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Truth and justice initiatives in non-transitional contexts: experiences from Latin America

Victória Monteiro da Silva Santos



BRICS Policy Center Centro de Estudos e Pesquisas - BRICS



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BRICS Policy Center

Rua Dona Mariana, 63 - Botafogo - Rio de Janeiro/RJ
Phone: +55 21 2535-0447 / ZIP CODE: 22280-020
www.bricspolicycenter.org / bpc@bricspolicycenter.org

BPC Team

IRI Director
Marta Fernández

BPC Director
Paulo Esteves

Academic Council
Paulo Esteves
Maria Elena Rodriguez
Luis Manuel Fernandes

Administrative Coordinator
Lia Frota e Lopes

Administrative Assitant
Luana Freitas

International Project Manager
Thalyta Ferraz

Layout and Design
Vinicius Kede

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GSUM Team

Coordinator
Monica Herz

Deputy Coordinator / Researcher
Paula Drumond

Researchers
Maíra Siman
Jana Tabak
Paulo Esteves

Research Assistant
Isa Mendes
Victória Santos

Collaborators
Tamy Rabelo
José Pascal da Rocha
Manuela Trindade Viana
Roberto Vilchez Yamato
Denise Garcia
Luisa Giannini



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Executive Summary

Facing complex manifestations of organized violence in Latin America, which challenge traditional distinctions between war/peace and dictatorship/democracy, many actors in the region have looked at mechanisms developed for “dealing with the past” as a source of inspiration for the transformation of structural patterns of present violence. In this sense, practices aimed at the promotion of victims’ rights to truth, justice, reparation and non-repetition have been variously appropriated and reshaped by those who demand a transformation of present violence.

In this policy brief, three cases illustrate the circulation of certain concepts and models which, while often conceived as part of a set of transitional justice practices, have reached beyond the realm of traditionally conceived transitions:

- 1.** The experience of the International Commission against Impunity in Guatemala (CICIG, by its Spanish acronym), and the ways it sought to handle impunity as a structural legacy of the country’s armed conflict;
- 2.** The national and regional efforts that have been deployed in order to provide truth and justice to the families of 43 disappeared students in Ayotzinapa, Mexico;
- 3.** The experience of the Colombian Women’s Truth and Memory Commission, established in Colombia by the movement Ruta Pacífica de las Mujeres amidst the armed conflict in the country, before a clear transitional process was in sight.

These experiences are analyzed as part of non-transitional contexts, that is, as present contexts affected by significant patterns of organized violence, in the absence of any readily identifiable transition from war to peace or from dictatorship to democracy. By tracing the circulation of concepts such as truth, justice, reparations and non-repetition, as well as of models such as the International Commission against Impunity, the Interdisciplinary Group of Independent Experts and the Truth Commission, I discuss some of the ways a diversity of actors have sought to handle and transform the complex patterns of organized violence which routinely impact several Latin American societies.

Key-words

1. Right to the truth
2. Access to justice
3. Latin America
4. Transitional justice
5. Criminal violence

Truth and justice initiatives in non-transitional contexts: experiences from Latin America

Victória Monteiro da Silva Santos

1. Introduction¹

Transitional justice practices have often been understood as efforts to handle the legacies of past violence while preventing its repetition in the future. This entails an attention to the rights of those who have been affected by past violence – including their rights to truth, justice and reparations – while the grounds for future peace and reconciliation are established. As will be later discussed in this policy brief, the historical emergence of transitional justice as a field has often been traced back to the late 1980s and 1990s (Arthur, 2009). In Latin America, this emergence is more clearly connected, on the one hand, with the experiences of democratic transition in the Southern Cone; and, on the other hand, with peace processes in Central America (see Fuentes Julio, 2015, pp. 7-8).

However, in the 2000s, many countries in the region have witnessed forms of violence which challenge traditionally established categories. In some of them, the absence of an “armed conflict” or of an “authoritarian regime” did not prevent homicide levels which surpassed casualty numbers in most declared “wars”. In others, the collusion of state and non-state actors into illicit security apparatuses perpetuates historical patterns of victimization, thereby challenging the very narrative of a successful transition to peace. Even where present expressions of violence more closely resembled those of a traditionally conceived “armed conflict”, this category would often be the subject of political disputes.

(1) The author would like to thank Monica Herz, Paula Drumond, Maíra Siman, Simone da Silva Ribeiro Gomes, Fernando Brancoli and Isa Mendes for their valuable reviews of previous versions of this text, one of which has been presented as a paper at the 43rd ANPOCS National Encounter. This research has been conducted as part of a doctoral project at the Institute of International Relations at PUC-Rio, which has been funded by the LASA Doctoral Research Grant and by the Coordination for the Improvement of Higher Education Personnel (CAPES).

In these ambiguous settings, where patterns of violence challenged the strict confines of the categories of “war” and “peace” or “dictatorship” and “democracy”, calls for the protection of victims’ rights to truth, justice, reparation and non-repetition have found additional challenges. In this policy brief, three such settings will be analyzed in order to shed light on how activists and experts from international and regional organizations, grassroots movements and government agencies have worked to promote these rights in the absence of any clear transitional processes. As will be discussed, these actors have often drawn inspiration from mechanisms developed for promoting peace and ensuring victims’ right to justice in the wake of a peace agreement or democratic transition. Therefore, the contexts explored here provide a few suggestions of how mechanisms that have commonly been associated with the field of peacebuilding might help us promote peace and justice in unconventional contexts.

The first section will discuss the multiple forms of organized violence found in Latin America and how they pose a challenge for traditional categorizations, as well as for efforts to promote human rights and peace. It will be followed by a presentation of the way transitional justice practices, in particular, have been developed in the region, and how the persistence of multiple forms of violence has posed challenges for the field. Afterwards, three cases will be presented in order to illustrate different dimensions of these challenges, as well as the ways the field of transitional justice is continuously transformed, as models and concepts circulate across the region. In the first case, I will discuss the experience of the International Commission against Impunity in Guatemala (CICIG, by its Spanish acronym), and the ways it sought to handle impunity as a structural legacy of the country’s armed conflict. I will then present the national and regional efforts that have been deployed in order to provide truth and justice to the families of 43 disappeared students in Ayotzinapa, Mexico; as well as the tensions between present efforts and broader calls for structural transformation. Finally, I will look at the experience of the Colombian Women’s Truth and Memory Commission, established in Colombia by the movement Ruta Pacífica de las Mujeres amidst the armed conflict in the country, before any transitional process was in sight.

