 16, 1983 to September 20, 1984. The mandate of the Commission “was to investigate the disappearances of people between 1976 and 1983 and uncover the facts involved in those cases, including the locations of the bodies” (United States Institute of Peace, 1983). The Commission was made up of thirteen commissioners, ten appointed by President Alfonsín and three elected by Argentina’s legislative Chamber of Deputies

(United States Institute of Peace, 1983). The Commission took over 7,000 statements, with 1,500 statements coming directly from survivors.

The Commission issued a few conclusions regarding the events under investigation. First, the Commission reported “8,960 disappearances during the 1976-1983 military rule.” Secondly, the Commission concluded that “disappearances, torture, secret detention, and the disposal of bodies in unknown sites were systematic practices.” The Commission also found that “all the disappeared people were killed, and the lack of information provided about these people was the intentional strategy by the government to prevent cohesiveness among survivors.” Lastly, the Commission concluded that “the repressive practices of the military were planned and ordered by the highest levels of military command,” and “military documentation that could have proven responsibility within the chain-of-command” was ordered to be destroyed (United States Institute of Peace, 1983). The Commission offered multiple recommendations on how Argentina should proceed to address such grave human rights abuses, such as establishing reparations programs for families of disappeared persons, prosecutions and follow-up investigations concerning missing persons, and implementing human rights education programs and judicial reforms.

Argentina also undertook some prosecutions. In December 1983, just three days after Alfonsín’s inauguration, he ordered Argentina’s highest military court to “try the members of the first three juntas for crimes against human rights such as illegal deprivation of liberty, torture, and homicide” (Speck, 1987, p. 500). In early October 1984, a civilian court referred to as the Cámara took jurisdiction over the case and the trial began. The prosecution presented their evidence in open hearings on April 22, in which they presented the “most representative 700 cases” (Speck, 1987, p. 502). Defendant arguments centered around the idea that “the state of internal war in which the country found itself necessitated and justified a suspension of all constitutional guarantees” (Speck, 1987, p. 503). Other defendants argued that they were simply following orders.

The court chose not to issue guilt collectively, but rather on an individual basis. The opinion of the court was given on December 9, 1985. Videla and Massera were each sentenced to life in prison; lower ranking officers including “Agosti, Viola, and Lambruschini were sentenced to prison for four and a half, seventeen, and eight years, respectively” (Speck, 1987, p. 503). The written opinion of the court was thousands of pages and carefully highlighted facts from each of the 700 cases presented by the prosecution.

Trials continue to be held for former military officials in Argentina. In August 2016, “an Argentine federal court [convicted 38] former military officials for their roles in kidnapping, torturing, and killing several hungry victims during a period of military dictatorship four decades ago” (Gilbert, 2016). Of the 38 defendants convicted, 28 were sentenced to life imprisonment, while the rest were sentenced to anywhere between two and a half to 21 years. The trials involved “716 victims and testimony from hundreds of witnesses over nearly four years” (Gilbert, 2016). In 2017, another 29 people were given life sentences “in a trial involving some 800 cases of kidnapping, torture and murder during the 1976-1983 dictatorship” (Stauffer, 2017). Argentina’s Attorney General’s Office reported that as of 2017, 2,971 people had been charged, 818 convicted, and 99 acquitted of crimes committed during the 1976-1983 period.

Following the military rule, Argentina also went through a few different reforms. The National Commission for the Right to Identity was created in 1992. This committee aimed to uncover identities of children who had been disappeared during the 'Dirty War,' and included "the Association of Grandmothers of the Plaza de Mayo (Abuelas) and their attorneys, [and] state prosecutors" (Brett, 2001). The committee has been able to uncover the identities of 71 children. Two years later, in 1994, "Argentina reformed its constitution to enhance democracy and to raise international treaties ratified by the Congress to the status of constitutional law" (United States Institute of Peace, 1983). These constitutional reforms work to ensure full enjoyment of human rights in Argentina.

Following the conclusion of the truth commission, it was recommended that reparations be issued. In order to be permitted to receive reparations, "victims had to prove that they had been detained without trial between 1976 and 1979" (United States Institute of Peace, 1983). This was very difficult, as the military had not cooperated in providing documentation to prove this requirement. \$3 billion USD was made available in 2004 to serve as reparations to victims who were unlawfully detained in Argentina.

Argentina is one example of a Latin American country that has worked extensively to implement transitional justice mechanisms. Immediately following his election, Alfonsín worked tirelessly to advance democracy in Argentina. Their efforts have not gone unrewarded. As of 2017, Human Rights Watch reported that "125 people who were illegally taken from their parents as children during the 1976-1983 dictatorship had been located" and reunited with surviving family members. Despite the extensive amount of cases, Argentine officials have worked to uncover the horrors of the last Junta and bring closure to families of victims and society as a whole.

