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# Rule of Law: The Soul of Transitional Justice in the Rule of Law

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**To cite this article:**

Katherine Paola Ribero Salazar. Rule of Law: The Soul of Transitional Justice in the Rule of Law. *International Journal of Law and Society*. Vol. 5, No. 3, 2022, pp. 276-283. doi: 10.11648/j.ijls.20220503.15

**Received:** March 22, 2022; **Accepted:** May 11, 2022; **Published:** August 10, 2022

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**Abstract:** For transitional justice to work in a country where its fundamental pillar is the rule of law, it is appropriate to recall the origins of the word itself, its definition, its objectives, its levels (Individual, Nation – States, Corporate Actors and the Supranational Institutions), its principles, the subject of reparation (the victim), its importance in strengthening the rule of law, the elements of a policy of this kind of comprehensive justice, and then remember that it is important in the solution of crimes committed within the rule of law, in international crimes. Countries going through internal armed conflicts or wars find in transitional justice an important tool for peace building and reconciliation. Transitional justice does not have a unique form but manifests itself in different ways according to the specific conditions of each conflict, each country and each historical moment. Culture, the strength of the conflicting powers, the economic interests behind the conflict and international human rights requirements are some of the factors that influence the specific characteristics of each transitional justice process. Transitional justice should be understood as that special and exceptional model that a society applies with the purpose of healing and repairing the wounds suffered after long periods of violence or disregard of rights, but it will establish that although each model of transitional justice is unique as each society and conflict is unique, there are also some elements that will allow peace to be achieved. We have seen this in situations throughout history, such as what happened in the Nuremberg and Tokyo trials, as well as in transitional processes in Latin America and South Africa, in the reflection of a power struggle; subsequently becoming a tool for peace building. This is evidence of how this concept has evolved over time.

**Keywords:** Transitional Justice, Rule of Law, Victim

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## 1. Introduction

In order to speak of transitional justice, we must make a historical journey from the Second World War, after the German holocaust that destroyed thousands of lives, not only of Jewish nationals, but also prostitutes, homosexuals, gypsies or Gypsies and a large part of the population whose lives were blinded when the bombs were dropped on Hiroshima and Nagasaki, in short, when, in the face of this manifestation of the use of human power in the control of the population, the Nuremberg and Tokyo courts were consolidated, The Nuremberg and Tokyo tribunals, following the will of the victorious powers, were set up to try the great Nazi war criminals, as well as, subsequently, the manifestations of "ethnic cleansing" committed in the 1990s in Rwanda, the former Yugoslavia and the well-known establishment by the United Nations Security Council of the

Criminal Tribunals of The Hague and Arusha, which, in their competence, aim at the reestablishment of international peace and security. It is there, the elemental role of transitional justice, which aims to overcome armed conflicts and the restoration of peace in this kind of world wars and armed conflicts.

In this moment, considering transitional justice as a therapeutic process for societies, it is essential to establish that, despite the fact that in theory there are different views regarding its phases as well as the ideal ways to achieve a solid process of social, political and legal restructuring, in practice there are difficulties inherent to the cultural development of each society, To this extent, transitional justice processes are complex processes that have never been uniform, since in the search for peace and reconciliation, States have ignored the fact that the definitive recovery of these "scars" left by the conflict is not only enacted with

respect to the victims but also to civil society, combatants and other actors in the conflict, since we are not only talking about peace and reconciliation as individual rights but also as a collective right. Thus, there have been several transitional justice processes, with different characteristics of victimization and with different objectives and goals.

## 2. Transitional Justice

Transitional Justice<sup>1</sup>: We will begin by stating that the concept of transitional justice first arose in Versailles, when the Allied Powers envisaged the possibility of setting up an international tribunal to try former Emperor Wilhelm II for "supreme offense against international morality and the sanctity (sacred character) of treaties", but this was not carried out because the Kingdom of the Netherlands refused the extradition request, hindering his trial.