As these three cases illustrate, the circulation of concepts and models across the region has been associated with the transformation of transitional justice practices, in response to the diversity of needs and demands that arise from patterns of organized violence in different places. Moreover, they bring examples of the place of expertise in this circulation – an expertise which is broadly understood as “authoritative knowledge at a given decision point”, while the expert is the one who “communicates, represents, packages and conveys relevant knowledge (that is, produces ‘expertise’) to others who don’t have the same conditions for knowing” (Leander & Wæver, 2019, pp. 2-3). In the case of the practices discussed here, the boundaries of the problem that is posed for transitional justice practices are continuously renegotiated, as is the set of actors whose knowledge is recognized as authoritative – ranging from human rights activists to lawyers, from scholars to victims of organized violence.

In its final remarks, the policy brief will bring a table with definitions of the main concepts and models whose circulation are traced throughout the cases discussed here. It also offers a few final considerations on the perspectives and challenges for promoting the rights to truth, justice, reparations and non-repetition in contemporary Latin American settings.

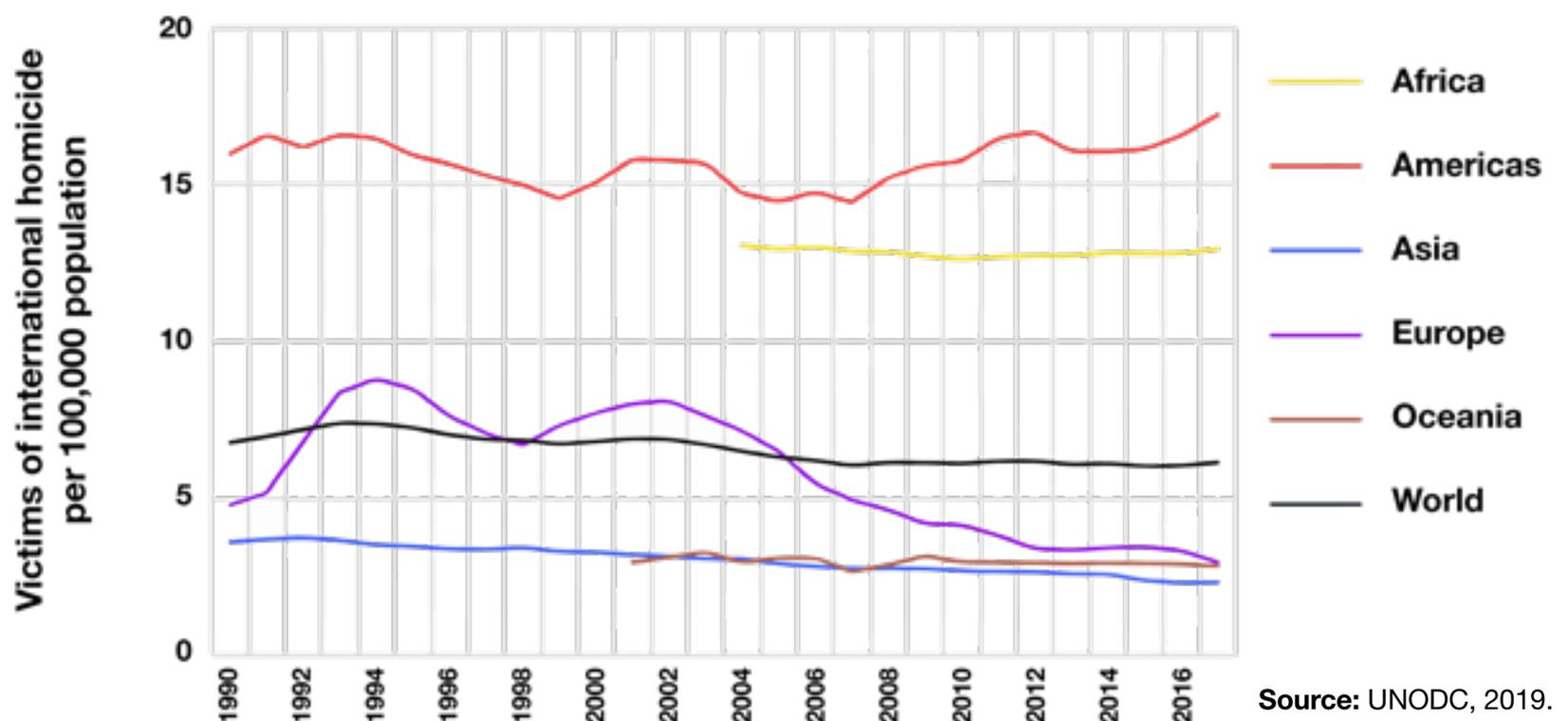
2. The multiplicity of violence and human rights practice in Latin America

In order to understand the challenges for human rights practice that are posed by the multiple forms of violence found in Latin America, this section will start by discussing a few difficulties that arise from efforts to categorize them. It will then go over some of the impacts of this multiplicity for efforts to protect the rights of victims in these ambiguous settings.

Troubled categories: violence in “war” and “peace”

Over the last few decades, Latin America has often been described as a violent region, a description grounded on the mobilization of criminal records and victimization surveys. For instance, according to the report “Global Study on Homicide 2019” published by the United Nations Office on Drugs and Crime (UNODC), the Americas have shown persistently high homicide rates for the past three decades, remaining between 14.5 and 16.7 per 100,000 population – or around two or three times the global average – before increasing to 17.2 in 2017, the highest level since 1990 as illustrated by Figure 1 (UNODC, 2019, p. 20).

Figure 1: Trends in homicide rate, by region, 1990-2017.



The numbers in figure 1 correspond to the category of “intentional homicide”, defined by UNODC in relation to three elements: **1.** The killing of a person by another person (objective element); **2.** The intent of the perpetrator to kill or seriously injure the victim (subjective element); **3.** The unlawfulness of the killing (legal element)” (UNODC, 2019, p. 9). Importantly, these “unlawful killings” might include, for instance, terrorist activities, but they leave out killings directly related to a war/

armed conflict, as in these cases the element of liability of the perpetrator is absent.² Through this distinction, the “intentional homicide” emerges as a category that is mobilized to compare the problem of violence in times of “peace” and in times of “war”. This distinction is reinforced by the UNODC report as they claim that, between 1990 and 2017, between 9.2 and 14.3 million persons are estimated to have lost their lives through intentional homicide, while the number of conflict deaths recorded in the UCDP/PRIO Armed Conflict Dataset over the same period adds up to around 2.2 million, including about 850,000 civilians (UNODC, 2019, p. 13).