## **Guatemala**

Between 1960 and 1996, Guatemala was ravaged by a civil war between leftist rebel groups, predominantly Ladino peasants and Maya indigenous people, and the government. The war stemmed from the desire to "alleviate the extreme poverty, political exclusion and inequality between rich and poor" (Ball et al, 1999, p. 19). This 36-year war has become known as one of the most brutal conflicts in Latin America's history, one in which "more than 200,000 people were killed—most of them indigenous, more than half a million were driven from their homes, and many more were raped and tortured" (Bracken, 2016).

The conflict officially began on November 13, 1960, "when discontented army officers, many of them trained in the United States, attempted a *coup d'état* against the corrupt and unpopular government of General Miguel Ydígoras Fuentes" (Ball et al, 1999, p. 13). Between 1960 and 1968, violence within Guatemala rapidly increased. In the early 1960s, police repression and political protest had become common, but by 1966, "the military was involved in a widespread attack on an armed guerilla movement and its civilian supporters" (Ball et al, 1999, p. 14).

The army began to bomb villages occupied largely by Ladino populations, where guerrilla operations had been carried out. Thousands of civilians were brutally murdered and disappeared between 1966 and 1968. During this period, it is estimated that anywhere between "2,800 and 8,000 Guatemalans were killed" (Ball et al, 1999, p. 16). In 1970, Colonel Carlos Arana Osorio was elected president and almost immediately

declared a state of siege, suspending all constitutional guarantees through February 1972.

In September 1972, Arana's government captured top leaders within Guatemala's communist party, tortured them, and threw their bodies into the Pacific Ocean. Throughout Arana's rule, death squad killings remained routine. By 1975, the number of killings and disappearances had reached a low, but by February 1976, the number began to rise again as Guatemala experienced rapid economic expansion. This triggered an "intensifying campaign of selective killing of labor activists and other militants." Amnesty International reported that in August 1977, 61 murders "appeared to be the work of paramilitary death squads" (Ball et al, 1999, p. 21).

In 1978, General Romeo Lucas García was named President. Upon assuming office, he chose to raise the prices of many common goods and services, intensifying the conflict. Anyone who opposed the government during this time was put on a death list published by ESA, the Secret Anticommunist Army. Many on the list were brutally murdered, some by machine guns in public places. García's government had a clear message: "it would silence anyone who dared speak against it and do so with complete impunity" (Ball et al, 1999, p. 21).

The 1980s became known as the most brutal period in Guatemala. On January 31, 1980, protestors occupied the Spanish Embassy in an attempt to reveal to the world the brutality of the Guatemalan government. Rather than attempting to negotiate with protestors, the police sent the embassy up in flames. Guatemalan police "refused to unblock the door or let firemen control the blaze," and subsequently thirty-nine people were burned alive (Ball et al, 1999, p. 23). Following this event, state violence continued to worsen. It is recorded that in 1982 alone, nearly 18,000 murders carried out by state officials had occurred. By 1983, Guatemala had become nearly completely militarized.

It was not until late 1989 that human rights concerns were raised. Nonetheless, large scale human rights abuses continued to take place. However, the military no longer committed the vast majority of murders and disappearances, rather, "army loyalists in the civil patrols acted against neighbors who challenged the army's hegemony or the local patrol's authority" (Ball et al, 1999, p. 32). In 1994, the United Nations stepped in to demilitarize the country and ensure compliance with human rights standards. A final peace agreement was signed in 1996.

The Guatemalan Commission for Historical Clarification took place between 1997 and 1999. The decision to establish it was laid out in the Oslo Agreement of June 23, 1994. The mandate of the two-year commission was to "clarify human rights violations related to the thirty-six year internal conflict from 1960 to the United Nation's brokered peace agreement of 1996, and to foster tolerance and preserve memory of the victims" (United States Institute of Peace, 1997). The Commission conducted a total of 7,200 interviews over the course of two years.

The makeup of the Commission was unique, having only three commissioners, one of them a foreigner. Christian Tomuschat, a German law professor, was the foreign commissioner of the Commission for Historical Clarification and served as the chair of the Commission. The use of a foreigner as a commissioner was new, yet desirable because a foreigner could not be suspected of pursuing political objectives, therefore, "a mixed composition seem[ed] to constitute a well-balanced model" (Tomuschat, 2001, p. 238). Otilian Lux de Coti and Edgar Alfredo Balsells Tojo were the two other commissioners appointed by Tomuschat. The final report of the Commission was

entitled *Guatemala: Memory of Silence* and was issued on February 25, 1999. The report was initially released in Spanish to representatives of the Guatemalan government, the Guatemalan National Revolutionary Unity, and the U.N. Secretary General (United States Institute of Peace, 1997). An English version of the report can be found on the American Association for the Advancement of Science website.