### 2.1. Definition of Transitional Justice

From its purpose, we can say that transitional justice "(...) encompasses the full range of processes and mechanisms associated with a society's attempts to resolve problems arising from a past of large-scale abuses, in order to hold those responsible accountable for their actions, serve justice and achieve reconciliation" [13]. It is understood then that transitional justice mechanisms address the legacy of human rights and international humanitarian law violations during the transition of a society recovering from conflict or authoritarian rule [1].

### 2.2. Objectives of Transitional Justice

In this general framework, the judicial and political mechanisms of transitional justice have the following purposes: a. To strengthen or establish the rule of law. b. To address, and attempt to heal, the wounds that arise in society as a result of human rights violations. c. To advance reconciliation processes, guaranteeing the rights of victims and society to truth, justice and comprehensive reparation. d. To reduce impunity, provide justice to the victims, guarantee the rights of victims and society to truth, justice and comprehensive reparation. e. Advance reconciliation processes, guaranteeing the rights of victims and society to truth, justice and comprehensive reparation. f. Reduce impunity, provide justice to victims and hold perpetrators accountable. g. Unveil the ideological justification for the crimes. h. Unveil the ideological justification for the crimes, including the right to truth, justice and comprehensive reparation. i. Strengthen the rule of law. Unveil the ideological justification (political, cultural, economic, etc.) of

violence and war crimes and offer society the possibility of dismantling the system of values associated with it. f. Promote the elimination of the causes of a situation of social injustice of a structural nature, which in turn lead to solid guarantees of non-repetition of the violations.

The materialization of these objectives ultimately aims at strengthening democratic ethics and preventing impunity, becoming an end in itself and a condition for the possibility of coexistence and lasting peace.

### 2.3. Levels of Transitional Justice [2] Transitional Justice Can Be Developed at Four Levels [14]

#### 2.3.1. Individual

At this level, the subjects operate fundamentally in the roles of victims or victimizers, which would place them on one side or the other of the effects of transitional justice mechanisms.

#### 2.3.2. Nation-States

It is up to the actors at this level to define the agreements and provisions that are understood to be necessary for the parties involved in the conflict to facilitate the effective transition to democracy. Likewise, public international law establishes the obligation of States to clarify, punish and repair serious violations of human rights and international humanitarian law, which implies a complex tension between these two purposes, as is the case, for example, with pardon laws for former combatants, which are necessary to facilitate the surrender of weapons and demobilization but which have limits in their application due to the imperative of justice and the prevention of impunity.

#### 2.3.3. Corporate Actors

These include organizations (political parties or churches), economic enterprises, professional associations and territorial administrative entities. As collective actors, they can play the role of victims or victimizers of violations, as in the case of Swiss bankers in the war crimes of Nazi Germany. Although it is much more frequent to find them in roles of facilitators or observers of negotiation processes or agreements.

#### 2.3.4. Supranational Institutions

Transitional justice operates at this level when there is neither the capacity nor the political will at the national level to prosecute war crimes suspects. International tribunals correspond to this sphere, whether those created to deal with particular situations such as the Nuremberg War Crimes Tribunal, the International War Crimes Tribunal for the Far East or the recent ad hoc tribunals for the former Yugoslavia, Rwanda and Burundi, or the permanent tribunal that corresponds to the International Criminal Court, the result of the agreement reached in Rome in 2000.

### 2.4. Principles of Transitional Justice [2]

The protection of rights in scenarios of transition to democracy presupposes the adoption of transitional justice mechanisms based on three fundamental principles: the right

<sup>1</sup> For Transitional Justice to be consolidated, it is an indispensable requirement in the context of our country to recognize that we are living in the midst of an ARMED CONFLICT, but since there is no political will to do so, Transitional Justice cannot be made effective. On the other hand, a criticism that can be made to the application of TRANSITIONAL JUSTICE is that it denaturalizes the principle of the natural judge because he would be ruling with arguments that are not proper to our social legal context, which has nothing to do with the Anglo-Saxon model.

to truth, the right to justice and the right to reparation. These principles are derived from the typification developed by Joinet, 1997, in the Final Report on the Question of Impunity for Perpetrators of Human Rights Violations (Civil and Political Rights).