While such a distinction may seem straightforward, the multiple ways in which the counting of violence is articulated by different actors in Latin America are also the subject of political disputes. On the one hand, comparisons such as the one above – between national homicide rates and casualty numbers in armed conflicts – proliferate in Latin American contexts, often with a similar aim: to create a sense of urgency around the problem of violence in these countries. For instance, in a recent report on national homicide trends, the organization Fórum Brasileiro de Segurança Pública (FBSP) stated that more people had died in Brazil between 2011 and 2015 than in Syria, an information which was widely replicated in the media at the time (Ferreira Santos, 2016). Other times, however, similar claims are made in order to call for the recognition of an existing armed conflict within contexts of massive violence perpetrated by criminal organizations and state agencies. That has been the case of Mexico, included in 2016 by the International Institute for Strategic Studies (IISS) in their “Armed Conflict Survey” as the second most violent country in the world – in absolute number of casualties – coming only after Syria (Sampaio, 2016). The report was met with criticism by the Mexican government, who argued that “the existence of criminal groups is not a sufficient criterion to speak of a non-international armed conflict” (Gilbert, 2017). Even in the Colombian context – often referred in specialized literature as the “the longest-running armed conflict in the Western Hemisphere” (ICTJ, 2009) – disputes over the recognition of the existence of an armed conflict are still at the center of the political stage.

At the core of these disputes are the ways in which the high levels of violence in Latin American countries appear to be at odds with its frequent construction as a peaceful region. This characterization, as seen in the proclamation of the region as a “zone of peace” by the Community of Latin American and Caribbean States (CELAC, 2014), is grounded on the low frequency of interstate armed conflicts in the region’s history. At the same time, this apparent paradox also hints at some of the challenges that arise as human rights activists and policymakers seek to promote and protect human rights in these contexts marked by high levels of violence in the absence of a recognized armed conflict³.

(2) Aside from killings related to armed conflict and war, the definition also excludes “self-inflicted death (suicide), killings due to legal interventions and justifiable homicide (such as self-defence), and from deaths caused by reckless or negligent actions, which were not intended to take a human life (non-intentional homicide)” (UNODC, 2019, p. 9)

(3) A connected debate concerns the applicability of international humanitarian law (IHL) in relation to situations of criminal violence, since IHL brings no generic definition of what an armed conflict is. The closest to a delimitation is found in Article 1 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), which marks the scope of application of the Conventions as those armed conflicts taking place between a state’s armed forces and dissident armed forces or other organized armed groups; these non-state parties should be under responsible command – implying a certain level of organizational structure – and should carry out “sustained and concerted military operations”. However, a risk in applying IHL to contexts of criminal violence is that it could undermine the ‘law-enforcement model’ marked by the prevalence of international human rights law (IHRL) (see Harroff-Tavel, 2010).

Human rights practice in ambiguous settings

These challenges for the categorization of violence also raise significant issues for how human rights activists can engage non-state armed actors. Crucially, human rights regimes have traditionally been understood as a source of obligations for states, which are assumed to be the main source of threats and to have the highest capacity to implement human rights standards (Donnelly, 1999). Therefore, as discussed by Hyeran Jo and Katherine Bryant (2013), the compliance of non-state armed actors with international human rights standards is usually unexpected; however, a number of rebel groups have explicitly committed to human rights and humanitarian treaties over time. This commitment is often connected to these actors' aim of gaining legitimacy before the international community, which is especially strong in actors who want to be in government positions or to form a new country.⁴

Debates about human rights violations in the context of the violence perpetrated by criminal actors, on the other hand, are usually mediated by the role of the state: for instance, in discussions about how to support the compliance of states with human rights standards even in areas of limited statehood, when a government lack the means to enforce the law – including the means to control their own enforcement agencies, such as police forces (Börzel; Risse, 2013). In this regard, there are a few contexts in which international actors provide assistance to these states in order to help them develop justice capacities, as will be discussed in the case of the International Commission Against Impunity in Guatemala (United Nations, 2008). Therefore, this treatment sustains the distinction between domestic law enforcement issues, and international human rights matters – preventing, for instance, pressures for an end of recruitment of “child soldiers” by organized criminal groups, or for an extension of the status of refugee for those who flee large-scale criminal violence (see Duday & McEnvoy, 2012).

Similar limitations are found in the ways transitional justice mechanisms have been engaging with non-state actors. As will be seen in the next section, these mechanisms have mainly been devoted to dealing with the past in societies which are moving out of an armed conflict or a period of authoritarian rule (Teitel, 2000). Most of them have focused on violations committed by armed actors in these “exceptional” times, in connection with a history of “political violence” which is to be overcome. However, in many Latin American contexts, civil society actors and victims' movements have been calling for practices aimed at the promotion of the rights to truth, justice, reparations and non-repetition – even in settings where clear “transitional processes” are absent.

(4) This is reflected, for instance, in the work of Swiss NGO Geneva Call, which engages with “armed entities that are involved in armed conflict, which are primarily motivated by political goals” and pushes them to commit to international humanitarian law standards. Retrieved from: <https://genevacall.org/how-we-work/armed-non-state-actors/>

3. Transitional justice practices and the place of Latin America

The foreign policy of many Latin American countries has traditionally been understood in relation to the doctrines of sovereign equality and non-intervention, in order to prevent interventions by powerful countries in domestic affairs. At the same time, however, Latin American legal scholars and activists have historically been at the forefront of the struggle for international human rights and democracy (see Sikkink, 2015).⁵ In relation to the emergence of a transitional justice field, this protagonist role of Latin American subjects becomes particularly clear – especially in connection, on the one hand, with the experiences of democratic transition in the Southern Cone; and, on the other hand, with peace processes in Central America (see Fuentes Julio, 2015, pp. 7-8).

Dealing with the past: transitional justice in post-dictatorship and post-conflict settings

Transitional justice is generally understood as an effort to handle massive violations of human rights while recognizing victims and preventing the recurrence of abuse (Arthur, 2011:1). In United Nations (UN) documents, transitional justice is defined as “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” (UN Secretary General, 2004, para. 8). It is generally conceived in terms of four pillars: 1) “Criminal prosecutions for at least the most responsible for the most serious crime”; 2) “‘Truth-seeking’ (or fact-finding) processes into human rights violations by non-judicial bodies”; 3) “Reparations for human rights violations taking a variety of forms: individual, collective, material, and symbolic”; and 4) “Reform of laws and institutions, including the police, judiciary, military, and military intelligence” (International Center for Transitional Justice [ICTJ], n.d.).

While the foundations for debates on how to handle the needs of peace and justice can be traced historically to a diversity of moments and events, the emergence of transitional justice as a particular field of expertise is often traced back to the late 1980s. According to Paige Arthur (2009:324), the emergence of a field of transitional justice “came directly out of a set of interactions among human rights activists, lawyers and legal scholars, policymakers, journalists, donors, and comparative politics experts concerned with human rights and the dynamics of ‘transitions to democracy’” at that time. These interactions took place, for instance, at a series of international conferences between the late 1980s and early 1990s, which gathered activists and scholars from such countries as Chile, Argentina, Brazil, Guatemala, South Africa, Uganda and Uruguay. At the center of those debates was the issue of how successor governments should deal with violations committed by their predecessors, while considering potential threats to the stability of new regimes.