The Commission came to a number of different conclusions. First, the Commission concluded that “repressive practices were perpetrated by institutions within the state, in particular the judiciary, and were not simply a response of the armed forces,” and that “agents of the state committed acts of genocide against groups of Mayan people” (United States Institute of Peace, 1997). The Commission concluded that over 200,000 people were killed, 83-percent of the victims were Mayan and 17-percent were Ladino (United States Institute of Peace, 1997). 93-percent of the violations documented were perpetrated by paramilitary groups and state forces, and 3-percent were the result of insurgent actions. Lastly, the Commission found that the rate of killings and human rights abuses peaked between 1978 and 1982 (United States Institute of Peace, 1997).

The Commission concluded with three recommendations for the government: reparations mainly in the form of memorialization, the return of land to Mayans, and financial assistance. Another recommendation given was for structural reforms to the judiciary and military, and for Guatemala to further attempt to strengthen the democratic process. This Commission did not call for any prosecution of perpetrators within its report. Criminal prosecutions have not been easy in Guatemala. In 2010, some trials of former military officials began, but the strength of Guatemala’s military and the general weakness of legal institutions have led to the extensive use of amnesties, thus impunity.

In 1996, the Guatemalan Congress passed the Law of National Reconciliation, invalidating a 1986 amnesty law that guaranteed immunity from prosecution for all crimes committed between 1983 and 1986 (Burt, 2018, p. 33). The 1986 law did not, however, provide amnesty for crimes such as disappearances, genocide, torture, and other international crimes against humanity. Despite this, impunity was still all too prevalent.

Where domestic courts failed, the Inter-American Court of Human Rights stepped up. In 2004, the Court “found the Guatemalan State responsible for the massacre and ordered it to investigate, prosecute and punish the perpetrators” (Burt, 2018, p. 34). Spanish courts also became involved in the prosecutions of Guatemalan war criminals. In 1999, charges were brought against eight government officials from Guatemala. The case remained inactive for nearly six years “when the Spanish Constitutional Court ruled in favor of Spanish jurisdiction in the Guatemalan genocide case” (Burt, 2018, p. 34). A verdict was not reached, but pressure on Guatemala intensified.

The International Commission Against Impunity (CICIG) was created in 2007. CICIG established new procedures to select the attorney general and senior judges, and helped create a specialized court system, the High Risk Tribunals, to adjudicate complex criminal cases (Burt, 2018, p. 34). All of these advancements led to the strengthening of Guatemala’s judiciary.

One of Guatemala’s most well-known war criminal cases was that of Rios Montt. The trial began on March 19, 2013. Less than two months later, Montt was found guilty

of crimes against humanity and genocide. This trial “marked the first time a former head of state was prosecuted in domestic court for the crime of genocide” (Burt, 2018, p. 37). Nearly 100 victims and families testified in this case. The legitimacy of the trial was questioned, and the president of Guatemala at the time, Otto Perez Molina, denied the occurrence of a genocide in Guatemala. A little over a week after the verdict in Montt’s trial was handed down, “the Constitutional Court, arguing procedural violations, partially suspended the genocide proceedings, effectively undoing the verdict” (Burt, 2018, p. 38).

It was not until 2016 that prosecution efforts in Guatemala began again. Less than a week into the year, “the Attorney General’s Office arrested 18 senior military officers on charges of criminal responsibility for dozens of cases of enforced disappearances and massacres committed between 1981 and 1988” (Burt, 2018, p. 39). One significant case since then has been the Sepur Zarco sexual violence case. On February 26, 2016, “two former senior military officers [were found] guilty of crimes against humanity in a case involving murder, sexual violence, sexual slavery and other atrocities committed at the Sepur Zarco army base” (Burt, 2018, p. 40). They were sentenced to 120 to 240 years imprisonment.

As of February 2019, Guatemala is at a crossroads. Congress is swaying towards amending the National Reconciliation Law of 1996. Doing so would “terminate all ongoing proceedings against grave crimes committed during the country’s civil war, free all military officials and guerrilla leaders already convicted for these grave crimes, and bar all future investigations into such crimes” (Burt and Estrada, 2019). The passing of such legislation deeply threatens Guatemalan society, especially victims of the war, and those who have come forward to testify against those prosecuted. Backing out of CICIG also poses a severe threat to justice.

Guatemala has been slow to adopt many institutional reforms. In 2016 the *National Dialogue towards Justice Reform in Guatemala* was developed. The goal was to launch “reforms of the Constitution and ordinary laws, in order to guarantee judicial independence, access to justice and institutional strengthening” (Human Rights Office of the High Commissioner, 2016). On October 5, 2016, the reform package, which included 25 constitutional amendments, was presented to the Guatemalan Congress (Beltran, 2016).

