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Transitional Justice in Established Democracies: Analysis of the Canadian, South African, and Chilean experiences•

Justicia Transicional en Democracias Establecidas: Análisis de las experiencias canadiense, sudafricana y chilena

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Abstract

In the last four decades, theories and mechanisms of transitional justice have been formulated and implemented in numerous countries, forming an interdisciplinary theoretical and practical corpus. This paper proposes to expand the scope of transitional justice so that it can be applied in stable democracies. The proposed reformulation could be useful to address structural injustices affecting indigenous peoples, that are a legacy of colonialism and assimilationist policies, and to address acts of state repression that constitute serious human rights violations. These reflections are formulated on the basis of three recent case studies: 1) from the Canadian experience, the Royal Commission on Indigenous Peoples, the Truth and Reconciliation Commission, and the National Inquiry into Missing and Murdered Indigenous Women and Girls are analyzed; 2) from South Africa, the Truth and Reconciliation Commission, the Constituent Process and the Land Reform are discussed; and 3) from the Chilean case, the link between social unrest and transitional justice, as well as the Constituent Process, are explained.

Key words: *Transitional Justice; Truth and Reconciliation Commission; Human Rights Violations; Constituent Process*.

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Resumen

En estas últimas cuatro décadas se han formulado teorías e implementado mecanismos de justicia transicional en numerosos países, conformando un *corpus* teórico-práctico interdisciplinar. En este documento se propone expandir el ámbito de acción de la justicia transicional, de modo que pueda ser aplicada en democracias estables. La reformulación que se propone podría ser de utilidad para enfrentar injusticias estructurales que afectan a los pueblos indígenas y que son un legado del colonialismo y políticas asimilacionistas, y hacerse cargo de actos de represión estatal que son constitutivos de graves violaciones a los derechos humanos. Estas reflexiones son formuladas a partir de tres recientes estudios de caso: 1) de la experiencia canadiense se analizan la Comisión Real sobre los Pueblos Indígenas, la Comisión de Verdad y Reconciliación y la Investigación Nacional sobre Mujeres y Niñas Indígenas Desaparecidas y Asesinadas; 2) de Sudáfrica, se aborda la Comisión de Verdad y Reconciliación, el Proceso Constituyente y la Reforma Agraria, y 3) del caso chileno se explica la vinculación entre estallido social y justicia transicional, además del Proceso Constituyente.

Palabras clave: *Justicia Transicional; Comisión de Verdad y Reconciliación; Violaciones a los Derechos Humanos; Proceso Constituyente*.

INTRODUCTION

This article seeks to explore the reconfiguration of the field of transitional justice, from its classical paradigm towards perspectives of social transformation. The first section offers a brief review of the classical notion of transitional justice, before exploring the expansion of its focus to encompass processes that seek to confront human rights violations within established democratic regimes. Transitional justice can be redefined as a justice of deeper transformation, with respect to historical conflicts and inequalities. Recent theoretical developments in this field highlight how its scope could be extended to serious violations of human rights committed in fully democratic periods, as well as the unjust consequences of the violence associated with the processes of colonization. Transitional justice is undergoing a reckoning as it seeks to better address not only the direct harm caused by human rights abuses, but also the underlying causes that lead to such large-scale abuses. This expanded approach opens the door to applying transitional justice mechanisms in response to events occurring in established democracies.

The experiences of recent transitional justice in three countries are explained below: Canada, South Africa, and Chile. These cases have in common the

use of the discourses and mechanisms of transitional justice for solving problems that have arisen from the evolution of democratic regimes, as they seek to face problems of structural violence. In recent years transitional justice has been used in Canada primarily to respond to colonial violence against indigenous peoples and its ongoing consequences (*infra* II). The South African experience is one of the emblematic cases of transitional justice, in which initial efforts focused on the transition from *apartheid* to democracy. But this transition has resulted in a protracted process in which democratic regimes have had to confront entrenched structural inequalities and systemic injustices (*infra* III). Finally, the most recent developments in the field of transitional justice in Chile are discussed, including the official responses to the human rights violations committed during the social outbreak of 2019 and the work of the Constitutional Convention (2020-2021) in charge of drafting the new Constitution (*infra* IV). The subsequent sections will delve into how these three cases go beyond the "traditional" mandate of transitional justice, which is to address human rights violations committed in authoritarian, totalitarian regimes, or during armed conflict, once democracy or peace has been restored.[1]

I. New theoretical developments in transitional justice

Transitional justice, according to the widely known definition provided by the United Nations Security Council, means "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."[2] According to Teitel, it is a "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoing of repressive predecessor regimes."[3]

Although the emergence transitional justice as a field of systematic academic research can be traced back to the 1980s,[4] but the debates that form the core of the field as we know it today originated in the atrocities of the Second World War, from the Nüremberg trials and the successive efforts around the *Vergangenheitsbewältigung* (elaboration of the past)[5] to the *Schuldfrage* (question of

[1] Rojas & Shaftoe (2021), p. 9.

[2] United Nations Security Council (2004), p. 4.

[3] Teitel (2003), 69; Teitel (2017), p. 31.

[4] Herz (1982); Peige (2009); Zunino (2019), p. 59.

[5] Rheichel (2001).

responsibility)[6] in post Nazi Germany.[7] Some scholars even argue the study of transitional justice has roots that go back to classical antiquity.[8]

The paradigmatic approach to transitional justice considers that it is a process applied to societies in transition after an armed conflict, a totalitarian regime or a dictatorship. The *Max Planck Encyclopedia of Public International Law* explains that "Transitional justice describes a field of international law which is concerned with the question how to confront a situation of past large-scale human rights violations and humanitarian abuses in a period of transition to peace and democracy."[9] In that sense, transitional justice emerges as a liberal narrative, which presupposes and supports the change from a repressive political regime to a democratic system, or a transition from a situation of violent conflict to one of peace.[10]

The transitional justice paradigm, according to Sharp, tends to situate the origins of democratic processes in elite decisions and in legal and institutional reforms, rather than in social conditions or grassroots movements, and considers the task of dealing with the legacies of the authoritarian past as key to helping strengthen liberal values, including political democracy, human rights, and the rule of law.[11] This paradigm has been employed and expanded since the 90s as the classic form of liberal conflict resolution, the *pax liberal*. Peacebuilding and paradigmatic transitional justice converge in their assumption that countries bled dry by conflict can shift towards peace through political, social, and economic liberalization. As such, transitional justice became one of the pillars of liberal peacebuilding.[12]

However, both in the theoretical discussion of transitional justice and in the practical application of its instruments, questions have arisen about the limits of the traditional approach of transitional justice and its ability to (*i*) deal with the root causes of conflicts and social injustices, and (*ii*) to address human rights violations committed in a democracy.

