

# **The Role of Groups of Relatives during Transitional Justice Processes in Argentina and Chile**

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## **Abstract**

Transitional justice mechanisms have been implemented to deal with the grave legacies of human rights violations committed during an authoritarian past regime. These mechanisms have been established by governments in order to deal with the past and construct a new democracy. Traditionally the application of these mechanisms has been oriented from the top-down. Victims have been usually left out from these processes, and precisely victims are the ones most affected since they had to suffer those violations of their human rights. This thesis is oriented to highlight the role of the human rights movements during transitional periods and their position in these processes. With this purpose I will use the case of the human rights movement in Chile and Argentina. I will show what relevance had the work of the relatives' groups and their perspective when it comes to influence the institutional agenda regarding human rights and their role in keeping alive the memory of the victims.

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## Introduction

Transitional justice processes have been developed during the last decades in countries which have lived a transition to democracy from an authoritarian regime. Transitional justice processes are directed to deal with the grave human rights abuses committed during a past regime. From the Nuremberg trials until today transitional justice discourse has gained recognition and there has been a growing literature dealing with a traumatic past during transitional periods. Despite the fact that transitional justice measures are closely connected with the victims of violations of human rights, victims and victims' groups have not received enough attention in the implementation of those measures. Transitional justice policies have left out the victims during periods in a transition to democracy. Despite the fact that they have been left out, in practice they have been active struggling for their rights. They kept alive the memory of the silenced during dictatorships. There are different factors in transitional periods that influence the techniques used to deal with the past, one of them is the activity of the human rights movement. Human rights' organisations are essential to put pressure on institutions to recognise their human rights demands. I will show in this thesis the role of the human rights movement in transitional countries, particularly I will focus on the relatives movement. I will use the case of Argentina and Chile and I will show how the relatives' groups emerged and developed.

The thesis is divided into five chapters: in chapter 1 I will show the theory of transitional justice, its evolution and how it has been shaped in order to understand the perspective that the discourse has taken and the position of the victims' groups in the transitional justice measures. In chapter 2 I will show the development of transitional justice in Latin America in order to understand the Latin American context in which is framed the activity of the Chilean and Argentinian human rights' groups. In Chapter 3 I will explain the emergence and development of the human rights movement and particularly of the relatives of victims of human rights violations. I will describe their activity and the achievements reached in terms of transitional justice. Similarly, In

chapter 4 I will describe the emergence, evolution and factors that shaped the activity of the Chilean relatives' organisations during the dictatorship and the transition. The last chapter will be a comparison between the development of the Argentinian human rights movement and the Chilean movement. In the comparison I will include the role that the movement played in both countries and the achievements reached in terms of transitional justice. Last part of the last chapter will be dedicated to show the aspect of the victims as the voices of the past.

## **CHAPTER 1. TRANSITIONAL JUSTICE PROCEDURES AND TECHNIQUES**

Transitional justice mechanisms have been implemented as a result of the emerge of new democracies after dictatorships and civil wars, arising from different countries all over the world: Southern and Eastern Europe, Latin America, Africa, the Middle East, and Asia. Each country faced a different situation, for this reason transitional justice processes have taken different shapes that is, governments have been implementing different procedures to reckon past abuses. However, they shared a common characteristic, they had the question of the legacies of human rights violations committed during the past regime by the state or with its support.<sup>1</sup> In the first part of this chapter I will present the development that has had the transitional justice discourse. Additionally I will show the role that the victims and grassroots organisations have played in this discourse. The second part of the chapter will be focused on two fields that have received less attention in the transitional justice literature. These two fields are trauma and memory work.

### **1.1. Transitional Justice**

Transitions to democracy after authoritarian regimes open the question of how the new democratic state has to be constructed. In this construction the position that the new government assumes in relation to the past grave violations of human rights perpetrated by officers of the former government will be a key point in the legitimization and the consolidation of the new democratic regime. In this context arises the issue of transitional justice that could be defined as “the set of judicial and non-

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<sup>1</sup> Méndez, 1997, p.2.

judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses”<sup>2</sup>. As it can be seen from this definition one of the essential issues that will have to be considered in this transitional period will be the question of the human rights abuses committed in the past regime. The new government will have to decide whether to pardon the perpetrators or to take them to the courts for the human rights violations committed in the past. Here is where the relatives of victims of human rights violations will focus their activity, fighting to hold accountable those who were responsible for human rights violations and to know the truth of what happened during the past regime to their relatives. Despite the fact that the victims perspective was not taken into account when the transitional justice discourse began, recently they have received a growing attention. Thus, it is important that the position taken by the new democratic state allows the protection and support of democratic institutions and on the other hand reckons with the past abuses of human rights, without jeopardising the stability and consolidation of the new democratic institutions.<sup>3</sup>

#### 1.1.1. Evolution

As already mentioned above, the common issue that states have to face in a transitional justice situation is the issue of the legacies of human rights abuses. Here, the question of why deal with these issues if they can be simply covered and forgotten is raised. There are several arguments in favour of dealing with the past abuses, one of them is that transitional governments which have the aim of consolidating democracy, have the obligation to reckon with the past abuses of human rights, as long as democracy is based on the rule of law.<sup>4</sup> As well, it has been argued that is necessary to

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2 International Center for Transitional Justice, What is Transitional Justice?, 2009, at <http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (consulted on 7 March 2013).

3 Crocker, David A., Reckoning with Past Wrongs: a Normative Framework, 2004, at <http://terpconnect.umd.edu/~dcrocker/Courses/Docs/Reckoning%20with%20past%20wrongs.pdf> (consulted on 3 April 2013).

4 Méndez, 1997, p.1.

achieve justice to avoid the same situation to happen again.<sup>5</sup> According to Mendez correcting the wrongs of the past is a legal and a moral obligation of the transitional states with legacies of human rights violations. Consequently, they have the following obligations, due to victims and society : to do justice, which includes the prosecution and punishment of persons responsible for crimes committed in the past; secondly, it is necessary to ensure the victims the right to know the truth, which implies the finding of all the details of a concrete violation and the revelation of all the information to the victims, their relatives and the society; thirdly, facilitate reparations to the victims, including not just monetary compensations, but other kind of compensation as well, for instance recognition of what happened and public apologies; the last is to forbid the persons responsible for crimes committed in the past serving in the security forces of the state to continue in the new democratic and reconstituted security forces. These obligations are indispensable and they must be considered “obligations of means”, i. e., the state will fulfil its obligation if takes all the measures to reach the result, independently that this result has been achieved.<sup>6</sup> As it can be seen most of these obligations have a close connection to the victims of the abuses committed in the past and that's why the relatives' groups of victims will centre their activity in pressure the governments to deal with these issues.

To understand the activity of groups of victims of human rights violations in an emerging new democracy, it is important to mention the transitional justice frame in which they act. For that it has to be explained how transitional justice has been set up and developed. For that goal I will use Teitel's genealogical approach since it shows the main focus that transitional justice has taken during its evolution.

Teitel structures transitional justice in three phases, which are defined by her as the

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<sup>5</sup> Roht-Arriaza, 2006, p.325.

<sup>6</sup> Méndez, 1997, p.12.

genealogy of transitional justice.<sup>7</sup> She argues that the beginning of modern transitional justice can be dated to World War I, but Teitel considers that transitional justice an international matter after 1945 (this is a fact that remains uncertain, other authors like Elster dates its origins to the ancient Athens, when trials and purges were carried out as a consequence of political upheavals<sup>8</sup>). In her genealogy the first phase of transitional justice is encompassed in the post-World War II period. This first phase of transitional justice is framed by the type of justice adopted in post-World War II, i.e., individual accountability for crimes committed in the past. This phase began with the Allied-run Nuremberg Trials, where international justice took national justice's place, ending at the beginning of the Cold War. Although transitional justice ceased at that moment, the trials of post-World War II influenced the formation of modern human rights law.<sup>9</sup>

The second phase coincides with the period of post-Cold War, in the context of the fall of the Soviet Union and the consequent democratizations (South America, Eastern Europe and Central America). The second phase was featured by a lack of international trials, in opposition of what occurred in the first phase. Instead of that, it assumed a more local approach and implemented measures more adjusted to the particular context. The core issue added in this phase was about how to establish different rule of law understandings connected to local circumstances and how to deal with the social suffering that had its roots in the past regime, an issue not taken into account in the first phase. In this phase emerged an emphasis on non legal mechanisms of transitional justice, such as truth commissions, which have the aim of disclose the information about human rights abuses committed in the past. Hayner defines this mechanism stating that “a truth commission is focused on the past, rather than ongoing, events; investigates a pattern of events that took place over a period of time; engages directly and broadly with the affected population, gathering information on their experiences; is a temporary body, with the aim of concluding with a final report; and is officially authorized or

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7 Teitel, 2003, pp.69-94.

8 Paige, 2009, p.327.

9 Teitel, 2003, pp.69-94.

empowered by the state under review”<sup>10</sup>. This is a mechanism representative of what Garrett defines as the “Historical Clarification Model”<sup>11</sup>, which is featured by the initiative of the new government to document violations committed in the past, but without identifying and prosecuting the individuals responsible for those violations.

In connection with the establishment of truth commissions there was in the second phase an emerging recognition of the victims' right to know the truth. This focus on the right to the truth was pushed by the implementation of the above mentioned truth commissions and the growing pressure of the international human rights network that brought the voices and the needs of the victims in the institutional sphere. These rights emerged from a non legal way since the activists and academics brought these rights into the institutional level.<sup>12</sup> As Teitel explains many important actors in this phase were external to formalised politics, including NGO's, churches and human rights' groups.<sup>13</sup> Another contribution in this phase to the recognition of the right to the truth was the Velasques Rodriguez decision of the Inter-American Court of Human Rights, which was the first court that had to deal with the question of disappearances. In the decision it was recognised the right of the victims to know the truth and it has been a legal landmark for the foundation of the right to the truth.<sup>14</sup>

Besides the second phase of transitional justice incorporated the perspective of forgiveness and reconciliation to achieve peace in the new democratic society that is the reason why new governments implemented a policy of amnesty, avoiding the punishments to responsible persons of violations of human rights in the former regime. This could be related to what Garrett defines as “The Amnesia Model”<sup>15</sup>, in which the new democratic government does not prosecute the perpetrators and besides, the

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10 Hayner, 2010, pp.11-12.

11 Garrett, Stephen A., Models of Transitional Justice- A Comparative Analysis, 2000, at <http://www.ciaonet.org/isa/gas02/> (consulted on 22 March 2013).

12 Park, Gloria, Truth as Justice, 2010, at <http://hir.harvard.edu/big-ideas/truth-as-justice> (consulted on 3 June 2013).

13 Teitel, 2003, pp.69-94.

14 Park, Gloria, Truth as Justice, 2010 at <http://hir.harvard.edu/big-ideas/truth-as-justice> (consulted on 3 June 2013).

15 Garrett, Stephen A., Models of Transitional Justice- A Comparative Analysis, 2000, at <http://www.ciaonet.org/isa/gas02/> (consulted on 22 March 2013).

question of accountability for past human rights violations is not published in the public sphere. In this case, the issue of the abuse of human rights is kept in the private sphere without emerging in the public discussion. This model is especially unjust to the victims and victims' groups. It lets a problematic situation since it presents a society in which it remains an indifference on the part of individuals who share group identities with the perpetrators.<sup>16</sup> It is important to highlight the difficulties when it comes to investigate and punish those state officials that committed violations of human rights. The fact is that when state officials are involved amnesties and pardons are the common practice.<sup>17</sup> Thus, the change from the first to the second phase supposed a new perspective. In the first phase the concern was the criminal punishment of the perpetrators and in the second it was more focused on reconciliation, but it has to be mentioned that the victim's perspective was still not taken into account.

Teitel calls the third phase the steady-state transitional justice phase, it begins at the end of the twentieth century. This third phase is featured by a wide presence and recognition of transitional justice discourse, which can be reflected in the establishment of the International Criminal Court (ICC), which is a tribunal constituted to prosecute individuals for genocide, war crimes, crimes against humanity and the crime of aggression (Article 5 of the Rome Statute of the International Criminal Court). This phase is characterized by an expansion of the humanitarian regime in a globalised world and all this in close connection to human rights law.<sup>18</sup>

It can be noticed that since its origins the field of transitional justice has been widely developed. At the beginning when the transitional justice field was emerging, a book was published in 1986 entitled "Transitions from Authoritarian Rule"<sup>19</sup>, which tried to

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16 Dimitrijevic, 2011, p.81.

17 Nino, 1996, p.39.

18 Teitel, 2003, pp.69-94.

19 O'Donnell, Schmitter & Whitehead, 1986.

frame the concepts of this new field. The authors'<sup>20</sup> major concern was related to how to solve the dilemma of balancing the inclination to hide and forget the past by the transitional governments and the claims to confront the abuses of human rights, usually committed by government officials of the former authoritarian regime under its rule. This balance intended to satisfy the different actors in the transition process and make the way to democracy possible. The solution stated by the authors was not to ignore the past, and to take before the court the wrongdoers. They left out many issues that today are taken into account, for instance they left out questions of international law, or they did not take into account non judicial measures of transitional justice.<sup>21</sup>

Today there are some aspects which have been improved in the transitional justice discourse. Firstly, the division between peace and justice that was present at the beginning of the transitional justice discourse has been overcome.<sup>22</sup> As it can be noticed, in the first phase of Teitel's genealogy the main response of transitional justice was to do justice through trials and punishments, while the second phase focused more on alternative responses to construct historical perspectives of past violations, like truth commissions. Now it is accepted that peace and justice are two concepts interconnected that cannot be divided. As Ellen Lutz states transitional justice must pursue multiple objectives, and "to be effective, the process of crafting each transitional justice mechanism must consider and balance all of those goals"<sup>23</sup>. Secondly, in a transitional justice period there are other questions which are not transitional justice issues because they are not directly redressing the human rights abuses of the past, but they must be taken into account as well by transitional governments since it influences transitional justice processes. For instance it could be mentioned the consolidation of democratic institutions or the revival of the economy, with the aim of making possible the transition to democracy. Thirdly, another important question learnt is that to be able to achieve the last goal of transitional justice that is, to reckon with the past abuses of human rights

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20 O'Donnell, Schmitter & Whitehead, 1986.

21 Hayner, 2010, p.7.

22 Lutz, 2006, p.327.

23 Idem.

and prevent them happening again<sup>24</sup>, it is necessary to approach the transitional justice measures to the concrete level, and to contextually adequate it to the culture in particular because as the experiences have shown transitional justice processes are shaped accordingly to the culture and the context.<sup>25</sup>

Today the international community contributes with financial, institutional and normative support to new governments under transitional periods.<sup>26</sup> In this context transitional justice mechanisms are implemented as a part of conflict management, not as a post-conflict consolidation instrument. The contribution of the international community influences states which are in transition, an influence that shapes the way of dealing with past human rights violations. It is agreed in the international level that individuals responsible for violations of human rights must be held accountable by states. Today it is accepted that the legacies of human rights violations cannot be simply buried and forgotten, and accountability of past abuses of human rights is necessary.<sup>27</sup>

#### 1.1.2. The emergence of bottom up processes

As it can be seen in Teitel's transitional justice genealogy, the principal approach to transitional justice processes is basically legal, an approach which shapes transitional justice discourse from a legalistic point of view.<sup>28</sup> At the beginning the transitional justice discourse was eminently focused on accountability in trials that is the case of the Nuremberg trials in post-World War II. In this phase individual criminal accountability was considered the main issue in transitional justice. In the second phase the attention of transitional justice was in the restorative model, represented particularly by truth commissions. Today transitional justice has become broadly accepted, and there has been a predominance of the legal processes that has had as a consequence the claims of recognising community-led initiatives.<sup>29</sup>

24 Roht-Arriaza, 2006, p.325.

25 Lutz, 2006, p.327-336.

26 Nagy, 2008, p.275.

27 Lutz, 2006, p.328.

28 McEvoy & McGregor, 2008, p.47.

29 Idem, p.48.

The already mentioned measures and mechanisms of transitional justice tend to forget or ignore the individuals most affected by the violations of human rights.<sup>30</sup> In settings where the national justice system is not implementing adequate measures to fulfil the necessities of transition, the impulse to make these processes succeed is given by victims' groups, communities, human rights NGO's and other civil organisations.<sup>31</sup> It could be said that those organisations were the platform where the injustices and the suffering of the victims were brought into the human rights discourse. A factor that has contributed to make pressure to include human rights issues in the political life, and that has influenced in the recognition of human rights, particularly in the question of dealing with the past has been the activity of the groups implicated in social struggle, together with legal institutions and jurisprudence.<sup>32</sup>

Transitional justice often has implemented mechanisms from the top. That tendency is probably because transitional justice measures have been established at the same time as the construction of democratic institutions. Examples of that are the establishment of the international criminal tribunals for the Former Yugoslavia and Rwanda, which did not pay that much attention to the needs of the most affected communities.<sup>33</sup> As a result these top-down mechanisms are carried out leaving out the victims from the construction and implementation of these mechanisms. The already mentioned mechanisms that have been used to deal with human rights violations committed in the past, for instance trials, truth commissions, reparations and lustration policies, show the institutional root of transitional justice and the distance of the victims from these processes. Since the beginning of transitional justice there has been a great emphasis on trials as the main representative transitional justice mechanism, when indeed reparation is the mechanism closer to the victims.<sup>34</sup> Although it could be mentioned that these top down mechanisms are contested by those local communities

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30 Idem, p.3.