As a country, Guatemala has done little to help victims, therefore many memorialization efforts are carried out by victims’ groups themselves. Across the country, communities “have constructed local memorial spaces to commemorate the victims of massacres and enforced disappearance” (Burt, 2018, p. 40). Certain communities have also developed oral history traditions. Communities came together to create the Monument for Peace and Tolerance, located near the site of the Panzos massacre of 1978. Other memorials include the Kaji Tulam Memory Museum, which “depicts the internal armed conflict from the perspective of victims;” and the exhibit *Why Are We the Way We Are?*, which “aims to encourage visitors to challenge their own assumptions and stereotypes as a way of dismantling the racism and discrimination that has characterized Guatemala since Independence” (Burt, 2018, p. 41).

Together, these initiatives have successfully helped communities in a number of ways. Each one has “served to document and to denounce the atrocities committed, to dignify and honor the victims, to recover the histories of heroism and resistance of the survivors, and to promote community organization and the rebuilding of social fabric”

(Burt, 2018, p. 41). These memorials effectively educate younger generations on the atrocities committed and often spark initiatives for justice and reparations.

Following the conclusion of the 36-year conflict, thousands were left tortured, abused, and murdered. The country carried out multiple transitional justice measures. Their Commission for Historical Clarification revealed the atrocities carried out during the war to the world; initiatives have been made for institutional reforms; criminal prosecutions have shut down impunity to a certain extent; and memorialization has helped to educate younger generations and has ensured that victims are not forgotten. Despite these efforts, the fate of Guatemala remains uncertain as the military continues to have a strong hold on the government.

## **Chile**

The 1973 Chilean coup d'état marked the beginning of a brutal conflict. Dr. Salvador Allende took office as President in 1970. His administration was met with opposition, largely from middle-class and business-class sectors. Soon, those who opposed Allende's administration determined that "the government of Allende was incompatible with the survival of freedom and private enterprise in Chile, and that the only way to avoid their extinction was to overthrow the government" (Loveman, 1986, p. 1). Following the 1973 coup by the Chilean military, supported by the United States, Chile became a military dictatorship under Augusto Pinochet. During his rule, it is estimated that more than 3,000 Chileans were executed or "disappeared," while up to a 100,000 were tortured (The Center for Justice & Accountability).

Pinochet's goal "was to transform Chilean political institutions and to restructure both Chile's society and its economy" (Loveman, 1986, p. 2). The standard of living in Chile for the middle and lower classes rapidly declined. Nearly every aspect of the new military government was met with opposition. The first groups to oppose the military regime were resistance groups formed in workplaces, prisons, factories, and homes. As the military continued to carry out human rights abuses, opposition grew stronger. The new government had no tolerance for opposition and dealt with those who expressed opposition through disappearances, murder, imprisonment, and exile.

Only days following the coup, armed forces set out to detain any suspected leftists. They began at the State Technical University where hundreds were detained at Chile Stadium. Here, they were exposed to brutal treatment. Detainees were starved and many were interrogated and tortured. Others were killed, their bodies disposed of in secret. In 1973, anyone suspected of opposing the military regime was targeted by a military death squad called the 'Caravan of Death.' The Caravan used military bases throughout the country, torturing and executing at least 75 political prisoners (The Center for Justice & Accountability).

In 1981, a new constitution was introduced by the military government. This new constitution prohibited any group which "advocated doctrines which served to undermine the family, which promoted violence, or which adopted a conception of society, state or juridical order of a totalitarian character or which was based on class conflict" (Loveman, 1986, p. 2). The new constitution placed an emphasis on national security, a responsibility placed on the shoulders of the armed forces, and introduced an eight-year, renewable presidential term.

Eleven parties came together in 1984 to sign an accord which demanded presidential elections be held before 1989. On December 14, 1989, elections were held



for the first time in Chile since the 1970s. Pinochet was defeated and became a senator, a role prescribed to him in his 1981 constitution. In 1998, British authorities detained Pinochet following Spain's request for his extradition in connection with the torture of Spanish citizens in Chile during his rule. After his capture, documents were released which revealed information regarding some of the most brutal human rights atrocities during Pinochet's regime. This included details of Operation Colombo and the disappearance of more than 100 Chilean leftists in 1975, and Operation Condor and the coordinated efforts of several South American military governments to eliminate opponents in the 1970s and 1980s (Encyclopedia Britannica).

In 2000, Pinochet was released by the British after it was determined that he was physically unfit to stand trial. He returned to Chile, expecting to be protected by immunity. However, the Appellate Court stripped Pinochet of his immunity by a vote of thirteen to nine (Pion-Berlin, 1985, p. 484). After being ordered to once again stand trial in 59 cases of kidnapping, murder, and torture, "the Chilean Supreme Court ruled him mentally and physically unable to answer them" (Read, 2018). Pinochet passed away in 2006, without facing any charges.