[6] KNITTEL (1993).

[7] TEITEL (2003), p. 70; VANKOVSKA (2020), p. 265.

[8] ELSTER (2004), pp. 3 ff.

[9] SEIBERT-FOHR (2012), Paragraph. 1.

[10] TEITEL (2014).

[11] SHARP (2015), pp. 152 ff.

[12] LEKHA S. (2014), pp. 30 ff.

I.1 Transitional justice: Transforming or reforming the approach?

In the last three decades, the field of transitional justice has evolved, expanding its radius of action. The theory and practice of transitional justice have challenged the initial limits the assumptions it had established. Some have even come to distinguish between the "paradigmatic cases" of transitional justice and the use of its tools for "non-paradigmatic cases", in an effort to maintain conceptual coherence.[13]

Academia has been especially critical of the liberal, western, and top-down approach of the initial formulation of transitional justice. Questions have also emerged regarding the difficulties in addressing structural or systemic problems of violence and inequality. Indeed, in the first approaches to transitional justice, themes such as gender violence, ongoing manifestations of colonial violence and socio-economic inequalities were absent.[14]

This proliferation of criticism has not yet become a fully coherent school of thought or alternative methodology for conducting transitional justice processes.[15] However, it is possible to find in the recent literature voices interested in exploring how critical reflections could be translated into theoretical and practical innovations. The approaches reviewed below invite us to reimagine transitional justice more broadly.

Some experts have tried to theorize, explore, and clarify (1) how transitional justice differs from other forms of justice, (2) what types of crimes transitional justice should address, and (3) what transitional justice mechanisms seek to achieve. For instance, Colleen Murphy has sought to engage with some of the major controversies in this field from a philosophical perspective.[16] According to Murphy, transitional justice should be understood as distinct from other forms of justice. In her view, the central problem of transitional justice is the just pursuit of societal transformation[17]. She defines transformation relationally, specifically as the "transformation of relationships among citizens into relationships premised on reciprocal respect for agency".[18]

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[13] McAuliffe (2011).

[14] Sharp (2019); Gready & Robins (2019); Nagy (2022).

[15] *Cf.* Lundy & McGovern (2008); Mcevoy & McGregor (2008); Sharp (2013); Winter (2013); Sarkin & Tetevi (2017).

[16] Murphy (2017).

[17] Murphy (2017), pp. 111-114.

[18] Murphy (2017), pp. 34.

Other theorists have looked to adjacent fields to explore how their practices and concepts could inform transitional justice. Among these efforts, Philip Kastner has sought to incorporate the notion of resilience (including resilience-based thinking) into the discussion.[19] One of his contributions has been to establish links between resilience and transitional justice, notably their mutual focus on communities' needs to adapt, to find strategies that allow them to cope with multiple forms of violence and to develop the ability to survive periods of significant stress.[20] Despite some risks and drawbacks of the resilience approach, this lens can help explain why *top-down* approaches to transitional justice can fail in communities with low institutional resilience.[21] Kastner suggests that concepts such as flexibility, creativity, diversity, and adaptive governance, can open spaces to rebuild resilience in social systems in the context of transitional justice.[22] Resilience-based thinking, for example, could provide a framework for connecting the concepts of reparation, adaptation, and transformation in community responses to violence.

On the other hand, the notion of *transformative justice* has emerged as a possible alternative framework to transitional justice. One of the advantages of the transformative justice approach is the connection it identifies between structural and everyday violence and massive human rights violations, rather than separating them. Gready and Robins define transformative justice as "transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes, and the challenging of unequal and intersecting power relationships and structures of exclusion through strategic action spanning local, national, and global levels".[23]

There is no consensus in the literature around whether transformative justice should replace, complement, or radically reform transitional justice. This does not mean that transitional justice is not being challenged by those who promote transformative justice. For example, Rosemary Nagy suggests that transitional justice can be defined as a set of short-term instruments that focus on the pillars of truth, justice, reparation, and guarantees of non-repetition, and proposes that transformative justice differs from transitional justice in three main aspects:

[19] KASTNER (2020).

[20] KASTNER (2020).

[21] KASTNER (2020).380-382.

[22] KASTNER (2020).382.

[23] GREADY & ROBINS (2019).

> *a)* it involves longer-term, less individualized processes aimed at (*b*) the radical and sustainable transformation of structures and relationships (*c*) with an emphasis on local participation, empowerment, and improving lived realities.[24]

Transformative justice is still in its conceptualization phase, and one of the most important challenges it faces is translating its ambitions into practice. Gready and Robins propose three ways to incorporate transformative approaches into transitional justice: 1) reframing to document not only victimhood, but also resistance in the past and present, 2) incorporating participation in the process and the mechanisms of transitional justice throughout the cycle, and 3) empowering active citizenship beyond transitional justice mechanisms.[25] These authors argue that, of the different existing transitional justice devices, "socio-political interventions such as truth commissions, memorials and educational reforms have the greatest potential to take on a transformative agenda".[26] Transformative justice could provide a useful framework for exploring how transitional justice mechanisms can relate to and complement the broader transformative work of constitutional processes – for example, as has happened in Chile with regards to the social upheaval of 2019 – as well how the mechanisms themselves could incorporate more transformative approaches.