(5) Sikkink illustrates the argument by telling us that the first intergovernmental declaration of rights, the American Declaration of the Rights and Duties of Man, was being drafted months before the adoption of the Universal Declaration of Human Rights in 1948 – usually taken to be the starting point of the global human rights regime. She argues that developments such as this one demonstrate that “the Latin American jurists and diplomats who promoted rights on the 20th century were jurists and diplomats from the periphery, but they were not at all peripheral to global debates on international law and institutions during their lifetime” (Sikkink, 2015).

Therefore, at the heart of the emergence of transitional justice discourse and practice in the 1980s, a common claim was that they would contribute towards democratization – a claim that is also connected to the presence of comparative politics scholars in the field from its outset.⁶ The emerging transnational field, structured around the idea of “transition”, would later crystallize around organizations such as the Project on Justice in Times of Transition (1993), from the US; the South Africa–based Justice in Transition (1994), and the NGO International Center for Transitional Justice (2001) (Arthur, 2009).

The experience of ending repressive regimes in Latin America in the 1980s was particularly important in shaping the field. In the 1970s, in the context of authoritarian regimes in the Southern Cone, a human rights framework had been mobilized by local and transnational movements in order to delegitimize political violence. In the 1980s, as those regimes came to an end, civil society organizations turned their attention – and their human rights practices – towards the task of rebuilding relationships between states and their citizens (Carmody, 2018). In this context, transitional justice mechanisms deployed in the region ranged from blanket amnesties to trials of military juntas, also including truth commissions and reparations policies among other mechanisms. In fact, Argentina’s “Nunca Más” was the first published truth commission worldwide, in 1984, launching a global trend; since then, a large share of truth commissions in the world have been established in Latin America (Fuentes Julio, 2016, p. 11).

From that moment, the field of transitional justice has become increasingly consolidated, and many of the elements that ground these practices became binding legal obligations, both for states and for individuals. In Latin America, the Inter-American System of Human Rights has played a central role in promoting the development of transitional justice mechanisms, both through investigations and recommendations made by the Inter-American Commission on Human Rights and through the jurisprudence of the Inter-American Court of Human Rights on the subject (Galindo, 2018).

Moreover, since the 1990s, as a growing amount of international resources and attention came to be dedicated to post-conflict peacebuilding, transitional justice practices became an integral part of the toolkit dedicated to these contexts (van Zyl, 2005). In other words, transitional justice expertise came to be understood as essential not only in transitions from repressive regimes to democracies, but also from wars to peace.

In the 2000s, the process of dealing with past human rights abuses perpetrated under authoritarian regimes and civil wars in Latin America has been reinvigorated, through the establishment of new truth commissions – such as the National Truth Commission in Brazil –, the (re)opening of trials of people involved in serious human rights violations, and other efforts to revisit the agendas of memory and reconciliation. According to Roberta Villalon (2017), this “second wave of memory, truth and justice mobilizations” has been connected to broader trends such as a global upsurge of a culture of memory and the solidification of international mechanisms for human rights

(6) However, as noted by Valerie Arnould, Johanna Herman and Chandra Lekha Sriram (2019), scholarship remains divided as to how clear these effects are – partly in connection with the disputed nature of the indicators that might be used to evaluate an advance in democratization. In particular, those authors analyzed the connections between transitional justice measures and the development of democratic security forces, but results were ambiguous and inseparable from broader societal and political dynamics (Arnould, Herman, & Sriram, 2019).

accountability, but also to three factors that were particular to the region. First, a sense of dissatisfaction with the incompleteness of justice in post-authoritarian/post-conflict settings, especially by victims' families, coupled with a diversity of interpretations as to what could constitute a "fair" solution to past violence (as seen in debates on whether to overrule amnesty laws or not). Second, the persistence of collective memory and justice processes which challenged the partiality of official accounts – and the ways in which transnational articulation and regional actors, such as the Inter-American Court of Human Rights, fueled this persistence. Finally, a context of economic volatility and inequality, alongside mounting violence, corruption and impunity, which stirred distrust of governmental and law enforcement institutions in the region (Villalon, 2017).

Thus, the persistence of violent structural patterns from authoritarian or conflictual settings has favored the recent establishment of memory, truth and justice initiatives dedicated to past violations, in order to grasp their connections with those of the present. On the other hand, violent contexts have also given rise to mechanisms which, while inspired by experiences of transitional justice in the region, focused their attention on present human rights violations, furthering a memory, truth and justice agenda as a set of tools that might contribute towards the transformation of contemporary violence, in spite of the absence of a traditionally conceived transitional process.

Transitional justice without a transition?

The reemergence of a memory, truth and justice agenda in the 2000s has favored an attention to the complexities of what it means to come to terms with a past of mass violence within a present context which, while considered "democratic" and "peaceful", also (or still) witnesses patterns of systematic human rights violations perpetrated by state and non-state actors. After all, while present forms of violence were distinct from those of repressive regimes or civil wars, it was possible to identify the continuities between present and past violence, often expressed in terms of legacies of impunity and the persistence of militarized security forces (Villalon, 2017). Therefore, as will be discussed in the case of Guatemala's CICIG, present structural patterns of violence and impunity have often been rearticulated by human rights and transitional justice experts as part of a legacy of past conflicts and dictatorships – meaning that the transformation of these present patterns is rearticulated as part of a broader transitional process that remains incomplete.

Moreover, there have been increasing discussions about the possibilities and limitations entailed by the deployment of "transitional justice" mechanisms in countries where there was no clear transition in sight. Such discussions were found, for instance, as of the adoption of a Justice and Peace Law in Colombia, in 2005, in the context of negotiations between the government and paramilitary groups. As noted by Rodrigo Uprimny Yepes and María Paula Saffon Sanín (2006, pp. 193-194), it was clear that these negotiations would not bring the armed conflict to an end, and the question of the very existence of an armed conflict was handled very ambiguously by Álvaro Uribe's government. Even so, the notion of transitional justice became increasingly enmeshed as part of state bureaucracy practices and civil society initiatives alike, as will be illustrated by Ruta Pacífica's case later in this work. The section on the Ayotzinapa case shows how a similar discus-

sion has more recently been developed in the Mexican civil society, as many organizations and experts have been using the category to refer to the truth and justice mechanisms they demand for a transformation of structural violence in the country (see Saffon, 2019).