The Chilean government finds itself now racing to prosecute Pinochet-era war criminals, as many are beginning to pass away. Since the end of the conflict, "there have been 1,149 convictions handed down for dictatorship-era human rights crimes" (Slattery, 2015). However, prosecutions are difficult to conduct because of the 1978 amnesty law passed by Pinochet during his presidency, still in force.

In 2004, Chile's armed forces assumed blame for the grave human rights abuses committed during the Pinochet era. This move by the armed forces was seen as a ploy to ensure immunity for all violators. Chile's Supreme Court President Sergio Munoz has tirelessly worked to reverse widespread impunity in Chile since he has taken office in 2014. In 2017, Chile's High Court "sentenced 33 former intelligence agents for the disappearance of five political activists in 1987" (BBC, 2017). Prosecutions of Pinochet era human rights abusers remain underway.

Following the Pinochet dictatorship, Patricio Aylwin assumed office as the president of Chile. Almost immediately after assuming office, Aylwin established a truth commission, which operated from May 1990 to February 1991. The mandate of the Rettig Commission was to "document human rights abuses resulting in death or disappearance during the years of military rule, from September 11, 1973 to March 11, 1990" (United States Institute of Peace, 1990). In total, the Commission was able to document 3,428 cases of grave human rights abuses in Chile during the Pinochet regime. The Commission was made up of eight commissioners selected by Aylwin. Raul Rettig chaired the Rettig Commission.

The Commission handed down a few conclusions and recommendations in its report, released in February 1991. The Commission concluded that "most forced disappearances committed by the government took place between 1974 and August 1977 as planned and coordinated strategy of the government" (United States Institute of Peace, 1990). It also concluded that the National Intelligence Directorate played a very significant role when it came to political repression during the rule of the military government. The Commission recommended reparation programs for victims who testified before the Commission, noting that these reparations "should include symbolic measures as well as significant legal, financial, medical and administrative assistance"

(United States Institute of Peace, 1990). The Commission further recommended that Chile adopt human rights legislation and create an ombudsman's office.

In 2003, Chile's president Ricardo Lagos created a second truth commission to address Pinochet-era human rights abuses. The Rettig Commission was limited in the sense that it was only mandated to investigate crimes which resulted in death or disappearance. The Valech Commission operated from September 2003 through June 1, 2005. It was mandated "to document abuses of civil rights or politically motivated torture that took place between September 11, 1973 and March 10, 1990 by agents of the state and by people in their service" (United States Institute of Peace, 2003).

The Commission handed down a 1,200-page report which included testimony from 27,255 victims. The report concluded that "torture and detention were used as a tool of political control by State authorities and perpetuated by decrees and laws that protected repressive behavior," and that torture carried out by paramilitary police and armed forces became a generalized practice (United States Institute of Peace, 2003). This Commission also recommended reparation programs and the provision of "individualized material reparations, pensions, educational and health benefits, as well as collective symbolic measures" for victims (United States Institute of Peace, 2003).

Following the recommendation of the Rettig Commission, a reparation program referred to as the National Corporation for Reparation and Reconciliation was created. This allows for victims who are named in the report to receive financial support, "totaling approximately 16 million USD each year" (United States Institute of Peace, 1990). Following the Valech Commission, 28,459 victims are being provided "lifelong governmental compensation ... and free education, housing and health care" (United States Institute of Peace, 2003).

In 2007, Chile's president Michelle Bachelet announced the creation of the Museum of Memory and Human Rights, in Santiago. The mission of the museum, as laid out on their website, is to "allow dignity for victims and their families, stimulate reflection and debate and to promote respect and tolerance in order that these events never happen again" (Museodelmemoria.cl). The museum features artifacts from Pinochet's dictatorship.

Chile was slow to implement institutional reforms. This was because the institutions in need of reform—the military, judiciary, and legislature—remained loyal to Pinochet even after his downfall. Change was initiated with the abolishment of a national holiday which honored the September 11, 1973 coup. Soon after, changes to the Pinochet-era constitution were made. This long reform process "resulted in amendments that allow the president to fire the armed forces' commanders" (United States Institute of Peace, 1990). Additionally, the National Security Council was no longer able to hold any power aside from advisory powers.

Chile is one example of a country which unfortunately still faces wide-spread impunity, making the advancement of human rights rather difficult. Despite this, the country has made significant progress in their attempts to bring justice to victims of Pinochet-era violence. Multiple truth commissions have brought to light the atrocities committed by armed forces; reparation programs have provided victims with housing, education, and money; and reforms have helped the country shift away from its military past. Chile is a country which still has a long way to go, but has made significant progress in their efforts to restore respect for human rights.