Among those who are reformulating transitional justice through the inclusion of alternative transformative approaches, Dustin Sharp argues that a new common vision is arising, of:

> a renewed transitional justice that is bottom-up, locally owned, victim-centered, contextually tailored, politically and culturally grounded in ways that foreground an array of options, oriented towards root causes and a broad array of structures of power and domination, and better coordinated with development and peacebuilding work.[27]

Sharp has proposed "critically motivated problem solving" as a way to bridge the gap between criticism and practice, inviting critical scholars to explore how alternative visions could be operationalized in meaningful ways.[28] The critically motivated problem-solving approach could prove useful for analyzing and learning

[24] NAGY (2022), p. 195.

[25] GREADY & ROBINS (2019), p. 49-54.

[26] GREADY & ROBINS (2019), p. 49.

[27] SHARP (2019), p. 579.

[28] SHARP (2019), pp. 583-587.

from the limitations and successes of past transitional justice mechanisms, such as truth commissions and reparation programs.

Truth commissions are one of the transitional justice mechanisms that have often been used outside of paradigmatic contexts. In fact, since the year 2000 more than half of the truth commissions undertaken in the world have been in non-transitional or non-paradigmatic cases.[29] This emerging trend illustrates the importance and relevance of analyzing some of how transitional justice mechanisms are being used in non-paradigmatic and democratic contexts.

I.2 Transitional justice in non-paradigmatic cases

Both the concepts of "transition" and "justice" in transitional justice are contested and debated. For example, a society may perceive itself to be immersed in a process of transition to democracy, but this does not necessarily mean that there is a broad social consensus regarding the start (and end) date of the political transition.[30] In addition, the concept of the transition is challenged by contexts such as the use of transitional justice in consolidated democratic societies, in deeply conflicted democracies, or a transition to a new political regime similar to its predecessor in non-democratic or repressive character.[31] This has led theorists to define and conceive transitions as processes, rather than as fixed timelines.

As for justice, there is a great deal of debate regarding what kind of justice and what degree of justice transitional justice mechanisms can deliver. Challenges arise in trying to understand how social justice and transitional justice intersect, particularly when addressing the root causes of social conflict, long-term structural injustices, and the legacies of periods of intense violence. These questions are fundamental to academic inquiries into how transitional justice can be understood and used outside of so-called paradigmatic cases, and its use in reckoning with historical and current injustices in democratic regimes.

Stephen Winter argues that the conceptual tools of transitional justice can be invoked in a democracy to address abuses perpetrated by the state.[32] Winter aims to formulate a descriptive political theory of state redress as a form of transitional justice. To this end, he focuses on the "transition" aspect of transitional justice and suggests that the key ingredient of transitional justice in established democracies is

[29] Posthumus & Zvobgo (2021), p. 517.

[30] Gready & Robins (2019), pp. 21-23.

[31] Hansen (2011).

[32] Winter (2014).

radical change to the legitimating regime.[33] In his view, circumventing historical injustices generates a perception of "authorized wrongdoing", which undermines state legitimacy in the eyes of the citizenry.[34] Thus, state redress is a means to transition towards a new regime of political legitimacy.

Regarding the notion of "justice" in transitional justice, Winter proposes three categories of justice that should be considered in state reparations: administrative, corrective, and restorative justice.[35] He suggests that these should be used to respond to different types of justice demands formulated by victims, for equality, claim rights, and need, respectively.[36] As we can see, Winter's theoretical work has the particularity of connecting transitional justice with the full validity of a stable democratic system. In addition, he recognizes the role that transitional justice can play in bringing a state to respond for past abuses and thus move towards a regime of greater political legitimacy.

In her analysis of transitional justice in democratic states facing scenarios of political violence, Amaia Álvarez outlines five key characteristics that must be taken into account when forging processes of dealing with the past in an established democracy: 1) the lack of a clear break with the past, 2) the fragmentation of transitional justice initiatives, 3) the obstacles presented regarding the uncovering of state violence, 4) the mixture of transitional and ordinary legislation, and 5) the different roles of state and regional institutions.[37] She suggests that narratives about violent confrontations are often built around a conflict paradigm in the face of terrorism. Using examples from Northern Ireland and the Basque Country, she explores how these different narratives about political violence can lead to disagreements about the nature of the "transition" and what types of responses and solutions are appropriate to handle the conflict. Álvarez argues that the application of a transitional justice framework is a political choice, which inevitably causes contested narratives about political violence to surface.[38]

One of the important challenges facing the field of transitional justice is in the application of its mechanisms to deal with the legacies of colonialism and colonial injustices. Nicola Henry, for example, argues that a broader conceptualization of transitional justice which encompasses colonial injustices is

[33] WINTER (2014), p. 6.

[34] WINTER (2014), pp. 91-118.

[35] WINTER (2014), pp. 119-120.

[36] WINTER (2014), pp. 126.

[37] ALVAREZ (2017), pp. 546.

[38] ALVAREZ (2017), pp. 556-557.

critical not only for examining the mistakes of the past in established democracies, but also for bringing coherence to diverse and competitive discourses on colonial injustices.[39] From a more radical point of view, Augustine Park argues that orthodox transitional justice cannot effectively confront settler colonialism.[40] She suggests that the intention of orthodox transitional justice to "move beyond the past" and the settler colonial desire to erase or overcome colonial history, risks reaffirming colonial patterns of violence, rather than confronting them.[41] If the transitional justice framework is radicalized and infused with decolonial principles, such as the resurgence of indigenous traditions, it could have the potential to contribute to decolonization.[42] According to Park, this would require the decentralization of the settler-state, the reframing of justice relations to engage with indigenous nations as sovereign nations, the delegitimization of the settler-state through the confrontation of ongoing settler colonialism, and the abandonment of liberal teleology in favor of embracing uncertainty.[43]

These critical and alternative perspectives that have recently emerged in transitional justice studies offer interesting reflections that may be useful in exploring the relationships between past transitional justice processes and the potential for alternative approaches in the future. However, many authors point to the risks of conceptual expansion when it comes to both transitional and transformative justice. Lars Waldorf argues that transitional justice is a tool, among others, that is "inherently short-term, legalistic, and corrective."[44] He suggests that while addressing past and present socio-economic inequalities is a matter of both justice and potential conflict prevention, it should be done through democratic politics and distributive justice, rather than transitional justice.[45] In a similar vein, Matthew Evans argues that "there is a danger that if transformative justice tried to address all social injustices, in all contexts, the agenda would, on the one hand, be set up to fail and, on the other hand, that it would lose its meaning."[46]

Therefore, it is important to clarify how and in what contexts we advocate for transitional justice to be expanded or complemented with alternative approaches to address structural injustices. Transitional justice and transformative

[39] HENRY (2015), p. 200.