In accordance with this report, the obligations of States in transition processes are identified, namely: the satisfaction of the right to justice; the satisfaction of the right to truth; the satisfaction of the right to reparation of victims; and the adoption of institutional reforms and other guarantees of non-repetition.

Taking up these principles, it has been pointed out that *"transitional justice requires States to seek and disseminate the historical truth, comprehensive reparation programs for victims, which cannot be reduced to mere compensation or be conditioned to the waiver of other rights, and the design of exceptional models for the application of justice, which, while admitting the flexibility of principles such as proportionality and equality in criminal matters, cannot become paradigms of impunity that deepen the pain and rejection of the victims and consequently prevent the healing of the wounds"* (emphasis added) [6].

The effective realization of the right to justice in the framework of the transition processes implies the construction and/or strengthening of formal scenarios to clarify the truth and to define the forms of reparation.

Specifically, in view of the State's inescapable duty to investigate, a series of minimum parameters must be met in order to satisfy the victims' right to know with the greatest possible certainty who the perpetrators were and how the events occurred [15].

With regard to the responsibility to prosecute the perpetrators, although the State must ensure compliance with the established principles of due process, the application of justice itself must be carried out within a framework that guarantees the protection of the victim as a subject of rights and fulfills the obligation to impose appropriate penalties on those responsible for crimes against humanity, war crimes and serious human rights violations. In this sense, the realization of the right to justice is based on the duty of the State to investigate promptly, impartially and exhaustively [15] serious violations.

Any system of alternative penalties adopted with respect to members of illegal armed groups, in the development of a negotiation process, must guarantee the rights of the victims through the application of the principles and norms of truth, justice and reparation, adopting the creation of instruments and formulas aimed at avoiding impunity, indulgence or excessive generosity in the application of penalties and consequently the disregard and contempt for the victims of human rights or international humanitarian law.

As a trend in public international law, the failure to comply with these requirements in the forms, meaning and scope of investigations at the national level into serious violations of rights in the framework of transitional justice systems increasingly constitutes an argument for the review in international tribunals of the proceedings brought against the

alleged perpetrators, beyond the principle of *res judicata*, recognizing, as the International Military Tribunal of Nuremberg stated, that *"individuals have international obligations that transcend the national obligations of obedience imposed by the State in question"* [16].

### 2.5. *The Subject of Reparation: The Victim*

In the context of understanding transitional justice processes, it is essential to specify the concept of victim. In this sense, victims are understood to be persons or groups of persons who have suffered harm caused by acts or omissions that violate the rights enshrined in the norms of the current legal constitutional order of the states, International Human Rights Law, International Humanitarian Law and International Criminal Law.

With respect to the universe of the definition of victim, this includes the person or persons directly affected materially, physically or psychologically by the violation of rights, as well as *"the members of the direct family or dependents of the direct victim, as well as the persons who, by intervening to assist the victim or prevent other violations from occurring, have suffered physical, mental or economic harm"* [17]. The status of victim is acquired regardless of whether the perpetrator of the punishable conduct is identified, apprehended or convicted and without regard to the family relationship existing between the perpetrator and the victim [18].

In the Inter-American system of protection, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have recognized that not only individuals can be considered as victims, but in certain cases the communities themselves (indigenous peoples, political groups, among others) can be considered as victims [19].