In sum, this policy brief is mainly dedicated to discuss how demands and initiatives related to victims' rights to truth, justice, reparations and non-repetition are currently being articulated in "non-transitional" contexts – that is, in relation to patterns of violence taking place in the present, in the absence of any readily identifiable transition from war to peace or from dictatorship to democracy. These contexts reveal the extent to which these categories are limited in their ability to grasp present forms of organized violence; but they also illustrate the circulation of transitional justice concepts and models across a continuously expanding range of settings.

Three instances of these shifts will be briefly discussed here. In their presentation, I will emphasize the ways these experiences are inserted in a broader circuit of transitional justice mechanisms across Latin America, including the ways in which the circulation of experts and lessons have participated in the constitution of these particular models. Moreover, I will briefly present some of the opportunities and challenges that have been identified in these experiences. More information on the concepts and models whose circulation is traced in those cases can be found at a table at the "final considerations" section of this text.

4. Impunity as a post-conflict legacy: the experience of Guatemala's CICIG

As previously mentioned, the historical emergence of transitional justice mechanisms has often been informed by the imperative need to "deal with the past", that is, to deal with victims' demands for truth and justice following contexts of mass violence. However, in many Latin American settings, post-conflict or post-dictatorship contexts have seen a transformation in violence patterns, at times accompanied by a rise in homicide rates. These situations have called for the development of initiatives aimed at the transformation of present violence, which often entails a recognition of the extent to which present structural limitations of state institutions can be traced back to their past of conflict or dictatorship. The Guatemalan context, and in particular the experience of the International Commission against Impunity in Guatemala (CICIG, by its Spanish acronym), can also be read in this light.

Between 1960 and 1996, Guatemala went through a civil war between an authoritarian regime and rebel groups. It is estimated that more than 200,000 people died in the conflict, most of them between 1981 and 1983, under the governments of General Romeo Lucas Garcia (1978-1982), General Efraín Ríos Montt (1982-1983) and General Mejía Victores (1983-1986). The Mayan populations were the main target of massacres perpetrated in the name of "counterinsurgency". As the Commission for Historical Clarification would later establish, more than 90% of the violations during the war were committed by state and paramilitary forces, and more than 80% of the victims were indigenous peoples (Martinez, 2017).

In 1996, after several years of negotiations mediated by the United Nations, the government and a coalition of the main guerrillas in the country signed a peace agreement. At that point, the Guatemalan state recognized that one of its structural weaknesses was the justice administration system. In 1999, it attempted to consolidate and implement negotiated commitments in this regard through a constitutional reform, which would include structural changes in the security and justice sector; but this constitutional reform was refused in a popular consultation. Between 1999 and 2009, Guatemala saw a sharp rise in homicide rates, going from 23 to 45 homicides per 100,000 people⁷. This violence was connected to various forms of organized crime, ranging from local gangs to transnational groups – some of which had evolved from networks dating back to the times of internal armed conflict, even including members of military and paramilitary forces. Moreover, the remilitarization of state security forces in the 2000s in the context of *mano dura* security policies was followed by a rise in extrajudicial killings (CICIG, 2019, pp. 2-4).

The International Commission against Impunity in Guatemala (CICIG)

Concerned about the threat posed by the entrenchment of criminal networks in the country's institutions, Guatemalan civil society groups started calling for the creation of an internationalized mechanism against impunity. In response to their advocacy efforts, the Guatemalan government asked the United Nations for assistance to local institutions in the investigation, prosecution and dismantling of post-conflict criminal networks (WOLA, 2019). In 12 December 2006, the Guatemalan government and the UN agreed to create the CICIG, and the decision was ratified by the Congress in August 2007 (CICIG, 2019, pp. 7-8).

The International Commission against Impunity in Guatemala has often been considered an innovative example of the United Nations' ability to support a member state in its struggle against impunity and corruption. The Commission was established as a body that had political, organizational and financial independence, both before the Guatemalan government and the United Nations. Crucially, the CICIG was conceived as a human rights mechanism, which sought to fight impunity in cases of violations against fundamental human rights and to strengthen the rule of law in a post-conflict society (CICIG, 2019, pp. 11-12).

Their activities were particularly focused on cases that involved “illegal bodies and clandestine security apparatuses” (CIACS by the Spanish acronym), identified by the CICIG in relation to certain characteristics: they are politico-economic illicit power networks inserted in politics and in business; they no longer respond to an ideological orientation, seeking illicit enrichment; they function under a logic of opportunism, flexibility and a continuum between the formal and informal, rather than as permanent criminal structures; and they have the ability to generate a sort of judicial counterintelligence in order to ensure impunity (CICIG, 2019, p. 15). Connections between the past of massive human rights violations and present organized crime were considered clear in the experience of many of these CIACS. For instance, several high-ranking military officials, arrested in connection with past massacres in the context of their participation in the 1980s Guatemalan

⁽⁷⁾ These rates have since fallen significantly, reaching 26 homicides per 100,000 people in 2017. See The World Bank Data, Intentional homicides (per 100,000 people) – Guatemala, <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?locations=GT>

counterinsurgency apparatus, had become the leaders of criminal syndicates developed after the 1996 Peace Accords, thereby retaining enormous power in post-War Guatemala (Burt, 2016).

CICIG's initial two-year mandate was renewed five times, meaning that it functioned for twelve years. Their mandate had four substantial components: Criminal investigation and prosecution alongside the Public Prosecutor's Office; Institutional strengthening through technical assistance; Formulation and promotion of public policy proposals as well as legal and institutional reforms, and; Publication of thematic reports (CICIG, 2019, p. 12).

Throughout CICIG's history, the cooperation of key figures in Guatemalan state institutions and civil society organizations was crucial for these goals. For instance, Claudia Paz y Paz, a human rights lawyer and former judge, was the first female Attorney General in the country, between 2010 and 2014, and CICIG's support was important for her selection (International Crisis Group [ICG], 2018). She has had a central role in the indictment of former military dictator Efraín Ríos Montt for crimes against humanity and genocide perpetrated between 1982 and 1983 by state forces under his rule. She has also had a crucial role in the prosecution of cases of corruption and organized crime (McDonald, 2012). Beyond individual prosecutions, her time in office saw the crystallization of a new case administration method, which relied on the search for patterns and trends in criminal activity in order to establish connections among cases and to dismantle illicit networks (ICG, 2018, p. 12).