## **Colombia**

Colombia has been plagued by an armed conflict that arguably began in the 1940s and continues to this day. Originally, Colombia's civil war, a period known as La Violencia, lasted from 1948 through 1957. The two groups involved were the "two economic, social and political elites organized under the Liberal and Conservative parties" (Garcia-Godos and Lid, 2010, p. 490). A peace agreement was reached by the two parties in 1957 for power to be shared among the groups for the next 16 years. The new bipartisan regime became known as the National Front. Shortly after, in 1964, "the war [was] re-ignited [by an anti-regime insurgency] and continues to this day" (Garcia-Godos and Lid, 2010, p. 490).

The main groups involved in the conflict are communist guerrilla groups including the Revolutionary Armed Forces of Colombia (FARC), Army of National Liberation (ELN), and the Populist Liberation Army (EPL). A year after the start of the conflict, the government enabled the creation of new irregular forces through Decree 3398, basically legalizing the formation of private self-defense or paramilitary groups (Garcia-Godos and Lid, 2010, p. 492). In 1989, this was reversed. Shortly after, violence carried out by FARC and ELN began to skyrocket.

The two groups have long histories of violence and human rights abuses. As of 2007, the armed conflict has resulted in an "estimated total of 674,000 homicides," including 51,000 civilians, 6,000 forcibly disappeared, 51,500 kidnapped, and at least 11,000 tortured (Garcia-Godos and Lid, 2010, pp. 490-491). In 2002, FARC was responsible for kidnapping Ingrid Betancourt, a presidential candidate. Betancourt was held "along with three U.S. military contractors until 2008, when Colombian forces rescued them and twelve other hostages" (Felter and Renwick, 2017). In 2001, FARC was responsible for the assassination of a culture minister. In 2002, the group was found responsible for hijacking a commercial flight.

These violent groups, as well as other right-wing paramilitary groups, quickly became involved in Colombia's growing drug trade. It is estimated that in the early 2000s, "Colombia supplied as much as 90 percent of the world's cocaine, and the production, taxation, and trafficking of illicit narcotic provided the FARC with much of its revenue" (Felter and Renwick, 2017). This involvement soon led to violent conflicts over territory. ELN did not become involved in drug trafficking until 2015.

After five years of negotiation, Colombia's government and FARC came together to sign a peace agreement. The two came together in Havana, Cuba, with the intention to "end the armed conflict and build stable and lasting peace" (Institute for Integrated Peace, 2018). Peace talks with ELN have been ongoing since February 2017, with very little success. Despite any agreements, Colombia is still in an incredibly fragile state. Armed conflict remains ongoing in many areas once controlled by FARC, "as armed groups are attempting to take control over strategic areas, natural resources and important drug routes" (Jenssen, 2018). Violence continues to grow throughout the country and the government is doing very little to stop it, leading "to a 36-percent increase in internally displaced people in the first half of 2017," a figure which continues to grow (Jenssen, 2018). There have been nearly 90 murders of human rights activists and local leaders since 2017, and many Colombians admit to feeling less safe following the peace talks than they did before.

The case of Colombia is unique because it is one where transitional justice measures have begun to take shape despite the ongoing conflict. In 2005, Colombia

passed the Justice and Peace Law, also commonly referred to as Law 975. The law established a framework for peace while also respecting the rights of victims to truth, justice, and reparations, and established Colombia's truth commission (The Center for Justice & Accountability, Colombia). It also introduced the "requirement of retributive justice in terms of imprisonment and recognizing the role of the victims and their rights in the peace process" (Garcia-Godos and Lid, 2010). The legislation also requires the government to preserve the memory of the armed conflict and its victims.

Law 975 provided a basic outline of institutions and their roles in the peace process. Colombia's Truth and Reconciliation Commission is such an institution. The law also required the establishment of the National Unit for Justice and Peace (UNFJP), with a mandate to "ensure that the demobilized paramilitaries fulfil their obligations with regard to confessions, and to carry out criminal investigations, in addition to having the main responsibility for collecting and systematizing reports of abuses" (Garcia-Godos and Lid, 2010, p. 499). Other important institutions laid out in Law 975 include the High Court of Judicial Districts, and the Public Defense Office, which oversees the rights of the accused.

In 2016, the Colombian government and FARC came together in an attempt to end the war. A June ceasefire and agreement, which arranged disarmament, was signed by the two parties, and three months later, FARC and the government came together to finally put an end to a conflict that had lasted more than 50 years. Colombians, however, were not happy with the peace agreement. They found the provisions of the agreement too lenient on FARC, and voted against the peace deal in a subsequent national referendum on the peace deal. A new deal was proposed, to include "reparations for victims which will come from FARC's assets and money" (Lopez and Capelouto, 2016). Other aspects included that "FARC rebels [would] be expected to provide exhaustive information about any drug trafficking they may have been involved in," and a 10-year time limit was set for the implementation of transitional justice measures (BBC, 2016). The new peace deal, which regulates the Special Jurisdiction for Peace tribunal, was approved in late November 2016.