On the other hand, Title II of Protocol II Additional to the Geneva Conventions, relating to the protection of victims of non-international armed conflicts, implicitly includes the definition or concept of victim when it specifies that its purpose is to protect persons who do not participate directly in hostilities or who have ceased to participate in hostilities (former combatants) against abuses of power and inhuman and cruel treatment that may be inflicted on them by the military or civilian authorities in whose power they are in. This protocol applies equally to all persons affected by the armed conflict and in the power of the adversary (wounded, sick, persons deprived of their liberty or whose liberty has been restricted), whether military or civilian [20].

The definition of victim status is developed in numerous international instruments or treaties based on the identification of punishable conducts that violate rights stipulated by human rights law and international humanitarian law.

Some fundamental aspects of Transitional Justice have been addressed; however, it is necessary to highlight its purpose, which is framed within the achievement of Reconciliation, understood as *"a political and social process by which the contending parties of an armed conflict or the*

*adversaries of a dictatorial regime make peace with a view to the reestablishment or establishment of democracy in the respective society. Reconciliation is always a positive experience for a divided society seeking to overcome war or tyranny, but it is not an end in itself and cannot be achieved at the expense of historical memory and judicial justice, which are the only legitimate and effective means of rebuilding the bonds of citizenship and restoring the rule of law and rights."* [11].

Transitional justice is not a special type of justice but a way of addressing it in times of transition from a situation of conflict or state repression. By seeking accountability and reparations for victims, transitional justice provides victims with recognition of their rights, building public confidence and strengthening the rule of law.

### **2.6. Importance of Transitional Justice**

When massive human rights violations are committed, victims have the officially recognized right to see the perpetrators punished, to know the truth and to receive reparations.

Since systematic human rights violations affect not only the direct victims but society as a whole, in addition to fulfilling these commitments, States must ensure that violations do not happen again, and, consequently, must especially reform the institutions that were implicated in these events or were unable to prevent them.

Societies that do not confront massive human rights violations are often divided, generating distrust among different groups and of public institutions, and hindering or slowing improvements in security and development. This situation calls into question the commitment to the rule of law and can ultimately lead to the cyclical repetition of various acts of violence.

As can be seen in most countries suffering massive human rights violations, demands for justice refuse to "disappear".

In conclusion, it could be stated that a victim is any individual or collective, direct or indirect person who suffers harm as a consequence of an omission or action by the State, its agents or persons belonging to society. In this sense, the victim will always suffer a loss, injury or damage to his or her person, property or rights as a result of a conduct that constitutes a violation of national criminal law, constitutes a crime under international law that involves a violation of internationally recognized human rights principles, that in some way also involves an abuse of power by persons occupying positions of political or economic authority. It also includes groups, classes or communities of individuals, economic or commercial corporations and political groups or organizations.

### **2.7. Elements of a Comprehensive Transitional Justice Policy**

The elements that make up transitional justice policies are interrelated. The most determinant ones are [10]:

- 1) Criminal prosecutions, especially against criminals

considered most responsible.

- 2) Reparations that governments use to acknowledge the harms suffered and take steps to address them. Such initiatives often have a material component (such as monetary payments or health services) as well as symbolic aspects (such as public apologies or days of remembrance).
- 3) The reform of public institutions implicated in abuses - such as the armed forces, the police and the courts - in order to dismantle, with appropriate procedures, the structural machinery of abuse and avoid both the repetition of serious human rights violations and impunity.
- 4) Truth commissions or other forms of investigation and analysis of systematic patterns of abuse, which recommend changes and help to understand the underlying causes of serious human rights violations.

However, this is not a closed list. Each country is incorporating new measures. Memorialization, for example, which consists of various initiatives aimed at keeping the memory of victims alive through the creation of museums and monuments, and other symbolic measures such as the renaming of public spaces, has become an important part of transitional justice in most countries around the world.

Although transitional justice measures are based on solid legal and moral commitments, the means to satisfy them are very diverse, so there is no one-size-fits-all formula for all contexts.

However, transitional justice is key to developing the rule of law, since it is key to UN initiatives in defense of the rule of law. Because history has shown that leaving past human rights violations unpunished is a major threat to international peace and security.