[40] PARK (2020), pp. 261-262.

[41] PARK (2020), pp. 267-270.

[42] PARK (2020), pp. 275-276.

[43] PARK (2020), pp. 278.

[44] WALDORF (2012), p. 179.

[45] WALDORF (2012), p. 179.

[46] EVANS (2016), p. 9.

justice emerged as concepts to confront serious human rights violations, historical injustices, and their current legacies,[47] and these types of injustices can also occur in democratic contexts. The cases we will explore below illustrate the complexities that arise when attempting to address structural injustices using transitional justice mechanisms, yet they also point to the potential for more transformative change if they are informed by social demands and accompanied by citizen participation and democratic processes.

II. COLONIAL LEGACIES AND TRANSITIONAL JUSTICE IN CANADA

Generally speaking, colonialism has remained at the margins of transitional justice,[48] and the application of transitional justice mechanisms to redress colonial injustices is still an exceptional matter. Recently, some liberal democracies have used transitional justice as a framework to address abuses perpetrated by colonial regimes against indigenous peoples.[49] The revision of colonial injustice requires a broad conception of the truth, as it must "locate stories of gross human rights abuse along a continuum of violence".[50] Canada has sought to use the lessons of transitional justice to address historical and current injustices affecting indigenous peoples. These efforts have mainly taken the form of truth-seeking processes.

II.1 Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples was created in 1991, following the Oka crisis, a 78-day armed confrontation between the *Kanien'kehá:ka* (*Mohawk*) community of Kanesatake, Quebec police forces, and the Canadian army[51]. To address the crisis in Indigenous-settler relations, the federal government proposed the creation of a commission whose purpose would be to help "restore justice in Indigenous and non-Indigenous relations in Canada and propose practical solutions to stubborn problems"[52]. Of the seven commissioners, four were indigenous and three were non-indigenous. The commission was entrusted with:

> investigating the evolution of the relationship between aboriginal peoples (*First Nations, Inuit* and *Métis*), the Canadian government and Canadian society as a whole. It should propose specific solutions, based on national and international experience to the problems that have plagued those

[47] NAGY (2022), 195; EVANS (2016) ,p. 9.

[48] NAGY (2022), p. 191.

[49] PARK (2020), p. 260.

[50] NAGY (2012), p. 360.

[51] HUGHES (2013), p. 101.

[52] CANADA, ERASMUS & DUSSAULT (1996).

> relationships and that confront Aboriginal peoples today. The Commission should consider all issues that it considers relevant to any or all of the Aboriginal peoples of Canada.[53]

Given the breadth of its mandate, the commission became "an extensive constitutional and historical review of relations between Aboriginal people and settler society and produced copious and wide-ranging recommendations".[54]

The commission's final report was published in 1996 and contained 440 recommendations. The proposals called for a complete restructuring of the relationship between indigenous and non-indigenous people. The report offered important recommendations regarding constitutional reforms, including the idea of a new Royal Proclamation to outline a set of principles governing the relationship between indigenous peoples and the State.[55] It also recommended conducting a public inquiry to investigate the residential school system and recommend corrective action, including apologies and compensation.[56] It was not until 1998 that the federal government formally responded to the report. Its response focused on the non-constitutional aspects of the report, a Declaration of Reconciliation that recognized the abuses suffered in residential schools, and a commitment to fund an Aboriginal Healing Foundation to support community-based healing initiatives. Regrettably, most of the report's recommendations were not fully implemented, or not implemented at all, but they continue to play an important role in defending indigenous rights.[57]

II.2 Truth and Reconciliation Commission

The Truth and Reconciliation Commission on residential schools was tasked with investigating the legacy of abuses committed in indigenous boarding schools or residential schools,[58] from 2007 to 2015.

The Truth and Reconciliation Commission was constituted and created following the *Indian Residential Schools Settlement Agreement* of 2006. This agreement settled the largest class action lawsuit in Canada's history, brought forward by indigenous survivors. The Truth and Reconciliation Commission was negotiated as

[53] CANADA, ERASMUS & DUSSAULT (1996), vol 1, p. 12.

[54] HUGHES (2013), p. 101.

[55] CANADA, ERASMUS & DUSSAULT (1996), vol 5, p. 4.

[56] CANADA, ERASMUS & DUSSAULT (1996), vol 1, pp. 686-687.

[57] HUGHES (2013), p. 109.

[58] INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT (2006).

part of the settlement, so that former students, their families and communities could publicize the experiences suffered, and leave an official record of what happened.

Residential schools were part of a policy of assimilation and cultural genocide. They were managed by the government of Canada in collaboration with the Anglican, Catholic, Methodist and Presbyterian churches, from the 1870s to the 1990s.[59] Indigenous children were separated from their families, often by force, and forced to attend schools where they were physically, sexually and psychologically abused. Many children died due to the terrible conditions of abuse, disease and malnutrition. The commission was to:

- reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities.[60]
- guide and inspire a process of truth and healing, leading toward reconciliation within Aboriginal families, and between Aboriginal peoples and non-Aboriginal communities, churches, governments, and Canadians generally.[61]

The commissioners were advised and supported by a Residential School Survivors Committee.[62] Under the settlement agreement, the government of Canada and the churches were required to provide all relevant documents to the commission. Unfortunately, the commission faced significant problems and was forced to go to court on several occasions to obtain documents from different public bodies.[63]

The commission concluded that the government of Canada had perpetrated cultural genocide against indigenous peoples and highlighted the legacy of intergenerational injustices and traumas of the boarding school system. It made 94

[59] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 3.