31 Idem.

32 Idem, p.4.

33 McEvoy & McGregor, 2008, p.50.

34 Idem.

that want their point of view to be recognised in the public sphere, it could be said as McEvoy explains that “activists in the transitional setting are perhaps the least likely to simply accept top down and legalistic limitations upon the interpretations of human rights discourses, particularly when these are promoted by the state in its own interest”<sup>35</sup>.

The origins of the bottom up processes can be dated to the late 1960s and 1970s coming out of the underdeveloped countries, when social tension and social struggles started to grow. This participatory approach started to gain force in the 1970s and 1980s, understanding participatory action as “a process that facilitates the permanent ability to identify and analyse problems, formulate and plan solutions, mobilize resources and implement them, to gain control over the processes that affect people lives”<sup>36</sup>. The main objective of this participatory approach is to empower local actors. An example of this approach is given in the research project made by Simon Robbins and Ram Kumar Bandhari in 2012 with the families of the disappeared in Nepal. In their participatory action research project the aim was to empower victims through mobilisation, to make them being active actors in transitional justice processes. In their project they studied the family association created after the conflict in Nepal, with the aim of supporting the family associations of the victims.<sup>37</sup>

This participatory approach discourse has been influencing transitional justice projects turning the attention to the communities, as the case of the project in Nepal. This can be especially seen in the case of Latin America, where this participatory discourse was an influential factor for the “Nunca Más” report<sup>38</sup> that has been a symbol of transitional justice.

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35 Idem, p.8.

36 Lundy & McGovern, 2008, p.280.

37 Robbins, Simon & Kumar Bandari, Ram, From victims to actors: Mobilising victims to drive transitional justice practice, 2012, at [http://www.simonrobbins.com/NEFAD\\_From%20victims%20to%20actors%20-%20Research%20report.pdf](http://www.simonrobbins.com/NEFAD_From%20victims%20to%20actors%20-%20Research%20report.pdf)

38 Lundy & McGovern, 2008, p.281.

### 1.1.3. The role of victims' groups setting up transitional justice processes

The role of victims' groups during transitional periods has been influenced by the orientation that has had the policies created to implement transitional justice mechanisms. There has been a tendency of implementing state centred policies during transitional justice that have excluded other ways of dealing with past human rights violations. Consequently, these policies have left out victims' groups and their needs. A reflection of these policies has been the implementation of amnesty laws. Particularly in the 1980s, when transitional justice discourse started to spread, the necessity of changing from an authoritarian regime to a new democracy, urged the adoption of implementing such centralised processes. At the beginning victims' groups and their rights were not taken into account because at that time the priority of states in a transitional period was to change the regime peacefully, using for that amnesty laws. As a consequence they had to ignore and eschew the question of the rights of victims.<sup>39</sup>

Community led initiatives have emerged as a response to these national centred policies, like the Mothers of the Plaza de Mayo in Argentina, demanding to know the truth about their relatives, or the Recovery for Historical Memory in Guatemala, where the Catholic Church documented cases of human rights abuses against indigenous people.<sup>40</sup>

States have been the principal actor in the emergence of international law, but there have appeared other actors in shaping this development that is the case of NGOs, which have been advocating the rights of the groups less represented. NGOs have become the platform where the victims of human rights abuses have turned to express their claims. They became a formalised organisation where the suffering of the victims could find a way to be expressed. The NGOs reacted presenting their claims in the human rights discourse. For instance it can be mentioned the involvement of NGOs in the establishment of the Set of Principles of Impunity and the Basic Principles on the Right

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<sup>39</sup> McEvoy & McGregor, 2008, pp.54-57.

<sup>40</sup> Idem, p.60.

to a Remedy and Reparation, as well as their contribution in the Statute of Rome, which implemented the ICC.<sup>41</sup> In particular they put their efforts on issues of victims' rights, participation and reparation. Additionally NGOs have contributed to the achievement of accountability through the development of legal mechanisms that had the aim of reaching that goal.<sup>42</sup>

## **1.2.Trauma and Memory**

Societies which have lived a period of massive atrocities perpetrated by the state, remain deeply marked by the wounds caused during the previous regime. To be able to construct a democratic future is necessary a social and individual healing process. That process must include coming to terms with the past, memory and remembering.

The literature on transitional justice has been mainly focused on certain mechanisms. These mechanisms conventionally used are trials, truth commissions, reparations, lustration policies and institutional reforms.<sup>43</sup> There are other fields that have not received enough attention in the transitional justice discourse, although they are relevant for the success of the transitional justice processes. These fields are trauma and memory work, which have been recently incorporated into the literature of transitional justice.<sup>44</sup> I will focus on these issues that are as important as the previous ones to construct a solid democracy. I will focus on them since both fields are in close connection with the victims of human rights violations. All victims lived a traumatic event, coping with it will determine the way of action the groups will take. Memory work has a strong connection with the action of the victims because one of the memories that struggle in the transitional period is the memory of the victims.

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41 Idem, pp.49-54.

42 Idem.

43 Olsen, Payne & Reiter, 2010, pp.30-42.

44 Kayser-Whande & Schell-Faucon, 2008, p.20.

### 1.2.1. Trauma work

It could be defended that the recognition of the violence used during the past regime, the accountability for those who committed violations of human rights and the reconciliation in society are necessary factors that need to be treated in a country which starts a transition to democracy. What is less recognised is the importance that trauma plays in those processes.<sup>45</sup> Trauma work is necessary to reach a future reconciliation. Societies that live periods of strong violence are marked with deep wounds. These wounds need to be healed to make possible to construct a better future. Although complete healing is impossible, it is possible that individuals reconcile with the past and that is the healing that has to be reached. In order to reach reconciliation the traumatised person need to assimilate trauma and stop being shocked by the traumatic experience.<sup>46</sup> This assimilation is particularly difficult in the cases of political disappearances. The mourning process becomes extremely complex when the body of the disappeared relative cannot be buried. The disappearance can cause on the relatives of the missing a long-term psychological distress because of the uncertainty produced by the missing bodies. In this situation the relative constantly fights between hope and grief. Without a burial the relatives cannot assimilate that their loved ones are dead. Thus, the person remains traumatised in the long-term. Trauma work will be of particular relevance when related to relatives of disappeared.<sup>47</sup>

Traumatic experiences can be defined as “rooted in single incidents or a chain of events that threaten a person's physical and psychological integrity”<sup>48</sup>. Trauma may affect to single individuals, but it can also affect a whole community as it is the case of massive human rights violations committed to specific groups.<sup>49</sup> Not all individuals exposed to traumatic experiences are traumatised, but some of them develop

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45 Barsalou, 2005, p.2.

46 Kayser-Whande & Schell-Faucon, 2008, p.29.

47 Stover & Shigekane, 2002, pp.859-860.

48 Kayser-Whande & Schell-Faucon, 2008, p.28.

49 Ursano, Fullerton & McCaughey, 1994, p.5.

psychological disorders, such as flashbacks or physical disturbance.<sup>50</sup> Among the consequences of trauma in the individual can be highlighted two: the loss of the connection between the person and his past identity, prior to the trauma; and it can break the capacity to have relations with other individuals. What trauma work does is to reconstruct the identity of the person traumatised and his ability to trust in others.<sup>51</sup>

Trauma can be considered from three perspectives: can be considered a medical concept understanding it as a number of symptoms; it can be considered a complex psychological mechanism that has to be analysed, such as the psychoanalytic work made with the victims of the Holocaust; and thirdly it can be considered a social and political process, this last perspective has been incorporated by the Latin American studies which have defended that trauma is not just an individual process, but it is as well a collective process in which social and political factors must be considered.<sup>52</sup>

The main question that comes here is why is trauma work important for the success of transitional justice processes. Transitional justice processes are aimed to deal with those groups most affected by the violence committed during the past regime. These individuals like child soldiers, the victims and perpetrators of political repression and the relatives of disappeared among others are those who are traumatised.<sup>53</sup> Transitional justice processes tend to reconstruct the dignity of those persons and their self-worth, both feelings that are “essential to citizenship in a democratic polity”<sup>54</sup>. Therefore, transitional justice processes and trauma work are aimed at the same groups, which are the ones who need to be reconciled. Reconciliation will not be possible if the individuals who conform society are still traumatised. Thus, there will be no reconciliation and social peace if there are no mechanisms which are aimed to cope with

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50 Barsalou, 2005, p.4.

51 Kayser-Whande & Schell-Faucon, 2008, p.29.

52 Becker, David, Dealing with the Consequences of Organised Violence in Trauma Work, Berghof Research Center for Constructive Conflict Management, p. 3, 2001, at [http://edoc.vifapol.de/opus/volltexte/2011/2599/pdf/becker\\_handbook.pdf](http://edoc.vifapol.de/opus/volltexte/2011/2599/pdf/becker_handbook.pdf) Cconsulted on 7 July 2013).

53 Kayser-Whande & Schell-Faucon, 2008, p.30.

54 Barsalou, 2005, p.11.

the traumas lived by victims of human rights violations. That is the main reason why trauma work is important to transitional justice discourse.

Trauma work is a multidisciplinary field since it involves different aspects. Traditionally has been considered a part of psychology practice since it is related to mental health, but it has to be kept in mind that trauma work is also linked to other fields such as education.<sup>55</sup> As David Becker stated “Psychosocial work should never be an aim in itself. It should be understood as a method that obliges us to deal with individuals and their histories, as well as with their social context and the economic realities that are present”<sup>56</sup>. Thus, trauma work is not just therapy work carried out by psychologists it can consist in community projects or school work. For instance it was implemented a trauma work project in Bosnia in which traumatised women had to take care of old people who lived alone. In this project the women break their isolation to be part of a group. In this way they help themselves and at the same time provide a social service, which is also a fight against forget since through the elderly people the women keep alive the pre-war past.<sup>57</sup>

### 1.2.2. Memory work

Another important factor in transitional justice processes related to the social healing is memory. In this sense memory “is the process of remembering, forgetting and learning to live with unbearable aspects of the past.”<sup>58</sup>. Memory and remembrance are as well important elements for coping. There is a distinction between personal memory and collective memory. It could be said that personal memory has the aim of remembering and mourning a past traumatic experience of those who witnessed the

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55 Becker, David, Dealing with the Consequences of Organised Violence in Trauma Work, Berghof Research Center for Constructive Conflict Management, p. 12, 2001, at [http://edoc.vifapol.de/opus/volltexte/2011/2599/pdf/becker\\_handbook.pdf](http://edoc.vifapol.de/opus/volltexte/2011/2599/pdf/becker_handbook.pdf) Cconsulted on 7 July 2013).

56 Idem.

57 Idem.

58 Kayser-Whande & Schell-Faucon, 2008, pp.31-32.

atrocities. When it transcends the personal it comes the collective memory, which is the memory shared by the individuals part on a social group.<sup>59</sup> The collective memory conforms a framework in which the individual memories are given a meaning. In this sense the collective memory interprets and helps selecting the individual memories. This sense that the collective memory gives to the personal memories establishes which are the memories that should be remembered and which ones should be kept in silence.<sup>60</sup> With the collective memory it is possible to construct a new future for the social group, and in the case of societies emerging from a period of strong violence and repression it could prevent the atrocities committed in the past from happening again.<sup>61</sup> Thus, memory and trauma work in the collective sense are directed to the same community since the traumatic events that affected the whole society are the same which have to be interpreted in the present by the memory.

Memory is not a static process, remembrance is a work in constant construction. The shape of memory and the creation of memorial places are a consequence of the politics of that time in a country. This process involves a constant change in which factors like political environments and the needs of the time influence the construction of myths about the past. That is why is important to remain critical to the construction of the discourses of memory by the politics.<sup>62</sup> It is known that there is no single truth, truths are several and complex. It is important to promote reconciliation through the recognition of different truths, not just the dominant memory discourse.<sup>63</sup>

Memory is a process that is made to relate the past with the present and the future. Memory is an act of the present, since from the present we shape and reshape the past. In this shaping and reshaping memory is a narrative, an interpretation of the past. Memory is as well a subjective relation among a collectivity that is part of a particular social environment. In a society there are different memories struggling to give a sense

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59 Idem.

60 Stern, Steve J., 1998, p.14.

61 Kayser-Whande & Schell-Faucon, 2008, p.32.

62 Idem, p.34.

63 Barsalou, 2005, p.7.

to the present. In a transitional period there are these two opposite and connected reactions, remembering and forgetting.<sup>64</sup> After traumatic periods it has happened that memory is dominated by the narrative of the ones who are in a stronger position in the society and it is imposed a memory in which the voices of the victims are not taken into account.

These two reactions of remembering and forgetting are connected to two different perspectives: the perspective of the victims and the perspective of the perpetrators. The meaning of the past historic facts will be different depending on the perspective. The victims will try to understand and find out what were the facts that made their lives change radically. On the other side the perpetrators will try to impose the forget. Perpetrators will defend that to construct a future and reach a reconciliation it is necessary to forget. They will be interested on this perspective since it will allow them to keep certain control in the society. Thus, if the perpetrators are able to keep that control they will not be taken before the courts.<sup>65</sup> Remembrance is a process in constant construction, it could be said the same about these two aspects of memory. Remembrance and forget are interacting and evolving during time. In this evolution of memory other generations will participate. Memories will be transmitted from generation to generation taking different shapes.<sup>66</sup> An example of this inter-generation aspect of the memory is the organisation Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (Children for the Identity and Justice Against the Forgetting and the Silence) created in Argentina after the dictatorship by the sons of disappeared persons during the junta dictatorship. They came together to fight for the memory of their disappeared parents.

Work memory are the political, social, juridic, economic, and cultural measures which

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<sup>64</sup> Lechner & Güell, 1998, pp.2-5.

<sup>65</sup> Gaborit, Mauricio, 2006, p.13.

<sup>66</sup> Bugüño Ulloa, Carolina A., Memoria y olvido social: Conectores intergeneracionales que nos consienten la conjugación del tiempo (Memory and social forget: intergenerational links that allow the time conjunction), Universidad de Playa Ancha, at [http://web.upla.cl/revistafaro/04\\_tesis/07\\_bugueno.htm](http://web.upla.cl/revistafaro/04_tesis/07_bugueno.htm) (consulted on 7 July 2013).

are implemented to deal with the past.<sup>67</sup> An example could be the places of memory like archives or museums which have been ways of expressing symbolic meaning. For instance the Escuela Mecánica de la Armada (the Navy School of Mechanics, ESMA) in Buenos Aires.<sup>68</sup> The ESMA was one of the representative clandestine detention centres during the dictatorship in Argentina. This museum was created to be a place for remembrance and for the promotion of human rights.<sup>69</sup>

As already said dealing with the past will not be just an issue of the transitional period, the struggle for memory will reappear in future generations. Thus, it is important to take into account memory in the transitional period since it will be a key point in the construction of a new democratic government in order to avoid the continuation of the conflict.<sup>70</sup> It is important that the different memories are taken into account in the process of shaping memory. Among these memories which have to be considered are the voices of the victims who suffered the violence.

## Conclusion

In this chapter I showed how the transitional justice discourse has been developed after the experience lived in several countries during transitions to democracy. During this evolution of transitional justice, victims have been left out and transitional justice processes have been implemented from the top down by the international community and the national elites. Today bottom up movements have been gaining a growing attention. These grassroots movements have made pressure to be recognised in their demands. Partly due to this pressure transitional justice has incorporated and developed fields which did not receive enough attention at the beginning, such as trauma and memory work.

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<sup>67</sup> Bolaños de Miguel, 2007, p.332.

<sup>68</sup> Idem, p.342.

<sup>69</sup> Badaró, 2011, p.35.

<sup>70</sup> Kayser-Whande & Schell-Faucon, 2008, p.36.