Failure to strengthen security forces weakened by conflict, corruption or political interference, or to address the legacies of such conflicts or abuses, can create a power vacuum that criminal networks or international terrorist organizations will soon fill, perpetuating violence, instability and human rights abuses [3].

Transitional justice is essential to developing just and peaceful societies. For example, in June 2010, the Security Council requested a further report to elaborate on the impact of its previous recommendations in this regard and to propose further measures to promote the rule of law and transitional justice in post-conflict situations.

ICTJ<sup>2</sup> participated in all the consultation roundtables held in early 2011, providing the UN with texts to prepare its report.

The primary mission of transitional justice is to strive to "open new paths towards a future of peace and stability". In

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<sup>2</sup> The International Center for Transitional Justice is an international non-profit organization specializing in transitional justice. ICTJ seeks to help societies in transition deal with the legacy of massive human rights violations and to build public confidence in the capacity of public institutions to protect those rights. In the aftermath of mass atrocities and repression, they help institutions and civil society groups-those who lead and shape change in their societies-consider measures to promote truth-telling, accountability, and redress for past abuses.

countries with violent or repressive pasts -that is, most of them- implementing truth-seeking measures, criminal justice, reparations and institutional reform is essential to establish a culture of justice and respect for the rule of law.

This was the overall message of an informal discussion organized by ICTJ and the Permanent Missions of Switzerland and Tunisia on May 7, which focused on the relationship between transitional justice and the rule of law.

In his analysis, ICTJ President David Tolbert defined the key role that transitional justice must play when talking about the rule of law. In a society that has experienced massive human rights violations, *"it is necessary to confront the past, recognize the victims, clarify the truth and reform institutions,"* he said. Otherwise, the rule of law will lack a foundation.

Where societies have not confronted the past, he continued, we find that violence and abuse are more likely to reappear.

Conversely, we also have the examples of countries that, emerging from conflict and repressive regimes, have built solid systems based on respect for the law. Argentina, for example, is just one of many case studies in which a consensual transitional justice process has laid the foundations for a strong system of security and respect for the rule of law.

As another example, Tunisia's governor said that *"justice is the key pillar of any transition,"* explained Nejmeddine Lakhel, deputy permanent representative of Tunisia. The Tunisian people know that by implementing truth-seeking measures, reparations, criminal justice and institutional reform, they are investing in the establishment of a peaceful society.

*"The rule of law is not built on the shoulders of those who committed crimes,"* Tolbert concluded. It must be built on truth, justice and the principle of accountability.

He further stated that *"When fundamental rights can be violated with impunity, it is difficult to imagine a society taking the rule of law seriously"*.

The four types of mechanisms contemplated in the mandate - truth, justice, reparations and guarantees of non-repetition - should not be seen as independent strategies for dealing with the past, but rather as parts of a whole.

The complexity and magnitude of the situations in which transitional justice mechanisms operate - in societies that have suffered massive violations of human rights or humanitarian law - require the application of a wide range of such measures.

The international criminal justice system relies on the implementation of judicial measures and respect for the rule of law at the national level. According to Selous, in countries facing the legacy of mass atrocities, this is not only achieved through criminal justice. The report also notes that other transitional justice measures such as fact-finding missions and truth commissions are key to promoting accountability. [4].

Also, in a state governed by the rule of law, mass atrocities are a tragic indication of its collapse.

Transitional justice has to do with regaining confidence in that legal order and in participating in activities that "traditionally" have been considered proper to legal work [5].

In this regard, promoting the rule of law at the national and international levels is central to the mission of the United Nations. Establishing respect for the rule of law is fundamental to achieving lasting post-conflict peace, effective protection of human rights and sustained economic progress and development. The principle that everyone - from the individual to the state itself - must abide by laws that are publicly promulgated, equally enforced and independently adjudicated is a fundamental concept that drives much of the work of the United Nations.