[60] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 23.

[61] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 23.

[62] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 23.

[63] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 27.

Calls to Action, divided into two main categories: legacy and reconciliation.[64] Legacy action calls seek to address the systemic inequalities faced by indigenous peoples, primarily in the areas of justice, child welfare, language and culture, education, and health. The calls for reconciliation action focused on educating society at large, the inclusion of indigenous peoples in various areas of Canadian society, and establishing practices, policies and actions that affirm indigenous rights. Many of the report's calls for deeper structural change echoed the recommendations of the Royal Commission on Aboriginal Peoples, for example, the Call to Action No. 45, which calls for a new Royal Proclamation reaffirming the nation-to-nation relationship between Aboriginal peoples and the Crown.[65]

The 94 initiatives that the Government of Canada has committed to implementing involve a major cultural transformation. However, progress since the report has been slow. These efforts have gained new momentum since hundreds of unmarked graves of indigenous children were discovered on the sites of former boarding schools in the spring of 2021.[66] Although the revelations of these mass graves shocked much of society, the existence of unmarked graves was a fact well known to indigenous communities. In fact, one volume of the final report is devoted to missing children and information on burials.[67] According to the Yellowhead Institute's annual *Calls to Accountability* report — which formally tracks the progress of the Truth and Reconciliation Commission's Calls to Action — by December 2021 only 11 of the calls for action had been completed, and most were more symbolic than structural changes.[68] Among the calls for action that have been implemented, one of the most significant ones is No. 41, on conducting a public inquiry to learn about the causes and remedies of the disproportionate victimization of Aboriginal women and girls.

II.3 National Investigation into Missing and Murdered Indigenous Women and Girls

In 2019, the *National Inquiry Report into Missing and Murdered Indigenous Women and Girls* was released. It is the most recent official truth-seeking process in Canada. The proposed objective was to investigate large-scale historical and current

[64] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), pp. 319-337.

[65] SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015), p. 199.

[66] JEWELL & MOSBY (2021), p. 30.

[67] JEWELL & MOSBY (2021), p. 7.

[68] JEWELL & MOSBY (2021), p. 6.

violence against indigenous women and girls and 2SLGBTQQIA persons (*Two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual*). It arose from the recommendations of the Truth and Reconciliation Commission and from the mobilization of indigenous women who sought to raise awareness regarding the alarming rates of violence and the lack of action by the authorities to locate missing indigenous women and girls and investigate the violence against them.

The mandate was to "examine and report on the systemic causes of all forms of violence against indigenous women and girls, including sexual violence".[69] It examined the underlying social, economic, cultural, institutional and historical causes that contribute to current violence and the particular vulnerabilities of Indigenous women and girls in Canada, and reported on existing institutional policies and practices to address violence, including those that are effective in reducing it.[70] The four commissioners who oversaw the commission until its conclusion were legal experts and advocates for indigenous rights, from different cultural backgrounds and geographical areas of Canada, two of the four commissioners were Indigenous, including the chief commissioner.

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls drew on the findings of the Truth and Reconciliation Commission, arguing more explicitly and directly that the violence it investigated amounted to a race-based genocide of indigenous peoples, including First Nations, *Inuit* and *Métis*, which especially targets women, girls and 2SLGBTQQIA individuals.[71] The inquiry directly linked these acts of violence to the broader colonial context, and found this genocide was enhanced by colonial structures, in particular Indian Act, the Sixties Scoop, residential schools, and violations of the human rights of *Inuit*, *Métis* and First Nations, whose consequences continue to be felt in the current increase in rates of violence, death and suicide in indigenous populations.[72] A series of recommendations were issued in the form of 231 Calls for

[69] RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019), p. 57.

[70] RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019).

[71] RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019), p. 50.

[72] RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019).

Justice, to achieve transformative legal and social change, aimed at governments, institutions, social service providers, companies and society in general.[73]

One of the strengths of the National Investigation into Missing and Murdered Indigenous Women and Girls is the way in which cultural rights violations were addressed.[74] Because of the investigation's broad mandate to search for the systemic causes of all forms of violence against indigenous women and girls, the commissioners were able to address in depth the full spectrum of cultural and colonial harms. An entire chapter was devoted to documenting and describing the violations of the cultural rights of missing and murdered indigenous women and girls, and " witnesses testified not only about their missing and murdered family members and loved ones, but also how the loss of their culture was its own form of violence, in and of itself."[75] The calls for justice include several recommendations that seek to redress violations of cultural rights and ensure respect, protection and fulfillment of indigenous cultural rights. They also include demands for the implementation of the recommendations of both the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission in relation to the justice system.[76] It remains to be seen whether these recommendations will materialize.

III. TRANSITIONAL JUSTICE, AGRARIAN REFORM AND STRUCTURAL INEQUALITIES IN SOUTH AFRICA

South Africa is considered one of the emblematic cases in the field of transitional justice. The experience of inequality in the years since its transition from *apartheid* to democracy has precipitated profound questions regarding the need for more intense social transformation, posing challenges to the transitional justice approach to economic inequality, land reform and racial justice. According to Powell, comparative research on transitional justice often focuses exclusively on the work of the Truth and Reconciliation Commission (1995-1998), neglecting other processes implemented in South Africa to address issues of concern regarding deeper underlying injustices.[77]

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[73] RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019), p. 168.

[74] LUOMA (2021).

[75] LUOMA (2021), p. 47.

[76] RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019), pp. 183-186.

[77] POWELL (2010).