In spite of its widespread recognition by local and international civil society organizations, the CICIG had become the subject of numerous attacks by Guatemalan politicians over the last few years. This trend was accompanied by a rise in the strength of military and conservative actors inside the government, as well as by increasing repression against indigenous and campesino social movements (Lesniewski, 2018). Moreover, the recent withdrawal of support to the Commission by the United States government, an important political and economic ally, also significantly hampered CICIG's strength⁸ (WOLA, 2019). In 2019, Guatemala's President Jimmy Morales, himself under investigation for corruption, announced that the Commission's mandate would no longer be extended, arguing that its work had been violating the rights of Guatemalan citizens by meddling into internal affairs (CNN, 2019); and in September, CICIG's activities came to an end (WOLA, 2019).

The circulation of CICIG's model

As noted above, the experience of the CICIG has been widely praised not only by local civil society organizations, but also by the international human rights community. For instance, the Washington Office on Latin America (WOLA) has considered it one of the most successful mechanisms for combating corruption and organized crime (WOLA, 2019). The International Crisis

⁽⁸⁾ "Reporting by various media outlets – including Foreign Policy and Guatemala's Nomada – indicate that the Trump administration may have diminished the traditional public, strong support of Guatemala's anti-corruption efforts, in exchange for Guatemala becoming the second country in the world to open an Embassy in Jerusalem. Along with the Trump administration's efforts earlier this year to suspend foreign aid to the Northern Triangle region, the dialing back of U.S. support for the CICIG is a reflection of the administration's changing approach on U.S.-Central America policy." (WOLA, 2019).

Group has argued that a reduction in more than 4,500 homicides between 2007 and 2017 – or an average 5 per cent annual decline in the murder rate – could be attributed to CICIG’s contribution (ICG, 2018). Other results that are often mobilized in praise of CICIG include the strengthening of justice institutions, as well as a contribution to social awareness around the relevance of judicial independence and of democratic consolidation (CICIG, 2019, p. 1). A statement issued by a coalition of more than 200 national and international civil society groups after CICIG’s shutdown was announced also attributed to the Commission a role in the dismantling of around 70 criminal structures, to the promotion of 34 key legal reforms, and the strengthening of the democratic system.⁹

Moreover, the experience of the Commission has inspired the creation of other mechanisms in Central America. Examples include the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), which is modeled after CICIG; and El Salvador’s president is reportedly discussing with the UN and the Organization of American States (OAS) about the possibility of creating a similar mechanism in the country (WOLA, 2019). The CICIG has also been a central source of inspiration for Mexican civil society organizations and experts, as seen in recent debates about the potential implementation of transitional justice mechanisms aimed at the transformation of massive violence perpetrated in the country’s “war against drugs”. Since 2016, these debates have included the call, led by a number of local and international civil society organizations,¹⁰ for the creation of an International Mechanism Against Impunity in Mexico, modeled after CICIG but adjusted for the particular patterns of human rights violations found in the country (Propuesta ciudadana, 2019). In order to inform their own proposal, Mexican experts have traveled to Guatemala in order to learn more about CICIG’s experience, challenges and lessons.¹¹

Therefore, while the CICIG is more generally presented as an “anti-corruption commission” than as a transitional justice mechanism,¹² it is considered an important step towards the transformation of a structural legacy of impunity in Guatemala, tackling the contemporary expressions of militarized violence and the entanglements between state and non-state security actors. Moreover, it has helped create the conditions for other practices that have more traditionally been understood as part of transitional justice packages, as seen in the prosecution of former military generals for crimes against humanity and acts of genocide, while seeking to make room in the public arena for indigenous movements’ demands for truth and justice. Finally, it has also inspired calls for the creation of similar mechanisms in countries such as Mexico, where it is envisioned as a step towards a full transformation of structural patterns composing the so-called “war on drugs”.

(9) See the statement “International and civil society organizations in the region celebrate CICIG’s achievements and urge the international community to protect its legacy and continue supporting the fight against impunity”. Available at: https://www.wola.org/wp-content/uploads/2019/08/Final-statement-in-support-of-CICIG_FINAL-ENG.pdf

(10) These organizations include, at the national level, the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and those organizations that compose the Platform against Impunity and Corruption. In the realm of transnational organizations, the Open Society Justice Initiative has been a crucial advocate for the creation of the Mechanism. See Open Society Justice Initiative (2018).

(11) Interview with Luis Daniel Vazquez Valencia (FLACSO México), April 2019.

(12) However, for a discussion on why the CICIG should be regarded as an example of non-traditional transitional justice measure, see Nyberg (2015).

5. Truth and Justice in the Ayotzinapa Case: from the pressure of international experts to a presidential commission

While the case of CICIG illustrates the challenges associated with the production of truth and justice in post-conflict settings, as well as the role of extraordinary mechanisms, other Latin American contexts have been faced with the need to handle atrocities in the absence of any recognized “exceptionality”, or of a declared transition from conflict to peace or from dictatorship to democracy. The case of Ayotzinapa, in Mexico, sheds light on the possibilities and challenges associated with the effort to produce truth and justice in such settings.

On 26 September 2014, a group of students from a rural school in the Mexican city of Ayotzinapa traveled to Iguala, from where they took over buses to go to the annual commemorations of October 2nd – a date dedicated to the memory of students that had been repressed by state forces in 1968. This activity had commonly been tolerated by local police forces. This time, however, as the students left Iguala, the municipal police set up roadblocks and opened fire against the students, most likely in cooperation with state and federal forces, in order to prevent them from taking the buses out of the city. On that night, 43 students were arrested and then disappeared, aside from other six people who were executed – three of whom were students, including one young man whose body was found the next day with clear signs of torture – and at least 40 people who were injured (Aguirre et al, 2017; Cavallaro et al, 2019).

This episode, which became known as the Ayotzinapa case, sparked major outrage throughout the country. One of the reasons was the way it illustrated the collusion between state and non-state forces in networks that are often referred in the country as of macro-criminality, as this collusion was apparently connected to the abuses perpetrated in Ayotzinapa. Another reason was the high degree of mobilization by the families of the 43 disappeared students, who continuously pressed the government to find and return their children – alive, as heard in their motto “¡Vivos se los llevaron, vivos los queremos!” (Telesur, 2014). This mobilization was supported by large protests in the country, drawing attention to the massive numbers of forced disappearances in Mexico (Animal Político, 2019). Investigations on the case by Mexican authorities, however, were problematic and rushed. In early 2015, the Mexican National Chief Prosecutor announced that he was closing the investigations, as state authorities had reached the “historical truth” – a version according to which the students’ bodies had been incinerated, which was inconsistent with previous evidence and only fueled the outrage of victims’ families (Ballinas, 2015).