The principle of this State, enshrined in the Charter of the United Nations, encompasses elements that concern the development of relations between States. The principal organs of the United Nations, such as the General Assembly and the Security Council, perform essential functions in this respect, which derive from the provisions of the Charter and require action in accordance with them.

For the United Nations, the concept of the rule of law is central to the Organization's mission. It refers to a principle of governance whereby all persons, institutions and entities, public and private, including the state itself, are subject to laws that are publicly promulgated, equally enforced and independently adjudicated, and are consistent with international human rights norms and standards. It also requires that measures be taken to ensure respect for the principles of the rule of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legality, non-arbitrariness, and procedural and legal transparency [21].

The Organization has judicial mechanisms, such as the International Court of Justice, the principal judicial organ of the United Nations, and the ad hoc criminal tribunals and hybrid tribunals [7].

On the other hand, we cannot ignore the dictatorial regimes that have emerged in Latin America under the protection of the United States. Thus, the abuses of power have not yet ceased. It is for this reason that transitional justice has emerged in the international arena, as a point of rupture, of transaction between societies that are trying to overcome those authoritarian periods or periods of excess and infatuation with power. In this order of ideas, this transitional justice seeks to protect the rights of the victims of crimes against humanity, war, aggression, genocide arising from armed conflicts, thereby violating the norms of international human rights law and international humanitarian law [1].

This is precisely what transitional justice is about; the use of political and legal mechanisms that seek to respond to the balance between the values of justice and peace, within the social rule of law, thereby seeking to promote ways in which the heavy legacy of human rights violations can be confronted and to initiate a path towards a future of truth, justice and reparation. The latter are the basic principles of transitional justice.

The concept of transitional justice has also been defined by the Secretary General of the United Nations Council as

*"encompassing the full range of processes and mechanisms associated with a society's attempts to resolve problems arising from a past of large-scale abuses in order to hold perpetrators accountable, serve justice and achieve reconciliation"* [13].

The mechanisms that arise from political and social agreements are compensation, moral recovery, public requests for forgiveness and the establishment of commemoration dates.

Likewise, there are truth and reconciliation commissions that are located between the judicial mechanisms or the mechanisms that arise from the political agreements, depending on the competencies or powers that have been granted to them.

### **2.8. Levels of Transitional Justice**

On the other hand, taking into account Elster's identification of levels [20], transitional justice can be developed in four levels:

#### **2.8.1. Individual Level**

IN which the subjects operate fundamentally in their roles as victims or victimizers, which places them on one side or the other of the effects of the mechanisms of this transitional justice.

#### **2.8.2. Nation-States**

It is up to the actors at this level to define the agreements and provisions that are understood to be necessary for the parties involved in the conflict to facilitate the effective transition to democracy. Likewise, public international law establishes the obligation of States to a) clarify, b) punish and c) repair serious violations of human rights and international humanitarian law, which implies a complex tension between these two purposes, as in the case of pardon laws for former combatants, which are necessary to facilitate the surrender of weapons and demobilization but have limits in their application due to the imperative of justice and the prevention of impunity.

#### **2.8.3. Corporate Actors**

These include organizations such as political parties, churches, economic enterprises, professional associations and territorial administrative entities. As collective actors, they can play the role of victims or victimizers of violations, as in the case of Swiss bankers in the war crimes of Nazi Germany. Although it is much more frequent to find them in roles of facilitators or observers of negotiation processes or agreements.

#### **2.8.4. Institutions at the Supranational Level**

Transitional justice operates at this level when there is neither the capacity nor the political will at the national level to prosecute war crimes suspects. This is where international tribunals come into play, such as the Nuremberg War Tribunal, the International War Crimes Tribunal for the Far East or the recent ad hoc tribunals for the former Yugoslavia, Rwanda and Burundi, or the permanent tribunal of the

International Criminal Court, which emerged as a result of the agreement reached in Rome in 2000.