## **CHAPTER 2. TRANSITIONAL JUSTICE IN LATIN AMERICA**

During the twentieth century Latin America lived several conflicts, dictatorships, and authoritarian regimes. These regimes had in common the implementation of repressive politics, with the consequent violations of human rights. Example of these violations were the forced disappearances, the cases of torture, the non-judicial executions and the forced displacement of people. Since the 1970s Latin American countries like Chile and Argentina have been implementing different techniques to deal with the legacy of mass atrocities committed during past regimes, implementing truth commissions, judicial processes, as well as commemoration and reparation projects.<sup>71</sup>

In this chapter I will present the role of the Inter-American Human Rights System on transitional justice processes in Latin America, as well as the contribution of the Latin American experience to the global transitional justice discourse. I will finish the chapter explaining the relevance of the victims during transitional justice processes in Latin America.

### **2.1. The Impact of the Inter-American Human Rights System on Transitional Justice Processes in Latin America**

To understand the transitional justice processes carried out in Latin America it is important to mention the influence of the Inter-American Human Rights System on them. This regional human rights system was created by the Organisation of American States (OAS) and mainly relies on two instruments: a) the American Declaration on the

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<sup>71</sup> Bernal Sarmiento, *Justicia Transicional en América Latina* (Transitional Justice in Latin America), Latin-American Society for International Law, 2011, at [http://www.academia.edu/2057882/Justicia\\_transicional\\_en\\_America\\_Latina](http://www.academia.edu/2057882/Justicia_transicional_en_America_Latina) (consulted on 22 March 2013).

Rights and Duties of Man and b) the American Convention on Human Rights.<sup>72</sup> The Declaration is not binding, but it has an interpretative value. The Inter-American Court has stated that the Declaration applies to the member states of the OAS and additionally the Declaration will be considered to interpret the human rights commitments included in the OAS Charter.<sup>73</sup> On the other hand, the system is composed of two institutions: the Inter-American Commission and the Inter-American Court.<sup>74</sup> Both have contributed significantly to the transitional justice discourse over the years, like in the development of international human rights law. At the same time the Commission and the Court have supported the democratisation processes by promoting and monitoring human rights.<sup>75</sup>

#### 2.1.1. The Inter-American Commission on Human Rights

The Commission has an important role in relation to the defence and promotion of human rights, its key functions are: to make recommendations to the states to take measures in favour of human rights, to make country and thematic reports, to conduct on-site observations with the consent of the government concerned, additionally the Commission can order the Court to issue provisional measures in serious and urgent cases.<sup>76</sup> Furthermore the Commission may adjudicate petitions containing complaints of violations of human rights lodged by any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the OAS.<sup>77</sup>

Since its creation the Commission has had a relevant role, especially during the 1970s and 1980s when repressive regimes in Latin America applied a terror policy resulting in grave violations of human rights. When transitions to democracy started, a debate began about the question of impunity for the crimes committed in the past and the right to know what really happened during the repressive regimes, that is, the right

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72 Hennebel, 2009, pp.805-814.

73 Cavallaro & Brewer, 2008, pp.778-779.

74 Hennebel, 2009, pp.805-814.

75 Idem, p.844.

76 Statute of the Inter-American Commission on Human Rights (adopted 25 May 1960), Article 18.

77 American Convention on Human Rights (adopted 22 November 1969), Article 44.

to the truth.<sup>78</sup> The Commission and the Court have justified this right in relation to other fundamental rights, such as the right of access to justice and the right to a remedy and reparation. The right to the truth was extended to situations involving disappeared people and to the context in which the disappearances happened. The right to the truth is always linked to other human rights violations and to the lack of information provided by the authorities regarding the violations. This right is rooted in the right of the victims or their families to find out the facts regarding the violation. This is a necessary factor in the healing need of the victims.<sup>79</sup> The Commission has recognised the right to know the truth of the victims, not just as an individual right, but as a collective right of the entire society, in other words, a right that allows society to have access to information. This access to information is required to consolidate democratic institutions.<sup>80</sup>

The Commission influenced the human rights regime by providing documentary evidence and condemning systematic human rights violations. Especially in relation to the right to the truth, the Commission condemned the lack of access to justice and information of the victims in the cases of torture, forced disappearance and massacres.<sup>81</sup> The Commission drove the formation of the concept of forced disappearance that culminated with the draft of the first Inter-American Convention on Forced Disappearances of Persons presented by the Commission in 1988.<sup>82</sup>

Another effort made by the Commission was related to the issue of amnesty laws. During democratizations in the 80s and 90s, several Latin American countries implemented amnesty laws. These laws could be divided in two groups: *de facto* amnesty laws, which consisted in the absence of carrying out an investigation and bringing before a court the perpetrators; and *de jure* amnesty laws, which consisted in

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78 Dykmann, 2007, pp. 45-46.

79 Naqvi, 2006, pp.248-249.

80 Inter-American Commission of Human Rights, case 10.480, Report n° 1/99, El Salvador, para. 150, 27 January 1999, at <http://cidh.org/annualrep/98eng/Merits/ElSalvador%2010480.htm> (consulted on 6 July 2013).

81 Bernal Sarmiento, *Justicia Transicional en América Latina* (Transitional Justice in Latin America), Latin-American Society for International Law, 2011, at [http://www.academia.edu/2057882/Justicia\\_transicional\\_en\\_America\\_Latina](http://www.academia.edu/2057882/Justicia_transicional_en_America_Latina) (consulted on 22 March 2013).

82 Pelayo Moler, 2012, p.26.

the legal obstacle to carry out an investigation and to do justice against perpetrators of crimes against humanity. These amnesty laws were widely spread in transitional justice processes in the 80s.

A major achievement of the Commission was to condemn these amnesty laws, because of the obstacle that they posed in achieving criminal accountability.<sup>83</sup> The contribution of the Commission in relation to this issue started in 1986, when they stated that amnesty laws decreed by those responsible for human rights violations had no juridical validity<sup>84</sup>, and continued until the 90s when they had cases related to amnesty laws. The first that the Commission dealt with the issue of the incompatibility of the amnesty laws with the international human rights regime was in the case of the amnesty law in Uruguay. The Commission stated that the amnesty law violated the right to justice of the victims.<sup>85</sup> In 1996 the Commission declared that the amnesty law in Chile was against the American Convention on Human Rights, because it violated Article 1, 2, 8 and 25 of the Convention. In the case of Samuel Catalán Lincone the Commission stated that the amnesty law was an extension of the politics of the past regime<sup>86</sup>, and was incompatible with the American Convention because it violated the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25).<sup>87</sup>

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83 Bernal Sarmiento, *Justicia Transicional en América Latina*, Latin-American Society for International Law, 2011, at [http://www.academia.edu/2057882/Justicia\\_transicional\\_en\\_America\\_Latina](http://www.academia.edu/2057882/Justicia_transicional_en_America_Latina) (consulted on 22 March 2013).

84 Inter-American Commission on Human Rights, Annual Report 1985-1986, OEA/Ser.L/V/II.68, 26 September 1986, at <http://www.cidh.org/annualrep/85.86eng/toc.htm> (consulted on 6 July 2013).

85 Burt, Amilivia & Lessa, 2013, p.314.

86 Bernal Sarmiento, *Justicia Transicional en América Latina* (Transitional Justice in Latin America), Latin-American Society for International Law 2011, at [http://www.academia.edu/2057882/Justicia\\_transicional\\_en\\_America\\_Latina](http://www.academia.edu/2057882/Justicia_transicional_en_America_Latina) (consulted on 22 March 2013).

87 Inter-American Commission on Human Rights, Case 11.771, Report no. 61/01, OEA/Ser.L/V/II.111, 2000 available at <http://www.cidh.org/annualrep/2000sp/CapituloIII/Fondo/Chile11.771.htm> (consulted on 6 July 2013).

### 2.1.2. The Inter-American Court of Human Rights

The Inter-American Court has also influenced transitional justice in Latin America. The Court is in charge of applying and interpreting the American Convention on Human Rights.<sup>88</sup> The Court has been productive in the struggle against impunity in relation to past violations of human rights, it has also covered questions such as the access to justice and the right of the victims to know the truth.

Undoubtedly one of the most significant contributions of the Court to transitional justice was its judgement in 1988 of the Velasques Rodriguez case. This case was the first decision of an international court related to the question of forced disappearances. The case was presented to the Court by the Commission. It was about a student leader who was taken by the national army of Honduras and afterwards disappeared. In this case the Court said that the relatives had the right to know what happened to the victim, even when those responsible could not be legally punished.<sup>89</sup> The Court stated that Honduras violated the right to personal freedom (Article 7 of the Convention), the right to personal integrity (Article 5 of the Convention), and the right to life (Article 4 of the Convention).

Another representative case that has to be mentioned in relation to the work of the Court is the “Barrios Altos”<sup>90</sup> case. In this case the core question concerned the amnesty laws granted by the Peruvian state. These laws pardoned crimes committed by the police or civilians that violated human rights, during the period covered between 1980 and 1995. Relatives of victims presented the case before the Inter-American Court, which declared that these laws had no judicial effects.<sup>91</sup> Consequently the Peruvian state had to examine the facts and carry out an investigation to establish and punish those individuals responsible for the violations, as well as to spread the findings in the public

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88 Statute of the Inter-American Court on Human Rights (adopted October 1979), Article 1.

89 Velásquez Rodríguez v. Honduras, Inter-American Court of Human Rights, para. 181, Serie C No. 4, 29 July 1988, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_07\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_07_ing.pdf) (consulted on 6 July 2013).

90 Barrios Altos v. Perú, Inter-American Court of Human Rights, Series C No. 75, 14 March 2001 available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_75\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf) (consulted on 6 July 2013).

91 Quiroga León, 2005, pp.243-267.

sphere.

The cases marked the need for the recognition of the right to the truth, and the right of victims to know what happened. The Court has contributed in two ways, by strengthening the right to the truth, and by implementing mechanisms to make possible the enjoyment of this right in practice.<sup>92</sup> In relation to the recognition of the right to know the truth the Court stated the right of the relatives of a disappeared person to know where the disappeared is and in the case of decease, where the remains of this person are, thus recognising the victims' right to truth.<sup>93</sup> An example is the Velasques Rodriguez case mentioned above. In other cases the Court declared that the right to the truth is one of the rights of the victims or their relatives to obtain information about the facts and the resulting responsibility of the State.<sup>94</sup> In the interpretation of the Court this right is an obligation of the state not just towards the victims of human rights violations, but towards the entire society. This gives rise to an obligation for the state to provide the truth to the victims' relatives, including the circumstances in which the violation was committed.<sup>95</sup> Understanding this right as a part of the necessity of justice that the victims demand.

The right of the relatives of victims of human rights violations to be heard during the legal and judicial proceedings is connected to the right to the truth. In the context of the cases of forced disappearance the Inter-American Court said that the right to know the truth was a type of reparation for the victims relatives. The Court stated that not providing the truth to the relatives about the whereabouts of the disappeared was a kind of cruel, inhuman and degrading treatment.<sup>96</sup> The jurisprudence of the Court has defended that the State has to guarantee that the victims have “full access and capacity to

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92 Malarino, 2009, p. 419.

93 Godínez Cruz v. Honduras, Inter-American Court of Human Rights, para. 191, Serie C No. 5, 20 January 1989 available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_05_ing.pdf) (consulted on 6 July 2013).

94 Bámaca Velasques v. Guatemala, Inter-American Court of Human Rights, para. 201, Series C No. 70, 25 November 2000 available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_70\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_70_ing.pdf) (consulted on 6 July 2013).

95 Park, Gloria, Truth as Justice, 2010, at <http://hir.harvard.edu/big-ideas/truth-as-justice> (consulted on 16 April 2013).

96 Burgogue-Larsen & Úbeda de Torres, 2011, pp.708-709.

act at all stages and at all instances of these investigations and proceedings so that they may submit pleas and motions, receive information, offer evidence, formulate arguments and, in brief, assert their interests”<sup>97</sup>.

## **2.2. The Influence of Latin American Experiences on Transitional Justice**

Latin America has contributed to the transitional justice discourse mainly in two aspects: in the development of the right to know the truth, and the individual criminal accountability of the responsible persons of crimes committed in the past.

### **2.2.1. Right to the truth**

The right to know the truth is an essential instrument to reach truth and justice for the victims. Knowing the truth is a necessary factor in the healing process. When the truth is known it is possible to accept what happened, helping the closure process of the victims relatives.<sup>98</sup> Truth is one of the main things that victims demand, one of the elements to achieve justice.

The Latin American experience contributed with the implementation of transitional justice mechanisms with the aim of fulfilling this right to the truth in practice. Among transitional democracies Latin America has been the region with the highest number of truth commissions implemented, it has established 52 percent of the truth commissions created all over the world.<sup>99</sup> The first attempt in Latin America to establish a truth commission was the case of the “National Commission for Forced

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97 Valle Jaramillo v Colombia, Inter-American Court of Human Rights , para. 233, Series C N° 192, 27 November 2008 available at [http://www.tc.gob.pe/corte\\_interamericana/seriec\\_192\\_esp.pdf](http://www.tc.gob.pe/corte_interamericana/seriec_192_esp.pdf) (consulted on 6 July 2013).

98 Naqvi, 2006, pp.248-249.

99 Olsen, Payne & Reiter, 2010, p.106.

Disappearances” in 1982, but this commission was disbanded before accomplishing its mandate, so the report that the commission was supposed to make was not issued.<sup>100</sup> Concerning truth commissions a relevant example was the truth commission established in Argentina in 1983. After the Videla dictatorship (1976-1983), the elected government established the Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons, CONADEP). The commission carried out an investigation about the human rights violations committed during the dictatorship. The result of the investigations was published in a report called “Nunca Más” (Never Again). This worldwide known sentence means that we must not fall into the same mistakes committed in the past and learn from the past experiences to make a better future. This concept represented by the slogan Never Again could be considered as the major contribution to transitional justice since it has become a symbol that represents transitional justice movements around the world.<sup>101</sup> This commission was a landmark for all the truth commissions that were created afterwards because it was the first important truth commission in the world that published a report which revealed the grave human rights violations committed during a military regime.<sup>102</sup>

### 2.2.2. Individual criminal accountability of individuals responsible for crimes committed in the past

The other important Latin American contribution to the transitional justice discourse was the prosecution of individuals responsible for crimes committed during the past regime. Argentina played an essential role in transitional justice because the Argentinian case was a key element in the worldwide spread of individual criminal accountability.

The idea of individual criminal accountability for mass atrocities emerged in 1945 in the Nuremberg trials coinciding with the first phase of Teitel's genealogy, and it reemerges in 1993 and 1994 with the ad hoc international tribunals, the International

<sup>100</sup>Malarino, 2009, p.419.

<sup>101</sup>Sikkink & Booth Walling, 2006, pp.305-306.

<sup>102</sup>Idem.

Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Although the establishment of amnesty laws has been a common practice in transitions to democracy, which implied the pardon to responsible individuals of human rights violations, there has been an increase in the use of trials as a transitional justice mechanism.<sup>103</sup> In this trend Latin American countries have constituted early pioneers, as the case of the junta trials in Argentina shows. In these trials nine commanders of the armed forces were judged. When the trials were finished, the Argentinian courts continued with other human rights cases related to lower level officials. In the end almost three hundred officers were prosecuted before the court.<sup>104</sup> After the junta trials in 1985, prosecutions began to spread in Latin America.<sup>105</sup>

The transitional period in Argentina has influenced the worldwide expansion of transitional justice mechanisms. This influence has increased since the establishment of CONADEP and the trials which had an impact beyond Argentina. As Sikkink explains Argentina has been one of the factors of what she calls the justice cascade, the spread and globalisation of transitional justice mechanism, to hold accountable those state officials responsible for the commission of human rights violations. After the Argentinian trials, there has been a raise of prosecutions in Latin American countries, like Bolivia, Guatemala, Panama, Chile and Haiti.<sup>106</sup>

### **2.3. Role of Victims in Transitional Justice in Latin America**

In their article Salazar and Galvis describe a study carried out by the Due Process of Law Foundation, which aimed to evaluate transitional justice processes in

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<sup>103</sup>Sikkink & Booth Walling, 2007, p.427-428.

<sup>104</sup>Sikkink, 2011, pp.70-76.

<sup>105</sup>Idem, p.96.