The Interdisciplinary Group of Independent Experts and the Follow-up Mechanism

Upon the request of the families and representatives of the 43 students, the Inter-American Commission on Human Rights (IACHR) appointed an Interdisciplinary Group of Independent Experts (GIEI by its Spanish acronym), who would “provide international technical assistance for the search, investigation, victim support and the structural analysis of the case” in light of the inability of local authorities and indifference of federal ones (Aguirre et al, 2017). This decision followed negotiations between the families and the Mexican government, after which the president agreed to accept the assistance provided by the GIEI and to cooperate with the Argentine Forensic Anthropology Team in the search efforts.

Created in November 2014, the GIEI gathered important human rights lawyers and activists from across the region: Guatemalan human rights lawyer Claudia Paz y Paz, who has had a crucial role in the previously discussed context of CICIG; Carlos Martín Beristain, from the Basque Country, who has extensive experience in attention to victims and truth commissions around the world, and is now one of the commissioners of the Colombian Commission for the Clarification of Truth, Coexistence and Non-repetition; Alejandro Valencia Villa, a Colombian expert on humanitarian law and international human rights law who is now also a commissioner at the Colombian Truth Commission; Ángela Buitrago, an important Colombian lawyer; and Francisco Cox, a Chilean lawyer specialized in criminal law. According to researchers from the Miguel Agustín Pro Juárez Human Rights Center (Centro Prodh), the organization that coordinated the international legal strategy of victims’ families, the GIEI was the first international monitoring experience within the context of a criminal investigation process of this kind (Aguirre et al, 2017).

At first, the GIEI’s work received governmental support, in the form of basic conditions and access to witnesses. However, their initial reports challenged the official version of events, implicating governmental structures in the disappearance and in the persistence of impunity through the obstruction of justice. As a result, GIEI’s access to crucial witnesses – such as soldiers and people who had been convicted for the disappearances – was foreclosed; and there were large efforts to discredit GIEI’s members. Their following reports emphasized that all law enforcement agencies who were present that evening had actively or passively participated in the violations, and that their collusion with criminal groups was not limited to the municipality. In 2016, understanding that the state was no longer providing the necessary conditions for their work, the IACHR announced that the GIEI would leave the country (Aguirre et al, 2017; Cavallaro et al, 2019).

After negotiations between the IACHR, the Mexican government and the victims’ families, a Special Follow-up Mechanism to the Ayotzinapa Case (MESA by its Spanish acronym) was created in September 2016, aiming at monitoring the implementation of the GIEI’s recommendations. In this context, technical visits were undertaken by Commissioners and Rapporteurs sent by the Inter-American Commission, including its Executive Secretary Paulo Abrão. A report published by MESA in June 2018 indicated that, while there had been some specific and structural advances, including the adoption of a General Law on Torture and of a General Law on Forced Disappearance, there were persisting challenges for the implementation of these laws, and the students’ whereabouts remained unknown (IACHR, 2018).

The Presidential Commission for the Ayotzinapa case and the Transitional Justice debate

In December 2018, the new Mexican president Andrés Manuel López Obrador (known as AMLO), after meeting with the parents of the disappeared students, ordered the creation of a Presidential Commission for Truth and Access to Justice in the Ayotzinapa case. The Presidential Commission also relies on the support of the IACHR, and a Technical Assistance Group – including former GIEI members Ángela Buitrago and Francisco Cox – was established to contribute in the investigations (Gobierno de México, 2019a). The Commission is composed by government agents, five representatives of the students' parents, and members of four civil society organizations: Centro Prodh; Centro de Derechos Humanos de la Montaña, Tlachinollan; SERAPAZ; and Fundar (Gobierno de México, 2019b).

While the decision to create this Commission is important, it should be read against the backdrop of broader political discussions about the possibility of “transitional justice” mechanisms in Mexico, especially in face of the high levels of violence in the country since the mid-2000s. This debate gained strength during the 2018 presidential campaigns, especially after then-candidate AMLO mentioned his intention to implement an amnesty program as part of the country's “pacification”, which was followed by an effort by members of his team to frame the proposal as part of a broader transitional justice program. After AMLO's election, during the presidential transition, working groups were established to design specific proposals in this regard, gathering national and international experts as well as victims' movements. This broad agenda was, however, progressively abandoned by the elected government, especially after it took office (Dayán, 2019). In spite of this shift, civil society organizations keep pushing a transitional justice agenda, advocating for the creation of mechanisms such as a truth commission that looks into human rights violations committed in the Mexican “war on drugs” since 2006, while attending to their connections with a longer history of state violence traced back to the late 1960s; and an internationalized mechanism against impunity modeled after the CICIG, as mentioned in the previous section (Propuesta ciudadana, 2019).

Ultimately, the “transitional justice” agenda of the present administration has so far been limited to the creation of the commission on the Ayotzinapa case and a commitment to strengthen search mechanisms for disappeared persons. These developments are surely important, especially considering the fact that at least 40,000 people have disappeared in the country since 2006, and nearly 5,000 bodies have been discovered in more than 3,000 clandestine graves over the same period (Sheridan, 2019). However, civil society experts fear that these search-focused commitments are not enough for a true transformation of structural patterns of enforced disappearance as well as other violations, which would call for a much broader and deeper approach to truth, justice, reparations and non-repetition.¹³ Moreover, as AMLO decided to create a highly militarized national guard as the central pillar of his approach on security, experts have criticized the incompatibility between this decision and any alleged transitional justice agenda (Dayán, 2019).

In other words, the work of independent experts sent by the IACHR to the country has been crucial to reveal how the Ayotzinapa case is emblematic, not only in relation to the role of broad

(13) Interviews with Luis Daniel Vazquez (FLACSO-México) and Daniela Malpica (JusRed), April 2019.

networks of macrocriminality in the persistence of impunity, but also to the close entanglements between state agents and non-state criminal subjects. Nonetheless, if future investigations on this case are to be presented by the government as part of a deeper transitional process, it is crucial not to handle it in isolation, through the attribution of individual responsibility to specific agents; but as part of deeper transformations that are needed in order to prevent future atrocities – transformations which would necessarily entail a reform of the militarized practices that have increasingly characterized the state’s security strategies.

6. From the margins to the center of truth telling: the experience of Ruta Pacífica de las Mujeres in Colombia

The previous cases refer to attempts at the transformation of violence taking place in allegedly peaceful and democratic contexts, that is, in the absence of a war or authoritarian regime. Even in relation to such “exceptional” settings, however, traditional conceptions of transitional justice have predictably assumed the existence of some sort of “transition”, during which a society aims to “deal with the past”. In Colombia, however, the emergence of a range of mechanisms and processes aimed at the promotion of peace has taken place in spite of the absence of any clear-cut “end of conflict” in the country. This setting has led to significant challenges, but also, as illustrated in this section, to important innovations and lessons.