Thus, transitional justice adopts different concepts that are reflections of political realities and of the actors that participate in the political and social scenario of these processes with diverse interests and agendas: - The approach to the definition of victim, - The modalities of reparation and the categories of violated rights.

On the other hand, the application of rights in scenarios of transition to democracy requires the adoption of transitional justice mechanisms based on three fundamental principles such as the right to truth, justice and reparation.

## **3. Conclusions**

Transitional justice requires States to seek and disseminate the historical truth, comprehensive reparation programs for victims, which cannot be reduced to mere compensation or be conditioned to the waiver of other rights, and the design of exceptional models for the application of justice, which, while admitting the relaxation of principles such as proportionality and equality in criminal matters, cannot become paradigms of impunity that deepen the pain and rejection of the victims and consequently prevent the healing of wounds.

According to the political context of the time, each country, depending on its own conflict, has different contexts, purposes, goals and motivations, which makes transitional justice processes become paths to be explored in each specific case. Thus, the construction of the various models of peace and reconciliation that have been developed involve: first, the cessation of practices that affect human rights through the recognition of actions; second, the distribution of political participation; and third, the reintegration of the factions of the conflict.

As can be seen, each conflict has different contexts, purposes, goals and motivations, which makes transitional justice processes become paths to be explored in each specific case. Thus, the construction of the various models of peace and reconciliation that have been developed involve: first, the cessation of practices that affect human rights through the recognition of actions; second, the distribution of political participation; and third, the reintegration of the factions of the conflict.

However, the results of transitional justice are often not as expected, as happened in several Latin American countries such as Peru, when Fujimori ordered the creation of a Truth Commission, after the transition to the rule of law, established that the measures taken by the State were aimed at combating the insurgent group Shining Path, but there were profound effects on peasants, indigenous people and in general, the population of extreme poverty, in a mostly rural, indigenous and poor country in the 1990s. The Commission that was created acted under an "implicit peace agreement" because the Peruvian State categorically weakened the insurgents.

After that, there was no inclusion of those considered as

demobilized, in any political or social level, besides, a fragmentation of society had been provoked, allowing the continuation of the practices of ethnic and cultural violence, only now, with little interest in social investment and hyperinflation; which finally led to the resurgence of the Shining Path group years later.

On the other hand, in South Africa, there is another story to tell: the white settlers inserted in the government created a series of policies dedicated to the racial separation of the country called apartheid, placing the black population in circumstances of inferiority at all levels of the social structure; in short, South Africa intended to eliminate culturally, socially and politically its majority population. Thus, unequal labor policies were designed (slavery), in health care, even in simple aspects of life such as sports, and the traditions of each ethnic group were considered useless. For this reason, at that time South Africa was identified as a territory occupied by settlers who brought their cultural identity from Europe and imposed itself unquestionably throughout the territory, which is why a National Liberation Front was created in 1965, as a result of the People's Congress. By 1990, the State considered that its policies were "unsustainable", while the liberation front reoriented its radical position, which allowed the search for peace through negotiation. Subsequently, as a result of the negotiation, a "National Peace Agreement" was reached, where amnesties were granted, but recognizing the responsibility for the actions of the apartheid policies. After the agreement, a traumatized society was found without congruence or representation; discrimination continued at all levels.

The same happened in Guatemala and the Congo with similar results: where the continuity of human rights violations was reflected in insufficient public policies and scarce political participation.

Consequently, it became evident that the different models of peace and reconciliation that have been built within transitional justice processes have not been completely successful. The basic reason could be alluded to the fact that the consideration of "peace" is circumscribed only to the non-existence of war and that, at the same time, reconciliation is singularly limited to truth and satisfaction measures, mainly. Reconciliation, as a process, cannot be forced; since this would be almost like pretending that a patient who has suffered a trauma, in the psychological sphere, is solved with interventions that deny what happened.