<sup>106</sup>Idem, pp.96-97.

seven countries of Latin America from the victims' point of view.<sup>107</sup> The presence of the victims during transitional justice periods has been an important factor to pressure institutions to keep the transitional justice discourse alive. Specifically they mention three aspects:

keeping the need to prosecute unlawful actions of the past on the public agenda; driving investigations and processes so that the victim can give testimony in court, provide evidence or demand diligent evidentiary investigations; and putting forward strong and convincing arguments of fact and law so that judicial officers can accept and apply them to resolve cases.<sup>108</sup>

The main factor that kept these processes going has been the persistence of the victims fighting to call for the recognition of past human rights abuses. In particular, victims' groups in their critical labour to institutions have helped in the struggle against impunity and amnesty laws, even in the difficult situations as the dictatorships in the Southern Cone of Latin America. victims' groups have helped to oblige the institutions to carry out investigations.<sup>109</sup> Social movements, human rights' organisations including victims' groups have been primary actors in Latin American experience to put pressure on authorities to reach the change they demanded.<sup>110</sup> This grassroots movements pushed to incorporate human rights issues in the governmental policies. Without them acting from the ground it would not be possible to advance in the defense of human rights.<sup>111</sup>

## Conclusion

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<sup>107</sup>Salazar & Galvi, 2010.

<sup>108</sup>Idem, p.116.

<sup>109</sup>Idem, p.121.

<sup>110</sup>Cavallaro & Brewer, 2008, p.788.

<sup>111</sup>Idem, p.770.

In this chapter I have first explained what has been the contribution of the Inter-American System of Human Rights to transitional justice in Latin America. For that I have shown the role of the Court and the Commission in fighting impunity and defining the right to the truth. I have mentioned the achievements reached in Latin America in terms of transitional justice, with respect to the right to the truth and the accountability of individuals responsible for crimes committed in the past. Both questions are connected to the demands of the relatives' groups in transitional periods. This recognition has been influenced by the activity of the human rights movement. The demands of the victims and the human rights' groups have been incorporated in the transitional justice discourse. What I have shown is the relevance of the human rights discourse in the Latin American context and at the same time the relevance of the Latin American experience to transitional justice.

### **CHAPTER 3. THE MOVEMENT OF RELATIVES' GROUPS OF VICTIMS OF HUMAN RIGHTS VIOLATIONS IN ARGENTINA**

The Mothers of Plaza de Mayo are a human rights' group constituted by relatives of the persons who disappeared during the dictatorship in Argentina, who demonstrated during the military regime to demand truth and justice. Their activity did not stop there, they continued demonstrating after the authoritarian regime, demanding justice, and even today they keep mobilising for the fight against forgiveness. The Mothers have become the symbol of the victims' movement of human rights abuses, not just in Argentina, but in a broader context as well. They have become an example imitated by wider movements constituted by victims of the political violence worldwide.<sup>112</sup> The emergence of the Mothers and other victims' groups in Argentina appeared as a part of the human rights movement in which several human rights' organisations were created.<sup>113</sup> In this chapter I will explain the emergence of the relatives' groups during the dictatorship and their activity during the authoritarian regime and in the transition to democracy. This chapter will provide the information to understand the role of the Argentinian human rights movement during the dictatorship and the transition. In the next chapter I will explain the activity of the human rights movement in Chile. Chapter three and four will provide the information to make a comparison between the role of the human rights movement during the dictatorship and the transition in both countries.

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<sup>112</sup>Robins, Simon & Kumar Bandari, Ram, From victims to actors: Mobilising victims to drive transitional justice practice, 2012, at [http://www.simonrobbins.com/NEFAD\\_From%20victims%20to%20actors%20-%20Research%20report.pdf](http://www.simonrobbins.com/NEFAD_From%20victims%20to%20actors%20-%20Research%20report.pdf)

<sup>113</sup>Brysk, 1994, p.23.

### 3.1. Background

To understand how and why the human rights movement and particularly the relatives' groups emerged in Argentina, it is important to explain the roots of the dictatorship in which these organisations appeared. The origins of the repression of the authoritarian regime that started in 1976 come from a long crisis carried for a long period of time, a period in which economic factors and military interventions played a decisive role. The roots of the dictatorship of 1976-1983 are controversial, some establish the historical origins in 1919 under the rule of Yrigoyen, when as a consequence of military threats he violently stopped a general strike, killing striking workers.

For Robben a crucial moment for the resulting dictatorship, was in 1945 with the rise of the importance of the populist Juan Perón, that took the leadership of the Argentinian working class, and had the opposition of the middle and upper classes.<sup>114</sup> This resulted in the military intervention in 1955, when Juan Perón was overthrown by a military coup, which started to restructure society, dismantling the former regime, including political institutions, economic system and activists.<sup>115</sup> As a consequence of the worsening of the labour conditions and the ban of the movement, Peronists reacted with armed resistance against the military rule. By the mid 1960s the political violence was led mainly by younger generations, which resulted in the creation of guerrilla movements, the main actors of the worker and student demonstrations that took place in 1969.<sup>116</sup> Military interventions and economic inflation produced a lack of legitimacy, which inspired a situation of instability and anti-government violence. The right-wing reacted to the emergence of these groups by creating right-wing death squads, like the Alianza Anti-comunista Argentina (Argentine Anticommunist Alliance, known as Triple A), which had as an objective to eliminate the leftists and they carried out that goal by

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<sup>114</sup>Robben, 2005, pp. 128-129.

<sup>115</sup>Brysk, 1994, p.30.

<sup>116</sup>Robben, 2005, pp. 128-129.

abducting any person who could constitute a possible threat.<sup>117</sup>

The military rule of the Process of National Reorganisation that took place during 1976 and 1983, had the elements of the preceding military rules, but there were new factors that characterised it: the increase of protests and anti-system violence that reached military officers. In 1973 elections were held as a result of strikes and protests, and Perón returned to power.<sup>118</sup> He took power at a moment in which the Peronist movement was internally divided, and he could not deal with the contradictions that arose in the movement after 20 years of exile.<sup>119</sup> Additionally, political violence increased with the result of the conflict between right-wing and Peronists, and Marxist guerrilla movements attacking the armed forces.<sup>120</sup> Perón died in 1974, and his wife Isabel Perón became president, under her rule the state was led to complete instability, politically and economically.<sup>121</sup> In this context the military removed her from power and imposed a junta formed by the commanders in chief of the armed forces (army, navy and air forces). The junta led by Videla established a terror state, in which all political activity was forbidden.<sup>122</sup>

### **3.2. Relatives' Groups Movement under the Dictatorship**

#### **3.2.1. The human rights movement**

There was some human rights activity before the dictatorship of 1976, like the case of La Liga Argentina por los Derechos del Hombre (Argentine League for the

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<sup>117</sup>Brysk, 1994, pp.28-30.

<sup>118</sup>Robben, 2005, pp.128-129.

<sup>119</sup>Brysk, 1994, p.32.

<sup>120</sup>Robben, 2005, pp. 128-129.

<sup>121</sup>Brysk, 1994, p.32.

<sup>122</sup>Navarro, 2001, p. 242.

Rights of Man), which was a lawyer's group that offered services to victims of human rights violations, created in 1937, or the Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights) created in 1975 as a response of violence and repression of the second Perón administration.<sup>123</sup> Still, the rise of the human rights movement including relatives' groups gained importance and was expanded during the period of the 1976 dictatorship. During the military regime the human rights movement was heterogeneous and could be divided into two groups: the affected, who were directly affected by the repression, like the Mothers of Plaza de Mayo and the nonaffected, for instance la Asamblea Permanente por los Derechos Humanos. The strategies used by these human rights' groups were divided into two lines of action: on the one hand, they wanted to ask for information about the truth of what was happening, and on the other hand, they wanted to demand accountability of the government.<sup>124</sup>

It is relevant to mention that during the dictatorship the Catholic Church did not support the human rights movement since the Church as institution was in agreement with the military junta. Not only did the Church not support the human rights movement, but it also refused to assist the relatives of the victims when they turned to the Church to seek help.<sup>125</sup> From this lack of response, two human rights' organisations were created. The reason of their creation was a necessity to give some support to those affected by the repression, as there was no ecclesiastical response to these demands. These two organisations were el Servicio de Paz y Justicia (the Justice and Peace Service, SERPAJ) and Movimiento Ecuménico por los Derechos Humanos (Ecumenical Movement for Human Rights, MEDH).<sup>126</sup> The SERPAJ formally established in 1980 provided education and assistance to marginalised groups and to support the emergence of human rights' groups. The MEDH, created in 1976, with Catholic and Protestant religious leaders, offered assistance to victims of human rights violations and their families. The lack of support of the Church had several consequences in these

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<sup>123</sup>Brysk, 1994, pp.45-47.

<sup>124</sup>Idem.

<sup>125</sup>Loveman, 1998, pp.32-34.

<sup>126</sup>Brysk, 1994, p.49.

organisations, for instance, the work of MEDH and APDH was limited due to the lack of resources. The social support that the Church could have provided lacked as well.<sup>127</sup>

To understand why these movements emerged during the dictatorship it is necessary to understand that they were an answer to the situation in Argentina. During the military regime of the National Process of Reorganisation (1976-1983), the human rights violations were a common practice used by governmental officers. The abuses were an instrument to carry out the repressive policy of the government. This repression was carried out in different ways, including abductions, torture, and murder. Most of the disappeared were killed by the armed forces and buried in mass graves or thrown into the sea.<sup>128</sup>

The Comisión Nacional para la Desaparición de Personas (National Commission of the Disappeared, CONADEP) created in 1983, initially listed 8961 disappeared persons for the period of 1975-83, based on the compilation of receiving petitions submitted by the relatives of the victims. Most of these petitions related to the kidnapping and disappearances in the period of 1976-1977.<sup>129</sup> The Commission had to investigate the cases submitted by the victims, using for that the declaration of the relatives and other testimonies including the perpetrators testimony.<sup>130</sup> Although the use of disappearances as a political repressive instrument was not new, in Argentina the military government used it in an expanded and systematic way not known before.<sup>131</sup> Human rights' groups responded to this high level of political repression and systematic violence.<sup>132</sup>

The relatives' groups were characterized by their public action during the military

127Loveman, 1998, pp.35-36.

128Sikkink, 2011, p.62.

129Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas (Never Again: report of the National Commission on the Disappearance of Person), Argentina, 1984, at <http://www.desaparecidos.org/arg/conadep/nuncamas/> (consulted on 6 July 2013).

130Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas (Never Again: report of the National Commission on the Disappearance of Person), Argentina, 1984, at <http://www.desaparecidos.org/arg/conadep/nuncamas/> (consulted on 6 July 2013).

131Sikkink, 2011, p.63.

132Brysk, 1994, p.40.

regime, in a period in which most of the Argentinian people were blind. Most of the Argentinians did not see or ignored what was happening and believed what the repressive state said, trying to justify the action of the military dictatorship some people said “algo habrán hecho”<sup>133</sup> (They must have done something). Nevertheless a few of them reacted to what was happening under the shadow of the repression, among them the relatives of victims of human rights abuses. It was a moment in which Argentinian relatives' victims of human rights violations created a new path of resistance.<sup>134</sup>

### 3.2.2. The emergence of relatives' groups of victims of human rights violations

The activity of the groups of relatives affected by the policy of repression of the military government had special importance in the context of the human rights movements under the dictatorship. It is not a coincidence that these family-based groups emerged during this period. The technique of the disappearances has deep consequences for the structure and life of the family of the disappeared person, as stated by Never Again report:

the arrest (generally carried out in the presence of the family or of people connected to the family); the anxious search for news at public offices, law courts, police stations and military garrisons; the hope that some information will arrive, the fantasy of a bereavement that is never confirmed; these are factors that destabilize a family group just as much as the individual members. Behind each disappearance, there is often a family that is destroyed or dismembered, and always a family that is assaulted in what is most intimate: its right to privacy, to the security of its members, and to respect for

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<sup>133</sup>Fair, Hernán, A 36 años del último Golpe de Estado en la Argentina: el recuerdo del pasado que apunta al porvenir (36 years from the last coup d'etat in Argentina: the remembrance of the past looking to the future), 2012, at <http://rcci.net/globalizacion/2012/fg1328.htm> (consulted on 22 April 2013).

<sup>134</sup>Brysk, 1994, p.41.

the profoundly affectionate relations that are the reason for its existence.<sup>135</sup>

As this report shows, 62% of the disappeared were detained at home in front of witnesses. This reveals that the emergence of groups of relatives of victims of human rights violations during the dictatorship was not a mere casual fact. As the relatives of the victims were directly affected by the repression the relatives' organisations reacted to the policy of the government.

The position of the Church had also consequences for the emergence of the relatives' groups. Some relatives of the victims tried to find support on the religious officers. These relatives later became important activists of the relatives' groups, like some Mothers and Grandmothers of the disappeared, who first came to the church looking for answers, but after the failure of the help they began to act without an intermediary, thus assuming in this way a role that always belonged to the church "to explain and resolve death and injustice"<sup>136</sup>.

In this context of violence and repression, the dictatorship used the fear as a tool to manipulate, the relatives of the victims of the repression did not know where to go to ask for help. They lived under the distress produced by the lack of information, and most of the times they did not know if what they lived was an isolated case or a spread situation. Under this lack of orientation, most of them did not say anything, remained in silence, but some of them decided to act. To find the answers they were looking for, they had to look for alternative ways of denouncing their cases, turning to churches, US embassy, and some human rights' organisations like the Asamblea Permanente por los Derechos Humanos. Most of the relatives were looking for support, not just legal support but emotional as well. It is possible that the emergence of these relative's groups was an answer to the need to share and to be understood in their suffering, like the case

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<sup>135</sup>Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas (Never Again: report of the National Commission on the Disappearance of Person), Argentina, 1984, at <http://www.desaparecidos.org/arg/conadep/nuncamas/> (consulted on 6 July 2013).

<sup>136</sup>Brysk, 1994, p.45.

of the Mothers of the Plaza de Mayo.<sup>137</sup>

As a consequence of the policy of state terror during the dictatorship, several human rights' groups were created. Among these groups, which included religious and family based groups, special relevance had the emergence of groups formed by the relatives of victims of human rights abuses. Three groups were created: Madres de la Plaza de Mayo (Mothers of Plaza de Mayo), Abuelas de Plaza de Mayo (Grandmothers of Plaza de Mayo), and Familiares de Detenidos y Desaparecidos por Razones Políticas (Relatives of the Detained and Disappeared for Political Reasons). Their main way of action was the organisation of public demonstrations, in which they asked for the whereabouts of their detained or disappeared relatives.<sup>138</sup> They were also active presenting cases to the courts. The first step of the relatives of victims of human rights violations was to present habeas corpus appeals. Despite their efforts most of the appeals were rejected.<sup>139</sup>

One of the best known groups of these relatives' organisations of victims of human rights violations that opened a new way of social action was the Mothers of Plaza de Mayo. Their first appearance was in April 1977, when fourteen middle age women, most of them housewives without political experience, demonstrated standing in a public square called Plaza de Mayo, in downtown Buenos Aires. What they demanded was information about what happened to their disappeared children.<sup>140</sup> Despite the fact that there was a ban on the freedom of movement, they stood every week marching on the central square of the main political public space in the country. They used symbolic ways to denounce their claims, they took photographs of their missing children, and they wore white scarves where they sewed the names of their children, that later would become the symbol of the movement. Their slogan at that time was “Aparición con

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137Jelin, 1994, pp.39-46.

138Brysk, 1994, pp.47-49.

139Barbuto, 2010, p. 43.

140Navarro, 2001, p. 241.

Vida”( Live Appearance).<sup>141</sup>

Although the regime ridiculed them and prosecuted them, trying to stop their activity by the use of detentions, burning their houses, taking another of their children and some of them tortured and thrown into the river, they kept resisting, and the movement became bigger and more widespread.<sup>142</sup> Their social action moved from an individual search to look for their missing children to a social movement with its own identity.<sup>143</sup> They reached this stage because they decided to socialize motherhood, as Hebe de Bonafini the president of the Mothers of Plaza de Mayo said. They started to become more and to gain support of the world when they decided that they would not defend just their own children but they would defend all the disappeared as they were the mothers of all of them.<sup>144</sup> They went from dozens to hundreds in 1978, and by 1981 they were leading demonstrations of thousands.

The other relatives' group was the Grandmothers of Plaza de Mayo, which was created at the same time as the Mothers. During the military regime every person that posed a danger for the government had to be eliminated, and they couldn't let the children of those “subversives” to be educated by the same families who had raised their parents. Instead they had to be educated by more appropriate families to avoid becoming threats to the state. These are the children that the grandmothers were looking for.<sup>145</sup> When they realized that the practice of kidnapping entire families and pregnant women was becoming normal practice, they decided to act more concretely on the issue of their grandchildren, but at the same time they remained participating with the demonstrations of the mothers.<sup>146</sup> They focused their work to spread awareness in the society and legal activities, such as receiving petitions or visiting orphanages to

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141Borland, 2006, pp. 133-135.

142Interview with Hebe de Bonafini, president of The Mothers of Plaza de Mayo, Association of the Mothers of the Plaza de Mayo , 1996, available at <http://www.madres.org/navegar/nav.php?idsitio=5&idcat=909&idindex=173> (consulted on 14 April 2013).