III.1 From *Apartheid* to the Truth and Reconciliation Commission

State-imposed racial and territorial segregation has a long history in South Africa since colonization, but it was institutionalized and greatly expanded with the implementation of the *apartheid* system in the 1950s. The *apartheid* system — which means separation in Afrikaans — was a "comprehensive system of social engineering and racial exploitation that was deeply embedded in the basic fabric of society at all levels".[78] It effectively separated South African society on the basis of race, forcing black people to live on reservations (*Bantustans*), excluding them from the South African political body, giving the state excessive control over all aspects of daily life, as well as imposing a regime of widespread state terror.[79] After years of mobilizations, political violence and state repression, the ruling National Party and the African National Congress (ANC) began a process of negotiation in the early 1990s and a political transition to democracy that culminated in the election of Nelson Mandela in 1994. A process of massive social and political transformation was then undertaken in South Africa, to try to resolve the abuses committed under *apartheid*, address structural injustices, and build the foundations of a new society.

The South African Truth and Reconciliation Commission has been extensively documented and analyzed, as it was a major project. It was given some of the most comprehensive and complex mandates than any previous truth commissions that had been implemented to date.[80] The commission was created by virtue of the transitional negotiations between the ANC, which wanted Nuremberg-style trials for the perpetrators, and the National Party, which wanted full amnesty.[81] Finally, an innovative approach was chosen, which allowed for the granting of amnesty to perpetrators in exchange for their testimony and public repentance in the truth-seeking process.[82] The process was widely publicized and covered intensively by the media.[83] This process provided important advances in the search for truth and official registry of violent human rights abuses and violations during the *apartheid* regime.

III.2 Constitutional Process

Beyond the enormous impact of the Truth and Reconciliation Commission, Powell argues that "agreement on a redistributive justice formula was the central

[78] POWELL (2010), p. 237.

[79] NAGY (2012), p. 353.

[80] HAYNER (2013), pp. 27-28.

[81] NAGY (2012), p. 354.

[82] HAYNER (2013), p. 29.

[83] HAYNER (2013), p. 28.

problem of the South African transition and therefore a precondition for any political agreement".[84] In addition to conventional transitional justice measures — such as the work of the Commission — the South African case offers interesting complementary innovations. Institutional reforms of legal and political nature were introduced to address the socio-economic injustices of *apartheid*.

The South African experience expanded the theory and practice of transitional justice to areas that had not hitherto been considered in the list of possibilities or the scope of transitional justice. One of the most significant aspects of this broader approach was to steer political talks towards the realization of a constitutional process, approving a new Constitution. Discussions on the possibility of issuing a new constitution were an important part of the negotiations carried out by the leaders of the ANC and the National Party. The political process agreed upon included a first phase in which the implementation of a Provisional Constitution and the establishment of a government of national unity were negotiated, followed by a second phase in which a Constitutional Assembly was entrusted with the drafting of the Constitution of South Africa within two years. The work of the Constitutional Assembly had to respect a binding framework of 34 constitutional principles. The final text adopted by the Constitutional Assembly would have to be validated by the Constitutional Court, in charge of verifying that it complied with the 34 fundamental principles.[85]

The constitution that emerged was the product of political commitment and an inclusive process of drafting constitutional norms that encouraged civil society in general to influence the results. Since the political negotiations grew out of a broader liberation and emancipation movement, any constitutional outcome that did not consider freedom, democracy and redistributive justice for the African population would have been unacceptable to the negotiating coalition of the ANC and the majority of the population.[86] Therefore, social justice issues that sought to address the structural inequalities created during *apartheid* were essential throughout the process of drafting the new Constitution. Matthew Evans argues that this allowed the Constitution to open up the possibility of radical change in the future that would not have been feasible in the years of early transition.[87] He suggests that, particularly with regards to land and property issues, the South African Constitution has acted as a "non-reformist reform", that is, a reform that shifts the boundaries of what is possible rather than accepting the boundaries of

[84] POWELL (2010), p. 231.

[85] POWELL (2010), p. 241.

[86] POWELL (2010), p. 242.

[87] EVANS (2021), p. 651.

existing structures.[88] For example, Article 25(4) of the Constitution allows for the implementation of potentially radical land reforms, including the possibilities of expropriation and redistribution of land without market-level compensation. However, as will be seen below, the manner in which land reform has been carried out in practice has been more limited than the Constitution allows.

III.3 Transitional Justice and Agrarian Reform

The dispossession of black Africans from their lands began with colonization, the Boer *Wars (Boer Wars*, 1880-1881 and 1899-1902), and the influx of settlers. But legal restrictions on land ownership by black Africans began with the Native Land Act of 1913, which established small reserves for "natives" known as Bantustans.[89]

The institutionalization of *apartheid* in the 1950s worsened the situation by empowering the state to expel and displace black residents to *townships* and *homelands*. As a result of this long process of affecting property rights, in 1990 only 13 per cent of land was reserved for black South Africans.[90] Land dispossession was a central aspect of the *apartheid* system, which translated into long-term systemic inequalities. For this reason, land reform and land restitution have been one of the most important and complex aspects of the South African transition.

As part of its efforts to dismantle the legacies of *apartheid*, the 1994 Reconstruction and Development Program outlined national plans for land reform and land restitution. A Land Rights Restitution Act was passed in 1994, establishing a Land Rights Restitution Commission[91] and a Land Claims Tribunal, to drive and oversee the land restitution process. The objective of the Reconstruction and Development Program was to transfer 30 per cent of the land over the next five years, through restitution and redistribution initiatives.[92]

Although the new 1996 Constitution allows for the expropriation of land in the public interest,[93] the main mechanism used to carry out the agrarian reform was the so-called *"willing-seller, willing buyer"* system, where the buyers were "those groups or individuals whose access to redistribution grants was subject to approval by the Ministry of Land Affairs".[94] This system required the consent of the current

[88] EVANS (2021), p. 646.

[89] HALL (2010), p. 18. See also *Natives Land Act* of 1913.

[90] HALL (2010), p. 19.

[91] See the *Restitution of Land Rights Act* of 1994.

[92] MOYO (2014), p. 81.

[93] MOYO (2014), p. 81.