It is, therefore, that reconciliation must be assumed as an autonomous process that each society must achieve at its own pace, but that requires the participation of society as a whole; otherwise, failure and the emergence, again, of conflict will be a sad cyclical and post-traumatic reality.

To this extent, transitional justice within the rule of law leads to a recovery of the social fabric, which must be comparable to an alternative model of reconciliation, where the effectiveness of a right that is not exclusively individual but collective is sought, without ignoring that this social fabric is based on the texture of collective memories.

A genealogy [10] of transitional justice demonstrates, over time, a close relationship between the type of justice pursued and the relevant political constraints. Currently, the discourse is aimed at preserving a minimal rule of law identified primarily with the preservation of peace.

Now, transitional justice moves from the exception to the norm, to become a paradigm of the rule of law. In this contemporary phase, transitional jurisprudence normalizes an expanded discourse of humanitarian justice by constructing an organicity of law associated with present conflicts, thus contributing to the establishment of the foundations of the emerging law of terrorism.

In this sense, international legal norms are useful for building a perception of continuity and consistency in the rule of law.

Reflections on transitional justice are best understood when situated in the actual political realities and political context of the transition, which include the characteristics of the predecessor regime, as well as political, legal and social contingencies. The feasibility of pursuing the application of justice and the ability of justice to contribute to the transitional rule of law depended on the scale of the prior crimes, as well as the degree to which they became systematic or were sponsored by the state apparatus.

Attempting to enforce accountability through criminal law often creates dilemmas inherent in the rule of law, including retroactivity of the law, alteration and improper manipulation of existing laws, a high degree of selectivity in prosecution, and a judiciary without sufficient autonomy.

Therefore, to the extent that the imposition of criminal justice incurred in such irregularities, it ran the risk of undermining the contribution that justice can make to the reestablishment of the rule of law.

In weak democracies, where the administration of sanctions and punishments can provoke acute dilemmas about the rule of law, the contradictions generated by the use of the law can become too great.

Later, the problem of prosecution gave way to other forms of response, notably national commissions of inquiry that had the advantage of being able to investigate state crimes more systematically.

Also, due to the requirements of International Human Rights Law and International Criminal Law, transitional justice has been evolving: from being an instrument of power, it has become a limit to it and a tool for building sustainable peace [9]. It has become a limit to it and a tool for sustainable peace building.

Countries going through internal armed conflicts or wars find in transitional justice an important tool for peace building and reconciliation. Transitional justice does not have a unique form but manifests itself in different ways according to the specific conditions of each conflict, each country and each historical moment. Culture, the strength of the conflicting powers, the economic interests behind the conflict and international human rights requirements are some of the factors that influence the specific characteristics of each transitional justice process.

Transitional justice has been evolving [9] from being a tool of power to become a limit to power. From its first phase in the Nuremberg and Tokyo Tribunals, where it was the justice of the victors, it became in its second phase, in the transitional processes of Latin America and South Africa, the reflection of the struggle of powers. In its third phase, it is on its way to becoming not only a check on power but also a tool for building a lasting peace.

In its first stage, transitional justice was used by the victor for two purposes: on the one hand, to punish the crimes of the vanquished and, on the other, to ensure impunity for its own crimes. In its second stage, in which the end of the conflict is the product of a negotiation between armed actors, transitional justice was an instrument of impunity, of mutual pardons, without truth (or at least not a complete truth) and without reparations to the victims. In its third stage, international human rights law and the Rome Statute have brought transitional justice ever closer to the idea of law as a limit to power. It is a new vision of transitional justice no longer as an exceptional local contingent right but as a universal statutory right, based on the principle of legality and an integral part of the social rule of law [9].

Finally, transitional justice has become an instrument for the control of power [12] by moving from mere punishment to a more comprehensive concept of justice that encompasses truth, the dignification of victims, their material and symbolic reparation, the reconstruction of the social fabric, reconciliation, memory and the guarantee of non-repetition.

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