143Brysk, 1994, p.48.

144Interview with Hebe de Bonafini, president of The Mothers of Plaza de Mayo, Association of the Mothers of the Plaza de Mayo , 1996, available at <http://www.madres.org/navegar/nav.php?idsitio=5&idcat=909&idindex=173> (consulted on 14 April 2013).

145Arditti, 1999, p.1.

146Brysk, 1994, p.49.

investigate about the adoptions.<sup>147</sup>

The last relatives' group is the Familiares de Desaparecidos y Detenidos por Razones Políticas (Relatives of the Detained and Disappeared for Political Reasons), this group had basically two different features that differentiate them from the groups mentioned above. On the one hand, the Relatives group included male members, in contrast from the Mothers and the Grandmothers, which had a female basis. On the other hand, what they demanded was the release of their relatives, considered political prisoners, and the improvement on their rights and conditions in the prison.<sup>148</sup>

The main way of action of the relatives' groups was the symbolic political protest. The activities included mass demonstrations and protests in public spaces such as the vigils of the Mothers in Plaza de Mayo. The activities of the relatives' groups also included legal actions. The legal activities were not effective during the dictatorship period, but the legal work would constitute part of the base of the reforms during the transition.<sup>149</sup>

The activities of the relatives of victims and human rights movement that took place in Argentina during the dictatorships involved the international society. The image of the mothers marching in Plaza de Mayo with the white scarves spread around the world, and international actors reacted to the situation by giving them resources, legitimacy and protection. The Mothers visited Europe, U.S and Canada, and in 1979 they had delegates in the Catholic Church's Puebla Conference, the Organisation of American States and United Nations. In 1980 the Mothers were nominated for the Nobel Peace Prize. Another factor contributing to the spread of the movement was the emergence of the human rights regime at that time in the world, which provided a network in which the movement crossed the national frontiers to reach different parts of the world. By 1979 a visit of the OAS Human Rights Commission affirmed in a report

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<sup>147</sup>Grandmothers of Plaza de Mayo, Historia de Abuelas (Grandmothers history) available at [http://www.abuelas.org.ar/institucional.php?institucional=historia.htm&der1=der1\\_hist.php&der2=der2\\_inst.php](http://www.abuelas.org.ar/institucional.php?institucional=historia.htm&der1=der1_hist.php&der2=der2_inst.php) (consulted on 14 April 2013).

<sup>148</sup>Brysk, 1994, p.49.

<sup>149</sup>Idem, pp.47-48.

the existence of disappearances, and in 1980 the Working group on Forced Disappearances was created by the United Nations, which allowed the participation of individuals affected by abuses of human rights. The international action and the rise of awareness helped to make the human rights movement more expanded, making it an influencing factor for de-legitimizing the military regime.<sup>150</sup>

### **3.3. Relative's Groups Movement during the Transition**

In 1982 Argentina was defeated in the Malvinas War, the loss of the islands constituted a hard moment for the armed forces, the image as the defenders of the Argentinian Nation was completely damaged with their defeat. This fact besides the economic problems and a military weakened and internally divided led to the elections in 1983. One of the main issues in the political agenda of the process of transition to democracy was the legacy of human rights violations. The military before to give the power to the civilians decreed an auto amnesty law, which included the pardon of all the acts committed during the war against subversion. What they tried was to avoid the appearance in the public discussion of the measures they adopted to implement its policy of repression. In relation to this, the two candidates in the elections adopted different positions. On the one hand, Luder the Peronist candidate accepted the main explanations of the military forces, and on the other hand, Alfonsín from the Union Civic Radical party adopted a position of defending that human rights violations had to be redressed. This position helped Alfonsín to win the elections with a support of 52% of the votes. As he promised Alfonsín started to implement during his mandate a policy without precedent in the world, in which those who committed human rights violations during the junta dictatorship were taken before the court.<sup>151</sup>

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<sup>150</sup>Brysk, 1994, pp.51-56.

<sup>151</sup>Roniger, 1999, pp. 80-83.

The particularity of Argentinian transition as Sikkink explains resides basically in two factors. The first factor is the level of repression, since the military repression was very high but they were not enough successful to eliminate the movement of human rights. The second is the type of transition as it was a “rupture” transition, since the military was not strong enough to be in the position to negotiate the transition, after the loss of the Malvinas Islands. These two facts, besides of the particularities of the judicial system and the high activity of human rights' groups led to the creation of the political opportunities that had as a result the innovative context of Argentina.<sup>152</sup>

In a report concerning Argentina Juan Mendez identified two phases, the truth phase and the justice phase of the reconciliation process. Understanding truth as the reality of what happened to the victims of human rights violations and the recognition of the accountability of the responsible for those violations. Justice phase is characterised by the means to take the responsible individuals to be judged and punished before a court.<sup>153</sup> I will use these two phases to explain what has been achieved in terms of transitional justice from the perspective of the activity of the relatives' groups.

Regarding the truth phase, it could be said that the main remarkable fact was the establishment of the truth commission. When the Alfonsín administration assumed the power 1983 it was implemented a policy where human rights issues were included in the agenda. Five days after having assumed the presidency Alfonsín established the truth commission called CONADEP which was a national investigatory commission on disappeared. CONADEP was formed by human rights activists, journalists and known people of Argentinian society, and it was led by Ernesto Sabato, a famous writer. This was the so expected response to victims' relatives to the question ¿Dónde Están? (Where are they?), with the goal of knowing the whereabouts of their relatives.<sup>154</sup>

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<sup>152</sup>Sikkink, 2011, pp.81-83.

<sup>153</sup>Jelin, 1994, p.50.

<sup>154</sup>Brysk, 1994, p. 64.

Despite this fact most of the human rights movements led by victims' relatives were not conformed with CONADEP because it was a nonrepresentative mandate with the function of accumulating documents, instead of the original bicameral commission. As the president of the Mothers Hebe de Bonafini said that they rejected the commission because it had no real power. That was the moment in which the human rights movements split in two, in those who acted within the system and those who acted from the outside, taking distance from the government to pressure new institutional policies.<sup>155</sup> These last ones were demanding a more effective position in relation to truth, justice and redress.<sup>156</sup> That is one of the reasons that influenced in 1986 the division of the Mothers in two organisations: the Mothers of the Plaza de Mayo led by Hebe de Bonafini and the Mothers of the Plaza de Mayo Founding Line led by María Adela Antokoletz.

The group led by Bonafini argued that they did not support the Alfonsín administration because it neither revealed the whereabouts of the disappeared nor prosecuted all the officers responsible for human rights violations, while the Founding Line group recognised the human rights labour of the Alfonsín government.<sup>157</sup> This was not the only issue in which they did not agree. Among other questions they had different positions in relation to the exhumations, as the Bonafini group did not support them while the Founding Line did.<sup>158</sup> Exhumations started in 1982 when were found in Grand Bourg four hundred unidentified bodies. That exhumation was carried out as a response of the relatives of Miguel Angel Sosa, a union leader. With the beginning of the democracy, it started the increase of a high number of exhumations. The Mothers' group led by Bonafini rejected the exhumations as they perceived them to be a way that would lead to the forget by accepting the death of all the disappeared, they perceived it as a government strategy not to condemn those responsible of disappearances.<sup>159</sup>

The CONADEP worked for nine months investigating, interviewing and

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<sup>155</sup>Brysk, 1994, p.64.

<sup>156</sup>Jelin, 1994, p.11.

<sup>157</sup>Robben, 2005, p. 330.

<sup>158</sup>Idem.

<sup>159</sup>Idem, pp.326-331.

analysing documents related to victims of human rights abuses. As a result of their work they published a book called *Nunca Más*, which affected deeply the whole Argentinian society as it revealed the high scale of the human rights atrocities. The report was widely spread in the population and became a best seller in Argentina.<sup>160</sup>

The Grandmothers kept specially active during the transition, identifying missing children, they provided the evidences for the investigation and they provided as well the courts with child psychologists.<sup>161</sup> They contributed to create a genetic test that would help to prove identity, which allowed to create the National Genetic Data Bank, with this method even after the death of the relatives they still could know about their origins. The effort of the Grandmothers helped to develop the concept of a human right to identity, which implies to preserve the identity of the children and to provide the necessary to reconstruct it in the case their identities were nullified.<sup>162</sup>

In relation to the justice phase, there was an institutional response to the demands for taking to trial those responsible for human rights abuses committed during the junta dictatorship. One of the questions that the government had to deal with was to restructure the military, this policy included the annulment of the self-amnesty law, the reform of the military code justice and a decree to take to trial the members of the first three juntas, as well as ex guerrilla movements.<sup>163</sup> It is remarkable to say that from the institutional perspective the human rights movements could achieve more from the judiciary than from the executive or legislative branch because it had a mixture of legitimacy, autonomy and institutional incentives.<sup>164</sup> In their judicial system the judges have more autonomy, which could lead to the pronouncement of prosecutions in human rights. The legal system allows “private prosecutions” in criminal cases, which implies that the victims and their allies can be part in initiating criminal prosecutors. The

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<sup>160</sup>Roniger, 1999, p.9.

<sup>161</sup>Brysk, 1994, p.50.

<sup>162</sup>Arditi, Rita, Do you know who you are: The Grandmothers of the Plaza de Mayo Wellesley Centers for Women, at [www.wcwonline.org/September/October-2007/Do-You-Know-Who-You-Are-The-Grandmothers-of-the-Plaza-de-Mayo](http://www.wcwonline.org/September/October-2007/Do-You-Know-Who-You-Are-The-Grandmothers-of-the-Plaza-de-Mayo) (consulted on 22 April 2013).

<sup>163</sup>Brysk, 1994, p. 68.

<sup>164</sup>Idem, p.74.

victims can even press to make a process keep going on when a prosecutor wants to leave it.<sup>165</sup>

The junta trials began in 1985. There were 833 witnesses and the hearings were open to the public. The trials were broadcast in television news for nine months. The prosecutors based its investigation on the work of the CONADEP together with the help of the human rights' organisations, that provided additional information, serving as well as an intermediate with victims and families. The result was a sentence that condemned nine defendants and recognised the central direction of the policy of repression.<sup>166</sup>

The courts were being swamped with claims coming from victims, victims' relatives and human rights' organisations. By 1985 around 650 military officers were accused, a fact that started to spread the concerns of the military. The government started to get prepared to limit trials in the future to calm the tension that arose among the military. Finally as a consequence of the rising tension, the government promulgated the Ley de Punto Final (End Point law), which limited future trials stating that it would not be possible to present more charges against “any defendant that were not processed within sixty days”<sup>167</sup>.

What the state wanted with the implementation of this law was an intermediate solution, it wanted to satisfy the military tensions but not giving complete amnesty. As a result the human rights movement reacted against Punto Final, including the Mothers who occupied the Senate wearing the white scarves and spreading leaflets. The approval of the Punto Final had as a consequence that most of the cases of repressors identified by testimonies were not taken into trial. In 1987 it was decreed the Due Obedience law, which limited the cases that could be judged to the very high rank officers, excluding those who were following orders. The Due Obedience law of the Menem administration did not stop the action of the relatives' groups. The Grandmothers continued demanding the accountability of the military officers who kidnapped the children of the disappeared and changed their identity. The legal group of the Grandmothers found a way to find

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<sup>165</sup>Sikkink, 2011, pp.81-83.

<sup>166</sup>Brysk, 1994, p. 68.

<sup>167</sup>Idem, p 80.

them accountable despite the amnesty law, defending that the crimes of kidnapping children and changing their identity were not included in the Due Obedience law. In the Poblete case, in which two activists for the rights of the disabled people were kidnapped together with their daughter because of this activity. José and Gertrudis were tortured and killed. After twenty years the daughter was found as a result of a DNA exam.<sup>168</sup> The judge declared in the case that the amnesty laws (Due Obedience and End Point) were unconstitutional, using to support their arguments domestic law and regional human rights law, like the Interamerican Court and the Interamerican Commission.<sup>169</sup>

It was with the administration of Carlos Menem, when impunity came again to the Argentinian society, during his mandate between 1989 and 1999, he declared again an amnesty pardoning those officers who had pending processes and those already convicted.<sup>170</sup> The Menem administration implemented a policy of impunity and oblivion. His government ignored the penal responsibility of those who committed grave violations of human rights and ignored the responsibility due to the victims. Despite this general impunity policy there was certain effort to recognise the rights of the victims. This effort was impulsed by the cases presented by the victims to the Interamerican Commission. The result was the economic reparations to victims of enforced disappearance, assassinations and political prisoners. Another legal achievement was the recognition of the right to the truth by the institutions. Three relatives of disappeared with the support of CELS presented a petition asking for the truth about the situation of their disappeared daughters. In the domestic level the petition was rejected and they presented the case before the Inteamerican Court. Finally, the right to the truth was recognised by the Argentinian state and the judicial system.<sup>171</sup>

Despite the advance given in terms of truth and justice, victims, victims' relatives and human rights' groups in general were not satisfied with the measures taken by the

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<sup>168</sup>Brown, 2002, pp. 207-208.

<sup>169</sup>Sikkink, 2011, pp.77-79.

<sup>170</sup>Brysk, 1994, p.50.

<sup>171</sup>Barbuto, 2010, pp. 45-46.

government since the forces responsible for the repression during the past regime had still certain influence, i.e., the democratic regime had not complete control of the military since it was not under democratic accountability. The military power was one of the factors that conditioned the transition to democracy, together with the institutional legacies and the economic crisis. The groups of relatives demanded a civilian control of the military. They wanted that the military had to be treated as common citizens and submit them to the rule of law.<sup>172</sup>

There were military reforms done, these reforms were supported by the Alfonsín administration and by the human rights' groups. The administration was more interested in reforming the military to professionalize and modernize them. The human rights' groups were more focused on trials with the aim of moving those antidemocratic officers. Both of them agreed that the military had to be subjected to the rule of law. In relation to the military reforms the action of the human rights movement was more focused on acting against the promotion of military officers that had committed abuses of human rights. They presented in 1984 a report in which was published that at least 20 promoted officers of the 219 were involved in abuses of human rights. Despite some achievements, the relatives' groups had not too much influence on the government. All these reforms were shaking the military, to them the democratic regime was received by the armed forces as a threat to their interests, what made them stronger to react against it, having as a consequence the failure of the effectiveness of the reforms.<sup>173</sup>

## Conclusion

In this chapter I explained how the human rights movement appeared in a context of strong repression. I described how in that development the relatives' organisations of victims of human rights abuses emerged. As it has been exposed the movement had a strong activity during the military dictatorship, even though their influence on the government was not that strong. The symbolic message they presented

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<sup>172</sup>Brysk, 1994, pp.53-54.

<sup>173</sup>Idem, pp.55-57.

helped in the defeat of the military regime. When the transition started they kept demonstrating and organising their activity. During transition they had a higher influence on the institutions. They claimed for truth and justice and several transitional justice mechanisms were implemented as a response to their claims.

## **CHAPTER 4. THE MOVEMENT OF RELATIVES' GROUPS OF VICTIMS OF HUMAN RIGHTS VIOLATIONS IN CHILE**

The destruction of La Moneda (the presidential palace) in 1973 was a hard blow in Chilean memory. The image of the bombs destroying the building with the president of the government in, marked the onset of a terror period. The coup led by Pinochet established a military dictatorship. A period began in which grave violations of human rights were carried out by state actors. People were detained and killed arbitrarily. The repression was resisted by the human rights' groups. Relatives of those who suffered directly the repression started to act and demonstrated their opposition. They organised in groups to form organisations. A new movement started at that period that kept the memory of the victims alive. In this chapter, I will explain how the groups of relatives of human rights violations were created and trace their activity during the dictatorship and the transition. For that I will show the context in which they developed their activity. This chapter will provide the information related to the activity of the human rights movement in Chile, to compare it with the activity of the Argentinian movement. The final aim is to show what role they played in the transitional period of both countries.