In June 2018, Colombia elected Ivan Duque as president. Duque ran his campaign for presidency primarily on his opposition to the 2016 peace deal. He stated that "people who have not turned in assets or weapons will be brought to justice," and "people who have committed crimes like kidnapping and narco-trafficking will no longer...be granted amnesty" (Wymouth, 2018). In Duque's opinion, the peace deal was too lenient with FARC commanders accused of atrocities (Murphy and Vargas, 2019). As news of the President's plans to amend the peace deal surfaced, former rebels expressed the dangers of doing so. Many think that this move will further aggravate armed conflict within Colombia. As of April 9, 2019, the lower house rejected Duque's proposed changes to the peace deal.

At the center of Colombia's current transitional justice efforts lies the Special Jurisdiction for Peace (JEP). The JEP was first laid out within the peace deal of 2016 and was described as the most contentious issue of the peace process (Harper and Sonneland, 2018). The JEP was officially instituted in March 2018, and contains different branches that investigate and try perpetrators of violence and human rights abuses during the war. The JEP is organized in a rather complex matter. Cases start in the smaller chambers, including the truth chamber, amnesty chamber, and sentencing chamber. In the first chamber, applicants are provided a platform to come forward

about their actions, “and depending on the severity of their crime, they may be referred to receive amnesty or limited sanctions” (Ballesteros, 2017). While this is happening, the Investigatory Unit researches where rebels had committed crimes and are not confessing, and works to bring those people to trial. If they are found guilty, they are given “the opportunity to tell the truth in the smaller chambers before their case heads to the Peace Tribunal” (Ballesteros, 2017). Once a case reaches the final step, the Peace Tribunal, all people involved are given the opportunity to appeal.

Colombia’s first truth commission, also a part of the peace deal, officially convened on May 8, 2018. The Commission “will operate for three years during which it must submit reports every six months” (BBC, 2018). The purpose of the Commission is to clarify what took place during the armed conflict and provide reparations to victims of the brutality. The evidence collected by the Commission cannot be used in the criminal proceedings in hopes that people would “provide more truthful testimonies of their crimes if they knew their testimony could not be used against them in court” (Ballesteros, 2017).

Another significant transitional justice effort implemented in Colombia with the help of the International Commission on Missing Persons is the Search Unit for Missing Persons. The Search Unit “was formally established through a Constitutional Amendment adopted by the Colombian Congress on 13 March 2017” (International Commission on Missing Persons, 2017). The Unit is responsible for finding “between 45,000 and 90,000 victims” (Gill, 2018). As of January 23, 2018, the Search Unit had not made any progress due to lack of funds and possibly a lack of political will.

The case of Colombia is certainly unique. Colombia is a country still ravaged by violence despite numerous peace deals being drafted and passed. A number of different transitional justice measures have been implemented in an attempt to bring justice to victims of the more than 50-year war, including the Search Unit for Missing Persons and The Commission for the Clarification of Truth, Coexistence, and Non-Repetition. The fate of these measures is uncertain as Ivan Duque, the current President of Colombia, is working against the 2016 peace deal which laid out all of these measures.

### **Conclusion: a comparative study of transitional justice in Latin America**

Each country that undergoes a transition from a repressive regime to a democracy will handle their transition differently. While the measures they implement may be similar in nature, they will remain unique in certain ways. The acceptance of these measures by the public will also vary by country. Additionally, the success of these measures is bound to differ throughout every country. These differences are prevalent when comparing the transitions of Argentina, Guatemala, Colombia, and Chile.

In terms of truth commissions, Argentina and Guatemala each utilized one truth commission, while Chile had two. As of now, Colombia is implementing one truth commission, but it is unclear whether or not they will hold any more in the future. The makeup of these commissions also varies by country. The number of commissioners varies depending on the size of the commission. Additionally, commissions differ on the nationality of their commissioners. Some commissions will have mostly natives of the country serve as commissioners, while others will have a majority of foreigners working in the commission.

Truth commissions also vary in the time frames they cover. It would be very difficult for commissions to cover the entirety of conflict in some cases, so they often

focus on specific years. However, the truth commissions held in Argentina, Guatemala, and Chile covered the span of each country's conflict in its entirety. Argentina's commission covered the years 1976 to 1983, which was the time frame of the country's 'dirty war.' Guatemala's commission covered the years 1962 to 1996, covering the entirety of the country's 36-year war. Both of Chile's commissions covered the years 1973 to 1990, which spanned the rule of Pinochet. Colombia's truth commission also aims to cover the entirety of its internal armed conflict.