[94] MOYO (2014), p. 82

owners to sell at the prices offered by the Land Rights Restitution Commission.[95] A balance was sought between the public interest and respect for property rights, since the amount to be paid, the payment period and the method of payment had to be "fair and equitable", and the market price was only one of the factors to be considered in that equation.[96] However, in practice this approach turned out to be much more complex than expected. One of the major problems was that white farmers and the commercial agricultural sector were unwilling to sell their land, affecting social demands for land redistribution. Hall argues that in the land restitution process it was difficult to strike a balance between two different pressures: that of restructuring the commercial agricultural sector (which is very hostile to the acquisition of land by the most vulnerable sectors) and attempts to engage in public reconciliation processes.[97] The willing-seller willing-buyer model has since been abandoned. As it was not possible to meet the goal of transferring 30% of the land by 2014, the government subsequently pushed back the deadline until 2025.[98]

Agrarian reform remains an important element to take into account in intergroup relations and current conflicts. Khanyisela Moyo argues that, that though restitution has been the favoured approach in TJ with regard to assets lost, it can in fact hinder distributive justice and uphold colonialism in postcolonial context because of the role that the demand for land restitution can play in maintaining a limited understanding of property rights.[99] Moyo suggests that "transitional institutional mechanisms can technically resolve issues related to land that was wrongly acquired from bona fide possessors, the same cannot be said about whether colonization extinguished pre-colonial land rights".[100]

IV. Transitional Justice, Social Outbreak and Constitutional Process in Chile

Once democracy was restored in 1990, a long process of transitional justice began in Chile in order to deal with the serious human rights violations committed during the dictatorship of Augusto Pinochet (1973-1990).[101] Despite progress made in the search for truth, reparation for victims, conviction of perpetrators, memory

[95] Hall (2010), p. 25.

[96] Moyo (2014), p. 82.

[97] Hall (2010), p. 38.

[98] Moyo (2014), p. 81.

[99] Moyo (2014), pp. 75-79.

[100] Moyo (2014), p. 78.

[101] Rojas & Shaftoe (2022).

and guarantees of non-repetition, Chilean society and its institutions continue to struggle with building a solid culture of promotion of human rights.

In October of 2019, citizens took to the streets to protest massively against inequality and social injustices.[102] The demands of the demonstrators were very diverse, but all connected back to structural problems with the Chilean neoliberal political and economic model, with its privatized social security system, segmented education and health care system, and lower quality public services for the majority.[103] The inequalities generated by this model fostered widespread discontent and clashed with the citizens' expectations of social mobility and eventually erupted into social unrest. The political system was also punished for its progressive elitism, expressed in low participation rates, and in the weakening of its links with social movements.[104]

On the other hand, the demands of the social outbreak also showed a cultural dimension, where traditional hierarchies based on gender, sexual orientation, ethnicity and age have been questioned, where feminist protests and the intercultural conflict between the State and the Mapuche people in the south of the country have been highlighted.[105] Finally, a pattern of abuses by the economic, political, police, military and religious elites has been questioned, leading to a sharp drop in trust in institutions.

Between October 2019 and March 2020, protests and mass demonstrations proliferated in all of the country's main cities. Between October and December of 2019 alone, more than 3,300 protest actions occurred, with days where more than 44 protest actions took place.[106] In the face of these protests, state forces, and in particular Carabineros (Chilean police), committed human rights violations. These abuses were documented and confirmed by research carried out by Amnesty International, Human Rights Watch, the Office of the United Nations High Commissioner for Human Rights and the National Institute for Human Rights.[107]

In response to the crisis, most of the political parties with parliamentary representation signed the "Agreement for Social Peace and the New Constitution", on November 15, 2019, committing themselves to ask Chileans if they wanted a new

[102] ROJAS (2022).

[103] SOMMA *et al.* (2021).

[104] SOMMA *et al.* (2021).

[105] FIGUEROA (2021).

[106] JOIGNANT *et al.* (2020), p. 11.

[107] AMNESTY INTERNATIONAL (2020); HUMAN RIGHTS WATCH (2019); OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (2019); NATIONAL INSTITUTE OF HUMAN RIGHTS (2019).

Constitution to be drafted. In the referendum that was carried out,78.27% of voters supported the idea of initiating such a process, and the election of representatives took place on May 15 and 16 of 2021. The work of the Constitutional Convention – made up of 155 "conventionals", with gender parity and seats reserved for indigenous peoples – began on July 4, 2021 and had a one-year deadline to write the document that was submitted to a plebiscite on September 4, 2022.

As the governmental measures adopted to respond to the consequences of the human rights violations committed during the social outburst were not sufficient, coupled with the meager results of the judicial persecution of those responsible for the abuses[108], the current government has announced an agenda which may be considered within the framework of transitional justice.[109] The next section focuses on how and to what extent transitional justice mechanisms can be used to address the recent experiences of state violence and human rights violations in Chile.

IV.1 Transitional Justice Agenda for Victims of the Social Outbreak

During the months of the social outbreak, 8,827 people filed complaints of human rights violations, including 388 cases of sexual violence and 460 cases of eye damage.[110] From October 2019 to May 2022, government initiatives aimed at reparations to victims were limited. With the intention of taking charge of a set of pending issues, President Gabriel Boric announced on May 24, 2022 the "Comprehensive Agenda of Truth, Justice and Reparation for human rights violations committed during the Social Outbreak". The government has expressly stated that "the State of Chile must act in accordance with the pillars of transitional justice, which are truth, justice, reparation, and non-repetition measures".[111]

In the area of justice, a commitment has been made to present a bill to ensure a specialized human rights criminal prosecution. The Public Prosecutor's Office will be strengthened so that it has the necessary resources and capacities to carry out investigations of crimes with due diligence.[112] With regards to reparations, the Integral Reparation Roundtable will establish, through a participatory process, the basis of the reparation measures in favor of the victims and their families and will then create an eligibility process to qualify the human rights violations. With

[108] CEJA (2020).

[109] MINISTRY OF JUSTICE AND HUMAN RIGHTS (2022).

[110] NATIONAL INSTITUTE OF HUMAN RIGHTS (2019); NATIONAL INSTITUTE OF HUMAN RIGHTS (2020); MATUS (2020); PUBLIC PROSECUTOR'S OFFICE (2021).