### **4.1. Coup and Military Dictatorship, 1973-1990**

To understand the context in which the groups of relatives emerged it is important to explain the situation in which the coup was carried out. This situation

would mark the ideological frame in which the military junta will later justify their action. In 1970 the left-wing political coalition called Unidad Popular (Popular Unity, UP) won the elections in Chile. The UP candidate Salvador Allende became the president of the Chilean government. The rise to power of a socialist candidate agitated the right-wing, particularly the business and middle class sectors. They felt threatened by his socialist oriented policy. This opposition's movement started to protest in the streets. The movement spread with external economic support and hidden political intervention. They started a campaign with the aim of removing the new president from power. The increasing of strikes, led by employers who were against nationalization or workers who claimed the socialisation process being faster, worsened the economic situation, and contributed to a high inflation.<sup>174</sup> The result of their reaction was a situation of instability and tension. The opposition movement turned to the military to gain its support to defeat the government to achieve peace and stability. On 11 September of 1973 the military acted through a coup d'etat to overthrow the Allende government. They justified the coup stating that it was necessary to maintain public order.<sup>175</sup> The action of the armed forces responded to several reasons: the opposition of the military to Marxist's movements and the risk of losing its integrity. Thus the military Junta led by Augusto Pinochet had the aim of transforming Chilean society, including institutions and economy.<sup>176</sup>

After the coup d'etat against the Allende government, the military regime led by Pinochet started a policy oriented to restructure the nation, particularly the social and economical areas.<sup>177</sup> The new government defended that the crises that Chile was living before the coup had its roots in the past policies. These policies let Marxists' groups to control the Chilean nation.<sup>178</sup> To prevent these Marxists' groups from leading the country to the complete disaster, the military junta had to repress any kind of opposition. They

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<sup>174</sup>Compagnion, 2009, pp.130-131.

<sup>175</sup>Idem, p.131.

<sup>176</sup>Loveman, 1986-1987, pp. 1-2.

<sup>177</sup>Correas Sutil, 1997, p.125.

<sup>178</sup>Loveman, 1986-1987, p.2.

used several means to carry out this repression including censorship, exile, torture, disappearances and executions.<sup>179</sup> Although exiles and imprisonment were techniques used in the past to repress political opposition, the use of disappearance or clandestine killing was a new way of repression never used before.<sup>180</sup>

In 1980 a new constitution was approved in a plebiscite, in a context in which constitutional guarantees did not exist. Consequently Pinochet could keep the power eight more years until 1989, when another plebiscite would maintain Pinochet for eight more years in the power was expected.<sup>181</sup>

Another important political factor was the amnesty law decreed in 1978 by the military junta. One of the groups of relatives, the Agrupación de Familiares de Detenidos y Desaparecidos (Association of Family Members of the Detained-Disappeared), reacted to the implementation of this law by starting a hunger strike to manifest their opposition.<sup>182</sup> The Amnesty included the crimes committed between the period of 11 September 1973 and 10 March 1978. During this period the regime was involved with the higher violations of human rights. According to the Comisión Nacional de la Verdad y la Reconciliación (National Commission For Truth and Reconciliation) in his report there were 2296 cases of persons who were killed under the period of the dictatorship (1973-1990).<sup>183</sup> Recently in the report of the Comisión Nacional sobre Prisión Política y Tortura (National Commission on Political Imprisonment and Torture) there were confirmed 9795 cases of political imprisonment and torture.<sup>184</sup>

In the 1980s Chilean society experienced a change. The most repressive period had passed and they started to live more freedom. As a consequence the social

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179Correas Sutil, 1997, p.127.

180Norris, 2004, p.13.

181Correas Sutil, 1997, p.125.

182Orellana & Hutchison, 1991, p.102.

183Informe Rettig: Informe de la Comisión Nacional de Verdad y Reconciliación (Rettig Report: report of the National Commission on Truth and Reconciliation), Chile, 1991, at [http://www.ddhh.gov.cl/ddhh\\_rettig.html](http://www.ddhh.gov.cl/ddhh_rettig.html) (consulted on 6 July 2013).

184Informe Valech: Informe de la Comisión Nacional sobre Prisión Política y Tortura (Valech report: report of the National Commission on Political Imprisonment and Torture), Chile, 2004, at <http://www.derechoshumanos.net/paises/America/derechos-humanos-Chile/informes-comisiones/Informe-Comision-Valech.pdf> (consulted on 6 July 2013).

movements had more space to manifest their disagreement with the regime. One of the factors that pushed this reaction was due to the economic crises of 1982, which caused a high tension in society. The Protestas that started in 1983, were public demonstrations against the military regime. These protests remained during the dictatorship until the end. That pressure resulted in the Acuerdo Nacional (National Agreement) in 1985. The impulse of the agreement was given by the Catholic Church. This agreement was aimed to provide a peaceful transition to real democracy and respect for human rights.<sup>185</sup>

The second plebiscite in 1989 resulted in the defeat of Pinochet. During the elections in 1990 Patricio Aylwin was the candidate of the political coalition called la Concertación. In his political program the legacy of the abuses of human rights was a main issue. This consideration of the human rights violations contributed to the election of Aylwin as the first president of the Chilean transition.<sup>186</sup>

## **4.2. The Human Rights Movement during the Dictatorship**

The relatives' groups of victims of human rights abuses in Chile were created under the support of the religious based organisations. The main group of relatives emerged as a response to the necessity to know what happened to their detained and disappeared relatives. The family has been considered the second social institution in creating human rights' organisations in Chile, the first one being the Church. The third institution would be related to political parties. It could be stated that the human rights movement was based in these three institutions: the Church, the family and the political parties. Nonetheless, the Chilean movement cannot be considered as clearly divided since the different organisations were interconnected.<sup>187</sup>

The human rights movement started as a reaction to the repression of the military regime of Pinochet. During the dictatorship period, from 1973 to 1990, several

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<sup>185</sup>Correas Sutil, 1997, p.129-130.

<sup>186</sup>Idem, p.132.

<sup>187</sup>Orellana & Hutchison, 1991, pp.11-12.

human rights' organisations emerged. The movement grew from 16 groups in 1985 to 52 in 1988.<sup>188</sup> The movement has been criticized because of being too excessive, due to the quantity of organisations. Yet, the movements' achievement relies on this diversity, as the organisations specified in different functions, but keeping the coordination among them.<sup>189</sup>

The main actor in assuming the role of human rights defence was the Catholic Church. One of the factors that permitted the human rights movement emerge and develop was the Church. The dictatorial regime thought that it would not be a good idea to go against the Church, since this institution was deeply installed in the Chilean society. Although there was not an open fight against the Church as an institution, the military dictatorship used its means to stop their activity. The ways to stop that activity included detention, killing and torturing religious officers and people connected to them. Despite this repression against the people who participated in the human rights movement, they kept fighting. Their work started with legal and social assistance, which developed into the provision of information and claims of human rights violations.<sup>190</sup>

Thus, the first organisations emerged under the protection of the Catholic Church. One of these organisations was el Comité para la Cooperación y la Paz en Chile (the Committee for Cooperation for Peace in Chile, COPACHI) created in 1973 by Catholic, Jewish, Orthodox, Lutheran and evangelist leaders. The military regime considered that organisation as a threat to the government and pressed to remove it, which was finally achieved. The organisation was dissolved, but it was replaced by the Vicaría de la Solidaridad (Vicariate of Solidarity), which continued providing legal and general assistance to the victims of the repression and their families. They worked with the collaboration of another religious organisation called la Fundación de Ayuda Social de Iglesias (the Foundation for Social Help of the Christian Churches, FASIC).<sup>191</sup>

Another factor in the emergence and development of the human rights movement was the existence of personal networks that connected people coming from

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<sup>188</sup>Idem, p.207.

<sup>189</sup>Norris, 2004, p.6.

<sup>190</sup>Orellana & Hutchison, 1991, pp.15-16.

<sup>191</sup>Loveman, 1998, pp.13-14.

different social spheres. These networks came from the relation between the Church, catholic political parties, labour unions, universities and community organisations.<sup>192</sup> Those connections among different activists at the national level helped to open a path to connect the national human rights' organisations with foreign ecclesiastic institutions, governments, political parties and non governmental institutions. This support was propelled by the exiled Chileans who supported the activity of these organizations from abroad.<sup>193</sup> Besides those connections and the support of the Church, an important element for the success of the human rights' groups was the financial support from the international community. The economic support from the international organisations was essential in the development of the activity of the human rights' organisations.<sup>194</sup>

The human rights movement was consolidated in 1984. Since then different institutions were created which would coordinate the activity of the human rights' organisations. The goal of these institutions was to be more effective in the activity and demands of the human rights' organisations. Among these institutions of coordination, there was one focused on the relatives' groups that was called, la Coordinadora de Agrupaciones Especiales (Coordinator of Special Groups).<sup>195</sup>

### **4.3. The Emergence of Relatives' Groups**

The work of the relatives' groups in Chile was centred on public denunciation of human rights violations, economic and legal assistance to the victims of the repression and their families and social mobilizations against the Pinochet regime.<sup>196</sup> The relatives' groups of victims of human rights violations were composed of six groups: Agrupación de Familiares de Presos Políticos (Association of family Members of Political

<sup>192</sup>Idem, p. 16.

<sup>193</sup>Orellana & Hutchison, 1991, pp.15-16.

<sup>194</sup>Loveman, 1998, pp.16-23.

<sup>195</sup>Orellana & Hutchison, 1991, p.20.

<sup>196</sup>Loveman, 1998, p.14.

Prisoners, AFPP), this group established close relations with la Vicaría de la Solidaridad; the second group is La Agrupación de Familiares de Detenidos Desaparecidos (Association of Family Members of the Detained-Disappeared, AFDD), which had more relations to the CODEPU and FASIC. After these first two organisations appeared la Agrupación de Familiares de Ejecutados Políticos (the Association of Family Members of the Executed, AFEP) y la Agrupación de Relegados y ex-relegados (the Association of Family Members of the Banished, AFAREL). There is another organisation that was constituted by the relatives of political prisoners convicted to banishment or expelled from the country, it is called the Comité Pro-retorno de Exiliados (the Committee for the Return of the Exiled, CPRE). As an impulse of the AFEP was created the group called la Protección de la Infancia Dañada por los Estados de Emergencia (the Protection of Children Damaged by the State of Emergency, PIDEE).<sup>197</sup>

The earliest organisation is the Agrupación de Familiares de Detenidos-Desaparecidos (AFDD) created in 1974, one year after the coup of Pinochet. Relatives of the detained and disappeared used to go to COPACHI (Cooperation Committee for Peace in Chile) to follow the legal procedures in which were involved their relatives. When they visited the COPACHI, religious officers used to meet with them to offer emotional support, these meetings resulted in the creation of the AFDD. This association was constituted mostly by women, who before did not take part in political activity. Their main claim was to know the truth of what happened to their relatives. As the attitude of the military regime was the denial, mostly the functions of AFDD were centred on the demand for recognition of the disappearances and information about what was happening.<sup>198</sup>

The second organisation called La Agrupación de Familiares de Presos Políticos (AFPP) was officially created in 1976. The original group was formed by relatives of military officers which were detained because being pro-democratic. The AFDD struggled for

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<sup>197</sup>Orellana & Hutchison, 1991, pp. 18-19.

<sup>198</sup>Idem, pp.27-28.

the rights of the political detainees and their relief. As the organisation mentioned above, the AFPP used to visit the COPACHI and la Vicaría de la Solidaridad seeking judicial assistance to the political prisoners. The activity of AFPP has been focused on the campaign to provide amnesty for the political prisoners and to remove the amnesty law that the military decreed in 1978.<sup>199</sup>

The third group is called Comité Pro-Retorno de Exiliados (CPRE), was created in 1978 by a group of relatives of individuals convicted to exile. This association mostly formed by women, fought for the recognition of the right to live in their own country. Their activity had successful results in the spread of social awareness of this right. Besides their activity inside the national borders, they have kept communication with the Chileans exiled abroad.<sup>200</sup>

The Agrupación de Familiares de Ejecutados Políticos (AFEP) was at the beginning part of the AFDD, but as their claim begun more focused on another issue they formed a new group in 1978. Their activity was different from the AFDD since they could not do anything to recover their relatives. Consequently their claims were more centred in demanding justice.<sup>201</sup>

The repression and violence directed to individuals who threatened the regime, left the children of those victims in a problematic situation. As a response to this situation the AFEP with the support of FASIC decided to create in 1979 the Protección de la Infancia Dañada por los Estados de Emergencia (PIDEE). Their activity was focused on satisfying the surviving needs of the children of victims of human rights abuses. Additionally they provided the affected children with the assistance in terms of physical and mental health, as well as in the educational and cultural area.<sup>202</sup>

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<sup>199</sup>Idem, p.29.

<sup>200</sup>Orellana & Hutchison, 1991, p.30.

<sup>201</sup>Idem, p.31.

<sup>202</sup>Idem, p.32.

The last organisation is the Agrupación de Familiares de Relegados y ex-Relegados (AFREP) created in 1980. Their activity was focused on visiting and assisting the banished, and on the other hand in supporting their relatives. Their activity varied significantly depending on the amount of banished. As the administrative relegation was temporary, there could be periods of a few individuals relegated and periods that could even be more than 600.<sup>203</sup>

During the dictatorship the relatives' movement was active in showing their demands. AFDD was particularly active, an example being the hunger strike carried out in front of the United Nations offices. They demanded to the Secretary of the United Nations to investigate the disappearances. Another example of their activity was the hunger strike carried out in 1978 against the amnesty law decreed by the junta. The hunger strike had as a result the negotiations between Cardinal Silva and the Minister of the Interior. The negotiations were aimed to achieve a compromise to investigate the disappearances. This fact obliged the government to deal with the issue of the disappearances and at the same time the question appeared in the national press making it public. Despite these efforts the AFDD did not receive any information regarding the cases they presented to the government. The last phase of the human rights movement was more focused on education and mobilization for the defence of human rights. This kind of work was aimed to create awareness by giving a political solution to human rights violations. The human rights movement contributed to the national protests that took place in 1983. They acted together with the popular organisations at the beginning of the demonstrations. They also participated and supported the protests by mobilising people to be part in the demonstrations.<sup>204</sup>

The Human Rights movement was also active presenting cases to the courts. Although most of the cases did not receive attention they kept presenting cases during the dictatorship with the aim of pressing the authorities to recognise the arrests as well as to document the abuses.<sup>205</sup> It was in 1998 when the legal situation began to change.

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<sup>203</sup>Idem.

<sup>204</sup>Idem, pp.101-110.

<sup>205</sup>Correas Sutil, 1997, p.127.

That year opened a new period, the judiciary started to take certain cases and pronounced the first important judgements. The truth started to emerge with the work of the lawyers of the victims and the judges who had to deal with the reconstruction of the facts involving the violations.<sup>206</sup>

During the dictatorship the relatives' groups provided the human rights movement with their specific work. They helped to expand the activity of defending human rights. They created a community linked by personal connections, a community engaged with the public denounce of human rights violations of the military regime. This is the emergence of an activity that would continue during the transition to democracy.<sup>207</sup>

#### **4.4. The Human Rights Movement during the Transition**

To understand how the human rights movements changed during the transition to democracy it is important to mention the main factors that characterised the transitional period in Chile. The transition was influenced by political, economic and moral factors. In the transition was necessary to maintain economic growth, to make possible the establishment of democratic institutions and the establishment of national coexistence.<sup>208</sup> At the beginning of the 1990s the situation was highly tense. This tension was due to the fear that the transition would fail. Social mobilisations were seen as harmful because they could cause the failure of the transition to democracy. That is the reason why the social movements decreased during the transition, they were considered a threat to the development of the transition. This is an important point to understand the context in which the human rights movement acted.

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<sup>206</sup>Barbuto, 2010, p. 85.

<sup>207</sup>Norris, 2004, p.15.

<sup>208</sup>Bengoa, 1994, p. 39.

The main characteristic of the Chilean transition was the strong influence of the military. To establish democratic institutions it is necessary to reconstruct the civil power over the military. To subordinate the military power the government chose the way of the dialogue. Negotiations were hardly marked by the strong presence of the military during the transition. Pinochet was still head of the armed forces until 1998, when he became a lifetime senator.<sup>209</sup> The Constitution of 1980 established the continuation of the military presence in certain national institutions, like in the senate or in the Supreme Court.<sup>210</sup> In addition the military force let to the society and to the new government clear that they still had political power. Their strongest point was on the ideological level. They presented themselves as successful due to the economic growth when the regime started. The military junta was criticised by their violations of human rights and their authoritarian regime, but they could not be criticised by their economic policy, as there was an economic growth that had place in their government. Is this double face of the military which permitted to have on the one hand the reconciliation and on the other the impunity.<sup>211</sup> As we can see Aylwin was elected with the goal of “national reconciliation” to satisfy the need of the majority to reach peace. To finally finish with the fear lived during the time of the military dictatorship.<sup>212</sup> Aylwin opened the path of reconciliation, but his attempt of promoting reconciliation was not easy. He had to find the balance between the presence of the military power, claiming for impunity of the armed forces and the claims of social groups fighting against impunity. This tension remained during the Aylwin administration and the administration of his successor, Eduardo Frei.<sup>213</sup>

#### 4.4.1. Reshaping human rights activity

The work of the human rights movement had to be reshaped in this context. The

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<sup>209</sup>Norris, 2004, p.29.

<sup>210</sup>Skaar, 2003, pp. 279-283.

<sup>211</sup>Bengoa, 1994, pp.40-41.