Subject matter covered in truth commissions also differs among countries. Argentina's truth commission was mandated to solely investigate the disappearances of people and the details of these disappearances. Guatemala's truth commission had a broader goal of clarifying all violations of human rights, fostering tolerance and preserving the memory of the victims (United States Institute of Peace, 1997). Chile's Rettig Commission was only able to investigate abuses that resulted in either disappearance or death. Chile's Valech Commission documented "abuses of civil rights or politically motivated torture ... by agents of the state and by people in their service" (United States Institute of Peace, 2003). Colombia's ongoing commission seeks to clarify abuses and events that occurred during the country's internal conflict.

Despite these differences among truth commissions, all of the commissions mentioned above helped to successfully contribute to a future of democracy and sustainable peace. The Argentina commission provided a platform for 7,000 stories to be heard and for the provision of reparation programs for victims. Guatemala's commission provided a platform for 7,200 stories to be told while helping kick start memorialization efforts and land restitution programs for natives. Chile's Rettig Commission documented 3,428 victim testimonies, and the Valech Commission documented testimonies given by 27,255 victims. Both of these commissions helped to create different reparation programs within Chile. Colombia's ongoing commission is working to clarify different abuses which have occurred over the last 50 years.

Prosecution of war criminals and human rights abusers varies greatly among these countries. In some countries it has been harder than in others due to impunity. Argentina is still prosecuting war criminals to this day. As of 2017, over 2,000 people have been charged with crimes that took place during the war. Argentina successfully overturned amnesty laws, which allowed them to continue prosecutions. Guatemala, on the other hand, has struggled with criminal prosecutions. The country recently backed out of CICIG, which worked to eradicate impunity and is also potentially going to amend the National Reconciliation Law of 1996, which would end all ongoing trials and free all persons currently in jail for crimes committed during the war. Chile has ignored Pinochet-era impunity laws and has worked tirelessly to prosecute war criminals. It is difficult to tell whether or not Colombia will successfully prosecute war criminals, as the promise of impunity is a central idea in their peace deal with FARC.

Reparations have appeared in these countries in a number of different shapes. In 2004, Argentina was granted \$3 billion USD for the victims. This was much easier said than done, however, as victims were required to provide documentation that they were detained without trial. In Guatemala, reparations came in the form of memorialization. Different communities within Guatemala have constructed different traditions to commemorate the disappeared. Chile had a combination of both of these. After the conclusion of their truth commissions, nearly 30,000 victims were provided with governmental compensation for the rest of their lives. The government also erected the

Museum of Memory and Human Rights to preserve the memory of those lost during conflict. Colombia has yet to provide reparation programs to victims.

Each country has had different experiences when it comes to reforms. Argentina was able to reform its constitution, promote democracy and human rights throughout the country. Guatemala has been very slow to reform their institutions despite efforts to amend the constitution in 2016. Chile was also slow to reform their institutions because the institutions which required reform remained loyal to Pinochet. Small reforms such as allowing the president to fire armed forces' commanders and bar the National Security Council from holding power aside from advisory powers, were implemented. Colombia has yet to implement institutional reforms.

Transitional justice is used around the world. It comes in a number of different forms and is a key player within international law. There are a number of different transitional justice measures including truth commissions, reparation programs, criminal prosecutions, and memorialization efforts. These measures have been implemented extensively throughout Latin America and have helped countries such as Argentina, Guatemala, Chile, and Colombia to make the transition from repressive regimes to democracy.

Since the implementation of transitional justice measures, Argentina has made great strides toward democracy, free from domestic armed conflict. In 2015, Argentina made history by electing Mauricio Macri as president. This is Argentina's first president who has been democratically elected since 1916 and is neither a Peronist, nor a radical. Guatemala has also made great steps towards strengthening their democracy through transitional justice. Despite high waves of impunity, in the past ten years Guatemala has "seen a former dictator found guilty of genocide; high-ranking military officials sentenced to lengthy prison terms for their roles in mass atrocities; and indigenous women winning cases against members of the military who sexually enslaved them and robbed them of their land" (Mattingly, 2019). Chile continues to prosecute war criminals and works to ensure that the memory of victims of Pinochet's era are not forgotten. The country continues to hold democratic elections, which had been incredibly rare in the past. Colombia is still involved in a deeply rooted internal conflict, but their present initiatives in transitional justice look promising.

Truth commissions in these countries have provided platforms for thousands of victims to come forward and tell their stories. This allows victims a sense of closure by allowing their story to be told and subsequently shared with the world. Criminal prosecutions put an end to impunity and act as a deterrent for future crimes. They provide a potential for victims to feel safer, knowing their abusers are in jail or facing punishment. Reparation programs, including memorialization, allow for victims and their families to come to terms with the past and to make sure their history is never to be forgotten. Memorials also allow for continuous conversation about the past for future generations. Reforms provide institutions a second chance to advance the human rights protections and democracy. When implemented together, all of these transitional justice measures serve as a channel for the advancement of democracy, development, and sustainable peace within Argentina, Guatemala, Chile, and Colombia.

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