[111] MINISTRY OF JUSTICE AND HUMAN RIGHTS (2022), p. 1.

[112] MINISTRY OF JUSTICE AND HUMAN RIGHTS (2022), p. 2.

regards to non-repetition measures, the government intends to introduce a bill to protect human rights defenders so that they can safely carry out their defense work.

IV.2 Constitutional Process

One of the consequences of the social outburst was the opening of a constitutional process. This was due to the progressive constitutional framing of citizen demands in recent years, the impulse lent to the process by the academic and intellectual community, and the decisions of the political system that opened the constitutional debate.[113]

Within the constitutional process, public hearings were held at the Constitutional Convention to hear the stories of people whose rights had been violated in different historical times, including during the social outburst, all of which was an attempt to connect the social memory regarding human rights violations during the outbreak, with previous processes of state violence, including the derivations of colonialism with regards to indigenous peoples. Specifically, 282 hearings were held in the Subcommittee on Historical Truth, Integral Reparation and Guarantees of Non-Repetition.[114] Representatives of indigenous peoples, Afro-descendant groups, marginalized sectors, victims of the dictatorship and victims of the social outburst, among others, participated in such hearings. As such, these stories, in addition to the opinions of the members of the Convention and experts invited to present at the sessions, permeated the proposal for a new Constitution from the beginning, ensuring that it contained principles and rights informed by transitional justice approaches. The final text approved by the Convention expressly mentions the rights to integral reparation, truth and memory, considering guarantees of non-repetition.[115]

In addition, the proposal for a new Constitution aims to enact profound changes relating to systemic forms of exclusion which have existed since the beginning of the Chilean republic, for example, through the declaration of pluri-nationality and interculturality of the State, multilingualism and the recognition of collective fundamental rights for indigenous peoples. It also establishes the promotion by the State of conditions of substantive equality between women, men, and gender diverse people.

[113] FUENTES (2022).

[114] COMMISSION ON HUMAN RIGHTS OF THE CONSTITUTIONAL CONVENTION (2021).

[115] CONSTITUTIONAL CONVENTION (2022).

CONCLUSIONS AND FINAL REFLECTIONS

We have argued that the concept and mechanisms of transitional justice can be relevant tools to help reckon with serious, massive violations of human rights when they occur in established democratic regimes. With this we seek to contribute to the public debate on how to face scenarios of social crisis and state repression of demonstrators, as has happened in Chile and Ecuador in 2019, in Colombia in 2019 and 2021, and in Hong Kong from 2019 to 2021, among other cases.

Transitional justice frameworks can be expanded to promote changes and deeper transformations, which are capable of confronting long-standing structural injustices. We also examine how notions of transition and justice have begun to be reconceptualized in the transitional justice literature, to be defined more broadly and applied in contexts of human rights abuses occurring in established democracies.

The case studies from Canada, South Africa and Chile illustrate that transitional justice holds promise as a flexible and adaptable framework for complex political circumstances, including in democratic contexts.

The Canadian experience underscores the challenges of recognizing colonial genocide and the human rights violations and injustices suffered by indigenous peoples. The truth-seeking processes implemented in Canada illustrate the importance of indigenous representation, community participation, and the possibility for the use of transitional justice mechanisms to reckon with the broad scope of colonial violence, and its ongoing impacts on indigenous peoples. The establishment of a Truth and Reconciliation Commissions and other truth-seeking initiatives to raise awareness of the abuses and harm suffered by indigenous peoples is an important precedent for other countries with similar problems.

In the sense of the far-reaching consequences of structural injustice, the Canadian case connects with the South African experience. In both cases, there are persistent legacies of inequality and complex connections between transitional justice, land reform and identity. Just as Canada must deal with the consequences of colonization, the South African process can be conceived as an effort to recognize the profound injustices and atrocities of the *apartheid* regime, with the intention of transforming the country into a more just, free, and egalitarian society. The role of constitutional process in institutional strengthening and addressing structural injustices is also highlighted in the South African case.

In the case of Chile, there has also been a shift in how transitional justice should be understood and applied. Between 1990 and 2019, the transitional justice

approach referred to the set of measures and mechanisms that would contribute to addressing human rights violations committed during the Pinochet dictatorship. But after the magnitude of the violence and state repression of the social outbreak in 2019, political decisions have been made to recognize the validity of the principles and rights that are part of transitional justice on a permanent basis, confronting processes of longer duration, such as persistent gaps of substantive inequality and exclusions of a historical nature.

In both Canada and South Africa, transitional justice mechanisms were used to seek to lay the foundations for a profound transformation, such as through the consideration of cultural rights and the economic and distributive justice. The South African transitional justice process is a combination of conventional mechanisms, such as the Truth and Reconciliation Commission, with the implementation of major institutional reform through a constitutional process. However, the transitional justice processes in both Canada and South Africa struggled to carry out many of the most profound structural transformations. In the latter, frustration around the persistence of social and economic inequalities has led to significant criticism, which could be undermine black South African citizens' trust in government.[116] Many of these criticisms and frustrations focus on land reform and land restitution.

In Chile, reflections on transitional justice have also been part of the work of the Constitutional Convention. The rights of memory, truth and reparation were included in the draft of the new Constitution. In addition, the current government is committed to carrying out a comprehensive agenda of truth, justice and reparation for the human rights violations that were committed during the social outburst.

Based on the experiences of Canada, South Africa, and Chile, in combination with a deep theoretical discussion, it's possible to see change emerging with regard to the conception and classical practices of transitional justice. This is manifested in a sense of the importance of understanding transitional justice as a transformative force within established democratic regimes, echoing many of the current debates and discussions in the field of social justice.

One aspect that must be addressed in future investigations is the real capacity of transitional justice to provide a lens and tools that can effectively contribute to solving social justice issues, as well as their ability to work in tandem with or assist political and legal systems in the contexts of crisis within established democracies. All this must be evaluated in contexts of concrete application, weighing the specific

[116] GUMEDE (2017), p. 88.

outcomes and consequences of the extended transitional justice measures that have been explored in this article.

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