<sup>212</sup>Loveman & Lira, 2002, p.14.

<sup>213</sup>Idem, pp.13-21.

work of the human rights' organisations during the military junta was related to document the abuses and their public denunciation. During the transition the organisations had to decide how to continue their work. As the massive abuses of human rights ceased after the dictatorship, the activity of the groups had to be redefined. There were several factors that made the movement weaker in this redefinition. The lack of external funding had some influence. Since the situation in Chile was not considered any more a priority, the economic support decreased. Additionally with the new democratic government many activists found a possibility to act from within the administration, resulting in a decrease of personnel in the human rights movement. Several groups stopped their work, such as the Vicaría de la Solidaridad which stopped functioning in 1992. Besides these factors, the role of the movement had less relevance as the government assumed the policy of human rights. Despite their importance during the dictatorship to overthrow the military regime, during the transition they were not taken into account in the political agenda in relation to the human rights issues. Another factor that contributed to the decrease of the human rights activity was the lack of cohesion among the groups. As the military junta was dissolved, there was no common enemy. The prior cohesion of the groups was broken during the transition since they began to affiliate to different parties.<sup>214</sup>

The national reconciliation process started by Aylwin did not fulfil his goal. They could not cover the past forgotten. Despite the obstacles that appeared during the transition, those affected by the repression resisted the impunity. During the transition the amnesty law decreed in 1978 posed the major impediment to the fight against impunity. The Aylwin government did not do too much in relation to this law.<sup>215</sup> The reconciliation process had to deal with the legacy of the massive violations of human rights, the memory of those who suffered detention, torture, exile and the relatives of killed or disappeared. The human rights' group resisted the impunity decreed by the amnesty law

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<sup>214</sup>Norris, 2004, pp.31-35.

<sup>215</sup>Idem.

of 1978. This law included political crimes committed during the dictatorship.<sup>216</sup> Despite, this resistance, as proclaimed in his campaign Aylwin looked for reconciliation and not for justice. Understanding reconciliation from a catholic perspective that is, recognising the truth, the confession and the pardon.<sup>217</sup> The human rights' groups, including the relatives responded to the impunity by criticising the policy of the government, by establishing their own justice plans and by carrying out symbolic actions.<sup>218</sup> Despite this, the lack of action of Aylwin in relation to the amnesty was not contested with enough human rights activity, as the movement was not as strong as it was during the dictatorship.<sup>219</sup>

#### 4.4.2. The Truth and Reconciliation Commission and the fight against impunity

Following the process of reconciliation, Aylwin implemented the Truth and Reconciliation Commission, called the Rettig Commission. The name of the Commission comes from the name of the president of the Commission Raúl Rettig. The president and most of the members who formed the Commission were lawyers.<sup>220</sup> The Commission was just allowed to take cases that resulted in death that is, it did not include the cases of torture, exiles, arbitrary detention and other human rights violations.<sup>221</sup> The commission received thousands of petitions. For the first time the relatives achieved to be heard at the institutional level. Even victims who did not dare before to report the disappearance of a family member, reported their case before the commission.<sup>222</sup> Relatives' groups like AFDD also testified in the commission.<sup>223</sup> The resulting report was made public in the national television, and Aylwin made a public apology to the victims and their relatives. On the one hand, Aylwin's public apology

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<sup>216</sup>Loveman & Lira, 2002, pp.17-29.

<sup>217</sup>Idem, p.34.

<sup>218</sup>Norris, 2004, p.36.

<sup>219</sup>Idem, p.38.

<sup>220</sup>Aylwin, 1994, p.112.

<sup>221</sup>Norris, 2004, p.36.

<sup>222</sup>Bengoa, 1994, pp.43-44.

<sup>223</sup>Norris, 2004, p.37.

helped to give a meaning of what occurred and on the other hand, it recognised the right to know the truth of the relatives to know what occurred to their loved ones. The implementation of a wall in the Cementerio General de Santiago (Santiago General Cemetery) with the name of the victims was a symbol of the government's support to victims.<sup>224</sup>

The group of relatives AFDD considered the Rettig report as a step further, but they claimed that there was still a lot to do. They did not know the whole truth, they did not know the whereabouts of the disappeared and still no justice had been achieved.<sup>225</sup>

The fight against impunity of the relatives' groups did not stop there. While the Rettig commission was still working there was some attempt to establish an agreement. That agreement was called *acuerdo-marco* and it would try to pardon political prisoners (those condemned as terrorists) and those who committed human rights violations.<sup>226</sup> Although the issue of the political prisoners was a main question for the relatives, the *acuerdo-marco* would reinforce impunity of the perpetrators of human rights violations. For that reason the human rights' groups linked to political prisoners and AFDD reacted publicly against the proposal. The attempt of the agreement failed in 1990.<sup>227</sup>

There were other attempts to guarantee the impunity of the perpetrators, with the consequent response of the human rights movement. In 1993 Aylwin proposed a law that would pardon or keep in secret the identity of those perpetrators who would provide information about the fate of the disappeared. Aylwin declared that the law would promote the elucidation of the truth, following his national reconciliation process. The Aylwin law tried to reach a cooperation. What he wanted was to find a balance between different interests. Especially after the military act of “*el boinazo*”, that was a clear message from the military to the civil authorities, showing their rejection to judicial

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<sup>224</sup>Bengoa, 1994, p.44-45.

<sup>225</sup>Loveman & Lira, 2002, p.88.

<sup>226</sup>Idem, p.43.

<sup>227</sup>Norris, 2004, p.38.

investigations of human rights violations.<sup>228</sup>

The groups of relatives rejected the Aylwin law proposition and they saw it as a step to impunity. The president of AFDD Sola Sierra said that with that law Aylwin confirmed the Amnesty law of 1978 and provided privileges to the military power.<sup>229</sup> To manifest their opposition to the Aylwin law the AFDD made a hunger strike during August.

Under the Frei administration there was another agreement proposal, the so called Figueroa-Otero. This agreement was aimed to the knowledge of the truth. According to this agreement those persons who committed human rights violations would be called to testify. The other side of that is that their identities would remain secret and consequently they would not be tried. The human rights movement reacted to the proposal. Some human rights' organisations including AFDD together with politicians, intellectuals and artists stayed two days in front of La Moneda (presidential palace) to show their opposition. Another act of AFDD was the submission of its own proposal in 1995, it was called "Proposal for Peace and Reconciliation in Chile". Finally, as a consequence of the popular disagreement and the lack of consensus within the Concertación the agreement was defeated in 1996.<sup>230</sup>

## Conclusion

During the transitional period the human rights movement had to redefine their work. Particularly the relatives' group as AFDD reconstructed its mandate, fighting against impunity. The human rights movement lacked in resources, they had difficulties to attract the attention of the international community, they had to fight with the environment of apathy during transitional periods and the authoritarian enclaves that still remained. Due to the circumstances and the weakened human rights movement the achievements in terms of transitional justice processes were not as high as in the case of Argentina. Even with these difficulties the movement kept fighting against impunity during the transition. This fight of the organisations helped to keep alive the issue of the

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<sup>228</sup>Roniger, 1999, pp.142-143.

<sup>229</sup>Loveman & Lira, 2002, pp.112-114.

<sup>230</sup>Norris, 2004, pp.39-40.

violations of human rights committed during the past and to take the perpetrators in front of justice outside Chile<sup>231</sup>, as it happened in 1998 when Pinochet was detained in London.<sup>232</sup>

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<sup>231</sup>Idem, p.42.

<sup>232</sup>Loveman & Lira, 2002, p.19.

## **CHAPTER 5. THE ROLE OF THE RELATIVES' GROUPS IN CHILE AND ARGENTINA**

In this chapter I will compare the role of the human rights movement during the dictatorships and transitions in Chile and Argentina. For that I will focus particularly on the role of the relatives' groups of victims of human rights violations. To carry out this comparison I will firstly explain the role of the human rights movements during the dictatorships in Chile and Argentina, and secondly I will focus on their role during the transition. To understand the impact of the relatives' groups I will explain the factors that characterised the movements in both countries. I will conclude the chapter showing how the memory of the victims is kept alive even when they are silenced. For that I will explain the ways in which the discourses of memory have taken shape in both cases.

### **5.1. The Relatives' Groups during the Dictatorships in Chile and Argentina**

In this part I will show the common factors of the relatives' groups in Chile and Argentina and their differences during the dictatorships. I will follow explaining what did they do and what it was achieved.

In Argentina three relatives' groups were created, the three of them were relatives of detainees who disappeared. Therefore, the main concern of the relatives' groups were the cases of their relatives who were detained and disappeared. In the case of Chile six relatives' groups were created. Each organisation was concerned about a different question: detained and disappeared (Association of Family Members of the Detained-Disappeared), political prisoners (Association of Family Members of Political

Prisoners), executed for political reasons (Association of Family Members of Executed), prisoners convicted to banishment or expelled from the country (Association of Family Members of the Banished and the Committee for the Return of the Exiled) and children damaged from the state of emergency (the Protection of Children Damaged by the State of Emergency). As we see in the case of Chile there were several groups that treated different issues, and in the case of Argentina there were three groups all of them centred on the question of the detained-disappeared. The basic difference of the Argentinian groups was that one of them was constituted by the mothers of the disappeared (Mothers of Plaza de Mayo), the other by grandmothers of the disappeared (Grandmothers of Plaza de Mayo) and the last was formed by relatives including male members (Relatives of the Detained and Disappeared for Political Reasons).

First of all it has to be mentioned that the creation of the groups was a direct consequence of the violence of the regime since in both cases the groups emerged already at the beginning of the repression. In the case of Chile all groups were created in seven years<sup>233</sup>, while in Argentina they appeared all within the first three years of the military dictatorship.<sup>234</sup> This difference could be due to the length of the dictatorship that was shorter in the case of Argentina than in the case of Chile. In Argentina the junta was in power for seven years, while in Chile Pinochet remained in power for seventeen years. Despite this difference in both cases the first relatives group emerged in the first years of the repression. It could be said that in these cases the relatives' groups emerged as a result of the high level of repression. The dictatorial regimes generated precisely what they wanted to avoid. These regimes created a new movement that would help to delegitimize the dictatorships and that would continue fighting after the fall of the dictatorships. As Loveman states “state repression may stimulate collective organization and opposition from certain sectors of society as a direct result of the severity and cruelty of its attempts to stifle it in others”<sup>235</sup>.

In Argentina the groups that emerged were all formed by relatives of detained

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<sup>233</sup>Orellana & Hutchison, 1991, pp.27-32.

<sup>234</sup>Loveman, 1998, p.512.

<sup>235</sup>Idem, p.517.

and disappeared, while in Chile there was just one organisation focused on the cases of the disappeared and detained. Both movements have in common that the relatives of the detained-disappeared were the first relatives' group that emerged and the most active ones. In the case of the relatives' groups of detained and disappeared they started to act because they wanted to know where their relatives were detained. As already mentioned in previous chapters the impact of the disappearances produces a shock in the family. This shock dismembers the unity of the family. Kidnapping was a common practice during the military dictatorship. Sometimes even more than one family member was abducted, like the case of the Kreplak family. Gabriel (one of the sons of the Kreplak family) declared:

That day my father was interrogated and subjected to electric shock treatment in front of my brother Ernesto Carlos. All the questions were aimed at finding out where I was, something my father was completely unaware of. When they realised this, his interrogators began asking about the whereabouts of my brother José Ariel, who was then, by chance, sleeping in the house of my grandmother, Sara Lis de Kreplak, situated in Villa Devoto, Buenos Aires province. This was what my father told his kidnappers. That same day at 11.30 a.m., seven civilians, armed with machine guns, broke into my grandmother's house, and in front of her took José Ariel away at gunpoint. They put him in the back of a truck covered with a green tarpaulin ... that afternoon my father and my youngest brother were released when they had caught José Ariel.<sup>236</sup>

When part of the family simply disappears it urges the desperate necessity to find the disappeared relatives. It is not surprising that in both cases the most active relative groups were relatives of detained-disappeared.

Most of the relatives' groups were focused on mobilization and denouncing the

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236Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas (Never Again: report of the National Commission on the Disappearance of Person), Argentina, 1984, at <http://www.desaparecidos.org/arg/conadep/nuncamas/> (consulted on 6 July 2013).

abuses. This includes presenting to the public attention the violations that the dictatorial regime was carrying out and on the other hand organising public demonstrations to raise awareness about the lack of information regarding the whereabouts of their relatives. This activity became a symbolic protest. In the case of Argentina the symbol was represented by the image of the mothers standing on the street with white scarves, asking the whereabouts of their children. The symbolic protest in Chile was led by the relatives of detained-disappeared. For instance in 1977 AFDD organised a hunger strike in the the Economic Commission for Latin America in Santiago de Chile. In this hunger strike AFDD spread the images of their disappeared relatives and the organisation popularised the sentence “¿Dónde están?” (where are they?).<sup>237</sup>

One of the main differences between the situation regarding the relatives' groups in both countries was the role of the Catholic Church. The Church in Chile provided the relatives' groups with the physical and the institutional space to act. In Chile there was a preexisting organisational infrastructure facilitated by the Church, at the national and transnational level. This network at the same time allowed the interaction between the human rights activists and the international church officials, governmental and nongovernmental foundations and exiled Chileans.<sup>238</sup> This support of the Church was the basis of the formation of the relatives' groups and other human rights' groups. It provided a moral justification, facilitating access to international funding and helping to spread awareness about the violations that were being carried out. That network helped to promote and defend human rights in the country. Consequently, it could be defended that the Church was supporting, giving legitimacy and resources to the movement.

In the case of Argentina this support for the movement was lacking since the Catholic Church agreed with the military regime. They even did not support the relatives that went to the church asking for help.<sup>239</sup> As a result of this lack of support, the relatives and particularly the mothers of the disappeared had to find another way to demand their need to find out where their disappeared relatives were. They organised

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<sup>237</sup>Díaz & Gutiérrez Ruiz, 2008, p.197.

<sup>238</sup>Loveman, 1998, p.493.

<sup>239</sup>Idem, pp.509-511.

themselves to fight against the repression to know where their relatives were. In this case, the relatives movement emerged from a noninstitutional way. Consequently, the activity of the relatives' movement in Argentina was extremely restricted. In opposition to what happened in Chile the groups lacked resources, the network and legitimacy that the Church could provide in Chile. In the first years after the coup the human rights movement was more developed and coordinated in Chile than it was in Argentina.<sup>240</sup>

Despite the lack of support of the Church, the relatives' groups in Argentina emerged. The representative of these groups was the Mothers of Plaza de Mayo. In their protests they expressed a clear message: helpless mothers seeking their children. With this message they achieved to attract the attention of the international community. Despite the action of the government which tried to disband the relatives' groups by making their members disappear and by arresting demonstrators, the groups continued demonstrating in the street. Thus, the relatives' groups attracted the international press and received a growing support of international human rights' organisations, helped to the support of their work and the recognition of the violations of the military junta abroad. Their work influenced the delegitimation of the dictatorial regime.<sup>241</sup>

On the other hand in the case of Chile, the relatives' groups and the human rights movements had more success on the institutional level during the dictatorship of Pinochet. Factors of key relevance in these achievements were the already mentioned networks in the domestic level and in the international sphere. The Church promoted the activity of the groups by providing funds, legal and moral assistance to the victims and their families.<sup>242</sup> Thus, the human rights movement under the dictatorship was more effective in pressuring the military junta. The relatives' movement in Chile also used a

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<sup>240</sup>Loveman, 1998, pp. 509-512. Loveman, Mara, High-Risk Collective Action: Defending Human Rights in Chile, Uruguay, and Argentina, pp. 477-525 in *American Journal of Sociology*, vol. 104, n°2, 1998.

<sup>241</sup>Idem, p.513-517.

<sup>242</sup>Idem, p.515.

symbolic protest to fight against the human rights violations. The human rights movement in Chile provided information to international institutions about the grave violations of human rights. This network was the “the largest transnational network designed to combat human rights abuses during the 1970s”<sup>243</sup>. This international network helped to pressure from the outside to end and delegitimize the Chilean dictatorship.

Relatives' groups and the human rights movement in the case of Chile were very active in fighting against the repression. Their activity was changing since they had to adapt to the social and political context. At the beginning there was an emphasis on the legal efforts which evolved in public denounce and mobilizations.<sup>244</sup> They were also active in the protests of 1983. The protests emerged as a cooperation between the human rights movement and the popular groups. Although at the end the protest would be dominated by the popular sector, the human rights movement was influential supporting the protests. They were as well supporting the activity of the opposition to ensure a fair vote in the plebiscite in 1988.<sup>245</sup> The human rights movement with the protection of the Church was a key factor in the mobilizations of people in different social spheres.<sup>246</sup>

In conclusion it could be said that although they did not directly defeat the military dictatorship, they could achieve some changes in the support to the dictator by denouncing publicly the abuses the junta was committing.<sup>247</sup>

In both cases, the Argentinian and Chilean relatives' groups had an influence in the delegitimation of the dictatorial regimes. As it has been said the Chilean human rights movement was more effective since the Church provided a network from which they could reinforce, develop and coordinate the activity of the groups in the national and transnational level. In that sense they were more effective than the Argentinian relatives' groups since they started as an isolated movement without any support. Consequently, they had not enough power to make pressure to the regime. Despite that they gained international

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<sup>243</sup>Norris, 2004, p.20.

<sup>244</sup>Orellana & Hutchison, 1991, p.92.

<sup>245</sup>Norris, 2004, p.27.

<sup>246</sup>Orellana & Hutchison, 1991, p.108.

<sup>247</sup>Idem, p.91.

attention and recognition with their clear and strong message and that helped to the delegitimation of the regime.

## **5.2. The Human Rights Movement during the Transitions in Chile and Argentina**

In the case of Chile the human rights' organisations became much weaker during the transition. Due to the lack of funds, the decreased international attention, the spread of activists in political parties and the lack of cohesion that characterised the movement during the dictatorship, the human rights' groups became weak and scattered. Their work during the transition was less significant compared with what they did during the dictatorship. They continued fighting to be recognised in their demands.

The case of the Argentinian human rights movement was the opposite. The human rights movement was stronger during the transition. For instance the Mothers were very active during the period of the military junta, but they were an isolated group without possibility of influencing the regime. When the transition to democracy started the human rights' organisations gained support and their influence in the administration and in the society was higher. The Argentinian human rights movement attracted the international community at the end of the dictatorship and during transition they could mobilize the international human rights regime. Besides mobilization they could contribute to the international regime. Thus, they became an example that would be followed by human rights movements in other countries.<sup>248</sup>

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<sup>248</sup>Brysk, 1994, p.156.

### **5.3. The Relatives' Groups during the Transitions in Chile and Argentina**

In this part I will explain the different factors that influenced the activity of the relatives' groups during the transition in Chile and Argentina. For that I will explain what were their claims and what was done in terms of transitional justice processes. Besides I will explain the impact of their role during the transitions.

The relatives' organisations survived the period of the military dictatorship and continued to be active in the transition to democracy. With the new political context the activity of the groups had to be adapted to the new situation. Their concerns were centred mainly on two aspects: their right to know the truth about the whereabouts of their relatives and the demand for accountability of those officers of the state who committed human rights abuses. In both cases as a response to the first claim truth commissions were created, both in the first year of the transition to democracy. The Chilean commission was limited to the cases of disappeared and executed, there were excluded the cases of torture, arbitrary detention and other human rights violations. Both commissions had a resulting report in which was described the results of the investigations carried out by the commissions. In relation to the second claim there was a difference between both cases. In terms of justice the achievements were higher in the Argentinian case than in Chile. In both cases the military junta decreed amnesty laws which pardoned the acts committed by state officials. In the case of Argentina the Alfonsín government annulled the amnesty law and took to trial members of the junta. Despite these efforts impunity came back with Menem administration. He implemented two amnesty laws, the Final Point Law and the Due Obedience law. While in the case of Chile the amnesty law decreed by the military junta was not annulled and there were no trials to take the responsible officials of human rights violations before a court.

The amnesty laws are in these cases a consequence of the position that the military still had in the transition to democracy. In Chile the military had still power in the negotiations that took place during the transition. Indeed, Pinochet remained head of the armed forces until

1998. In this context taking before the courts those officials responsible of the commitment of human rights violations was not possible since the military had still enough influence to pressure to maintain the amnesty law in force. On the other hand, in Argentina the situation was very different since the military was defeated in the Malvinas war and consequently it was strongly weakened. In the Argentinian case it was a rupture transition. Therefore the military had less influence to negotiate the transition. The amnesty law was annulled and there were trials carried out. Military power had though still influence since amnesty laws with Menem administration were again implemented. In this context in which the possibilities were very restricted the human rights movement including the relatives' groups continued looking for ways to achieve justice. Like in the case of Argentina the legal group of the Grandmothers could achieve that the crimes of kidnapping children and changing their identity were out of the scope of the amnesty law or in the case of Chile the AFDD presented an alternative proposal to the Figueroa-Otero proposal, which would keep in secret the identities of those who would testify about the human rights abuses committed.

In both cases, despite the influence of the military human rights issues were included in the agenda of transition to democracy. The relevance of the work of the relatives during the military dictatorship and during the transition has to be highlighted here since partly it was because of their work that the questions regarding human rights was taken into account from the beginning of the transition. As it has already been said the truth commissions were a response to the inclusion of the human rights issues in the transitional agenda. Additionally a consequence of the relatives' demands was the emergence of the right to the truth in the Latin American context, being the Inter-American Court the pioneer in the recognition of this right.

Despite this inclusion in the transitional agenda, the relatives' groups had a very different level of participation in setting up the agenda. In the case of Chile they were not part in the negotiations about how to deal with the legacy of human rights abuses.<sup>249</sup> While in the case of Argentina the movement was part in the process of setting the agenda of the transitional

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<sup>249</sup>Norris, 2004, p. 33.

period.<sup>250</sup> The difference between both movements was not just in the setting of the transitional agenda, their role during the transition was very different in both cases. Despite the decrease of international attention during the transition, the relatives' organisations were already well established in society that is why they could be part in the process of setting the agenda of the transitional period. The consequence of this social and institutional recognition of the relatives' group was the increase of the influence on civil society.<sup>251</sup> This increase of influence supposed that they could raise their voice and be heard by society creating awareness about what happened during the dictatorship in Argentina.

In conclusion it could be said that the relatives' groups had a different role in both countries due to the sociopolitical context and due to the internal factors of the organisations. The rupture transition and the consequent decrease of threat by the military, the specificity of the judicial system and the active role of the human rights' groups resulted in the particular situation of Argentina. In contrast, in the Chilean case the achievements were not so profound. The military power was still strong, and the activity of the human rights' groups was not so high. Despite this fact the activity of the relatives' groups did not stop, they would continue active during the transition. When the transitional period passed and the threat of the military was weaker and the human rights movement became stronger there were improvements in the human rights issues. An example of these achievements was the arrest of Pinochet.<sup>252</sup>

#### **5.4. Memory, Trauma and Reconciliation**

The voices of the victims of human rights violations can be considered a critic perspective to the official narrative. With their voices it is possible to interpret the past from the experience they lived. This critical perspective of the past is just able to influence on the social sphere when the truth has been elucidated and justice has been done. These are the

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<sup>250</sup>Brysk, 1994, p.156.

<sup>251</sup>Idem.

<sup>252</sup>Skaar, 2003, p.283.

means by which individual memories become part of the collective memory. The distorted memory or the silenced one will have to face the voice of the ones who state a truth excluded from the official truth.<sup>253</sup> This is the way to take the process of reconciliation since reconciliation includes recovering what was repressed or excluded in the past from the official discourse and do justice.<sup>254</sup>

The past will be interpreted from the narratives of the present. After a period of grave violations of human rights like torture or forced-disappearance there will be different narratives. These narratives will come from different opposed identities, the victims on one side and the perpetrators on the other. Both narratives will participate in the struggle for memory, leading to the tension impunity-justice.<sup>255</sup>

As we see the voices of the victims' relatives construct historic memory, they are the ones who try to open a space in the official narrative to include their perspective, what they had to suffer due to the traumatic event lived. Without their voices there would be an incomplete memory of the traumatic past. Their voices are necessary to reach the construction of a real democracy, the construction of a better future. As it has been said the way in which these voices are incorporated in the collective memory is through the achievement of justice and the elucidation of the truth. What I am going to do in this part is to analyse this process of memory construction in the case of the transitions in Chile and Argentina.

#### 5.4.1. The Chilean case

As I showed in the fourth chapter, the Aylwin administration chose the way of reconciliation, with the main goal of consolidating democracy. In the context of the Chilean transition the present was linked to the past by the juridic and economic continuity. At the same time, the past was full of conflicts that divided society, the atrocities committed and the suffering of the victims. Thus, being unable to deal with the past, the solution was to look to the future.<sup>256</sup>

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253Gaborit, 2006, pp.677-678.

254Bolaños de Miguel, 2007, p.332.

255Gaborit, 2006, p.681.

256 Lechner & Güell, 1998, pp.5-7.

There were some efforts made to recognise the suffering of the victims and the crimes committed in the past. As it was the implementation of the Rettig Commission and the public apology of Aylwin in 1991, when he apologised in the name of the state. These efforts were contested by the armed forces. They did not reveal any information regarding the detained and disappeared. The reactions of the relatives' groups to these positions were linked to these facts since they recognised the step made by the Rettig Report, but they criticized the need for information regarding the disappeared and the need to do justice. This contested institutional position, led to the search of justice in other ways, like the legal aspect. The courts were swamped of cases of violations of human rights brought by the victims and human rights' groups including relatives' groups. However, they could not be processed since the amnesty law of 1978 was still in force.

In the case of Chile during the transition the traumatic past was still interpreted with the official narrative. Thus, the official interpretation remained in the collective memory, excluding the voices of the victims. At the same time, the present was subject to deep divisions since during the Aylwin and Frei administrations the narratives were conflicting and opposed. These contradictions were reflected in the population since they had to live opposite emotions. The result has been a lack of history. This has individual consequences since the individuals cannot link their personal experiences to a broader historic frame.<sup>257</sup> This implies to ignore what they had to suffer and exclude that it happened in a historic moment. That is one of the reasons of the relevance of the right to know the truth and the institutional recognition of the violence committed by the past government.

In Chile the transition to democracy was a moment in which a policy of silence was implemented and forgetting was imposed to preserve democracy. Still some remembrances remained alive. The grave violations committed during the dictatorship, such as torture, the number of the detained-disappeared and the relatives that survived them could not be simply nullified. It might be that the remembrances remained silent, but not forgotten, somehow they remained in a silent way in the memory during a long time. It just needed something which would make them awake, like the detention of Pinochet in London.<sup>258</sup>

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<sup>257</sup> Lechner & Güell, 1998, pp. 11-14.

<sup>258</sup> Waldman, 2006, pp. 10-11.

The struggle for memory may start at the same time in which a traumatic event is happening. In the Case of Chile the coup d'etat was justified by the military as the only way to save the nation from a civil war. For instance the coup was not considered a coup, but an “uprising”. The fight against Marxist ideology was justified as a defence to the Christian and occidental values. From the victim's memory, the coup supposed a traumatic event, a rupture in the symbolic cultural system which had as a consequence the grave violations of human rights. During the transition the efforts made to recognise the memory of the mass violations committed during the past were several. For instance the Rettig Commission or the public apology, which were aimed to break with the official narrative that was dominant during the dictatorship. Despite these facts there were still some sectors wanting to forget. On the other side there were sectors which could not forget because the past was still present to them as the relatives of detained and disappeared.<sup>259</sup>

#### 5.4.2. The Argentinian case

At the beginning of the transition to democracy in Argentina the government had to tackle the question of the legacies of the massive human rights violations. During this period the human rights movement besides truth and justice demanded the necessity of not forgetting the crimes of the military regime.

The transitional period was an important moment to break the official narrative predominant during the dictatorship and to start taking into account the voices which were excluded during the regime. In the Argentinian case there were several attempts to include in the collective memory the remembrance of the strong violence and repression used by the state to repress the “enemies” of the regime. Measures implemented were for instance the Truth Commission to investigate the grave violations of human rights committed by the state.<sup>260</sup>

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<sup>259</sup>Idem.

<sup>260</sup>Idem.

The atrocities committed were revealed by the *Nunca Más* report and spread to the whole population. Some differences between the Argentinian and the Chilean case in terms of memory are: the impact of the symbolic message of the Mothers in society, the work of the commissions and the trials. Regarding the Mothers as already said they achieved international recognition with their fight. As well in the domestic level their voices reached the whole society with their claims of truth and justice. On the other side, the reports have assumed different roles. In the case of Argentina the report was formed by activists, journalists, known people of the Argentinian society and it was led by Ernesto Sabato a famous writer. The *Nunca Más* report showed the histories from a subjective perspective and it was a clear attack to the dictatorial regime. The success of this report can be seen in the fact that it became a best seller in the country. While in the case of Chile the Commission was aimed at the general disclosure of the truth and it was limited to certain cases. The commission was formed mostly by lawyers and it was led by Raúl Rettig who was a lawyer as well.<sup>261</sup> The resulting Rettig report was a legal oriented text with an objective perspective, centred on the political and historical context. Additionally in the first years of the Argentinian transition there were trialed the responsible military officers for human rights violations, i.e. the junta trials. All these facts are factors in the collective memory which must be taken into account to evaluate the situation in terms of historical memory.

Despite these efforts, there were attempts to encourage forgetting and impunity. During the Menem administration the Final Point and the Due Obedience laws imposed the silence and the forget, giving a step back. Despite these laws, the remembrance of the massive violations of human right was activated in specific situations as it happened in the case of Chile. Despite the fact that the memories of the excluded were silenced, they did not forget.<sup>262</sup> It could be mentioned as a factor of the awaking of the memory, the case of the testimonies of Adolfo Scilingo, an ex-marine of the Navy School of Mechanics. He recognised publicly the death flights and admitted his participation on them. His confession had an impact on society. The head of the armed forces at that time Martín Balza, admitted and criticised the activity of the military during the dictatorship.<sup>263</sup> Another example of the

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<sup>261</sup>Aylwin, 1994, p.112.

<sup>262</sup>Waldman, 2006, p.10.

<sup>263</sup>Ruiz, María Olga, *Qué y cómo recordar: luchas por la memoria en el movimiento de derechos*

persistence of the memory is the creation in 1996 the organisation HIJOS, formed by the children of the victims of the military repression.<sup>264</sup>

As we have seen in the case of Argentina the voices of the excluded narrative kept alive even when they were silenced. The process of memory construction is a long one, but it is important that these excluded voices keep fighting to be recognised in their demands. As we have seen in this chapter the victims and the victims' relatives have been continuously active after the dictatorship was over. They have continued asking for truth and justice, and their action has been part in the construction of the collective memory by keeping their voices alive.

## Conclusion

In this chapter I showed the context in which the relatives' groups acted during the military regimes and during the transitions in Chile in Argentina. Firstly, I exposed the features of the relatives' groups, their activity and the factors that influenced them during the dictatorships. Secondly, I explained the main features of the human rights movement during the transitions to democracy in both countries. Thirdly, I showed the role of the relatives' groups and what it was achieved in terms of transitional justice in both countries. I finished the chapter showing how the narrative of the victims keeps the memory of those most affected by the violations of human rights. For that I used the Chilean and the Argentinian context.

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264Ruiz, María Olga, Qué y cómo recordar: luchas por la memoria en el movimiento de derechos humanos argentino (1976-1998),(What and how to remember: fight for the memory in the Argentinian human rights movement(1976-1998)), in Nuevo Mundo Mundos Nuevos, Cuestiones del tiempo presente, 30 May 2011, at <http://nuevomundo.revues.org/61495#sthash.DGDtICTL.dpuf> (consulted on 19 Juni 2013).

## **Conclusion**

This study was designed to determine the role of the human rights movement and particularly the role of the relatives movement during transitions to democracy. For that the thesis presented the theory of transitional justice, its evolution and the position that the victims and the victims' groups had in the transitional justice discourse. I showed the fields of transitional justice which are closely connected to victims such as memory and trauma work. I focused the study on the cases of the relatives movement during the transition to democracy in Chile and Argentina. To understand their work I first explained the context in which they developed, including the Latin American experience in transitional justice and the Inter-American System of Human Rights. In relation to the human rights movement I showed the political context in which the human rights' groups emerged and developed. I described the activity of the movement from their emergence in dictatorship to their evolution during the transition and I showed the factors that influenced their activity. I also presented the transitional justice processes carried out in both cases. I concluded the thesis with a comparative analysis of the development and activity of the human rights movement from their origin during the dictatorship to their development during the transition in both countries and I exposed their role as holders of the voices of the past.

This study suggests that the human rights movement plays a basic role during transitions since they are the ones who most persistently demand their rights to be recognised. Particularly victims and relatives of victims of human rights violations are the ones more active and persistent as the case of Chile and Argentina presents. Both cases showed that the movement partly influenced the policies implemented by states during the transition. Despite their influence changed depending on political factors, such as the influence of the military, they organised to bring their demands to the public attention. The relatives movement demanded truth and justice and to keep the remembrance alive to avoid such grave violations from happening again. This evidence suggests that the victims and their relatives should receive more attention in the transitional justice discourse and practice.

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