Since the 20th century, Colombia has witnessed the emergence of numerous mechanisms aimed at the production of historical memory in relation to different modalities of violence. Examples in this regard are the 1958 national investigation commission regarding the period of “La Violencia” (1946-1965), marked by confrontations between liberals and conservatives in the country, and the 1987 Commission of Studies on Violence, which sought to handle the emergence of organized criminal structures as perpetrators of mass violence in the country.¹⁴ From the early 2000s, these efforts became increasingly entangled with the notion of transitional justice, as part of an emerging “humanitarian bureaucracy” in Colombia (see Vera Lugo, 2017).

Under Alvaro Uribe’s presidency (2002-2010), there were negotiations between the government and paramilitary groups, aiming at their demobilization. At the time, the Justice and Peace Law (975/2005), which was adopted as a framework for these negotiations, was widely criticized by civil society representatives as insufficient due to its soft approach to paramilitary perpetrators (Grajales, 2011, p. 192) and limitation towards the provision of victims’ rights to truth, justice, reparation and non-repetition (Uprimny Yepes and Saffon Sanín, 2006). In particular, women’s and victims’ groups challenged key aspects of the law, and as a result, the Constitutional Court instructed the government to include more victim-centered provisions, such as the possibility of liquidating paramilitary assets to pay for victim reparations (Warren et al, 2017)

(14) For an analysis of these two commissions, as well as of the work of the Historical Memory Group (2007-2011), with an attention to their place in the transmission of certain narratives of the country, see Jaramillo Marín (2014).

In June 2009, four Colombian civil society organizations – Corporación Casa de la Mujer, Corporación Vamos Mujer, Funsarep and Ruta Pacífica de las Mujeres – held a forum in Bogotá in order to discuss the challenges and obstacles faced by women victims in the context of the Justice and Peace Law. Two international experts had been invited to this forum: Susana Villarán, who had been special rapporteur for women’s rights of the Inter-American Commission of Human Rights; and Carlos Beristain, who had coordinated the Recovery of Historical Memory report in Guatemala¹⁵ and participated in a number of other truth commissions in the region.

The forum also aimed to formulate proposals and actions on how to promote truth and justice from a perspective of women’s organizations, in order to overcome the silence on women’s rights violations that had marked truth initiatives in the country. At the event, Carlos Beristain could share his previous experience in truth commissions in other countries, such as Guatemala and Peru. Informed by these exchanges, the coordinators of Ruta Pacífica de las Mujeres started considering the creation of a truth commission focused on the experience of women and the ways in which their lives and bodies had been historically victimized by the Colombian armed conflict.¹⁶

The Colombian Women’s Truth and Memory Commission

La Ruta Pacífica de las Mujeres is a feminist movement of national reach in Colombia, grounded on the notions of pacifism, antimilitarism and non-violence. Since its creation in 1996, at a moment when the country was marked by particularly high levels of violence, the movement has advocated for a negotiated solution to the armed conflict, while working to render visible the impacts of war on the lives and bodies of women. Their strategies have included the mobilization of over a hundred thousand women across the country, both in rural and urban spaces, as well as the incidence in political negotiations and the provision of psychosocial and legal support, amongst others. The movement brings together a wide diversity of experiences and realities,¹⁷ being composed by women who represent around 300 organizations across the country (Ruta Pacífica, n.d.).

After the forum mentioned above, and after a series of internal consultations and debates, Ruta Pacífica progressively worked towards the establishment of a “Colombian Women’s Truth and Memory Commission”. The Commission was a historical memory mechanism in which women victims of violence were listened to, recognized and supported. Over a thousand cases of individual and collective violations against women – including murders, massacres, disappearance of relatives, forced displacements and sexual violence – were documented by the Commission, through the collection of testimonies across the country. They started working in 2010 and their final report was published in 2013 (Ruta Pacífica et al., 2013). Aside from Carlos Beristain, Alejandro Valencia Villa – who, as mentioned in the previous section, would also become part of the GIEI in Mexico –

(15) “Foro Internacional “Verdad, Justicia y Reparación Integral: una deuda pendiente con las mujeres víctimas de las violencias”, Semanario Virtual, <http://viva.org.co/cajavirtual/svc0160/index%20-%20pagina%2016.html>

(16) Interviews with Sandra Liliana Luna (La Ruta Pacífica de las Mujeres) and Carlos Martín Beristain, August 2019.

(17) “Las Mujeres Ruta, son campesinas, indígenas, afrodescendientes, raizales, jóvenes, mayores, estudiantes, profesionales, víctimas, rurales, urbanas de barrios populares, productoras, sindicalistas, pertenecientes a organizaciones feministas, ONG feministas, redes de mujeres por los derechos sexuales y reproductivos, organizaciones ecológicas de mujeres, organizaciones de mujeres diversas y organizaciones de artistas; son ellas el bastión de las propuestas y acciones que se impulsan en el día a día en representación de la diversidad étnica y cultural del país.” (Ruta Pacífica, n.d.)

was another truth commissions expert who played an important role in support of the design and implementation of Ruta Pacífica's commission.

As discussed in a document on the Commission's methodology, Ruta Pacífica's decision to establish a truth commission was far from obvious. After all, truth commissions had traditionally been conceived as official mechanisms, carried out after the end of an armed conflict. In their case, they would establish it as an independent project by a women's organization based in civil society, and in the midst of an open armed conflict with no end in sight. Moreover, their work would be carried out with no institutional support from the Colombian government, although they did receive support from agencies and institutions worldwide (Ruta Pacífica et al., 2013:11-12). In spite of these differences, an analysis of the international experiences of truth commissions allowed them to learn from the methodologies deployed in those projects while considering ways to overcome usual limitations – for instance, the frequent neglect of women's experiences and perspectives that has marked several institutional truth initiatives (Ibid., 15). Therefore, despite important lessons learned from the methodologies of other, more traditional, truth commissions, there were also crucial innovations arising from the very particular decision to place women's experience at the center, while adopting a feminist approach to the research they performed.

From Ruta Pacífica's Commission to the implementation of the 2016 peace agreement

It should be noted that the creation of the Commission, alongside other strategies historically deployed by La Ruta Pacífica de las Mujeres, have participated in bringing this movement to the center of the peacemaking field in Colombia in general, and of the transitional justice field in particular. That is illustrated by the important role played by the movement's representatives throughout the peace negotiations between the Colombian government and the FARC. For instance, in 2013, Ruta Pacífica was among the organizers of the National Summit of Women and Peace in Bogotá, where over 500 women from Colombian civil society organizations demanded that negotiations in La Habana became more inclusive of women's needs and demands. As a response to these pressures from women's movements, an innovative Gender Subcommittee was established as part of the peace negotiations, and the government included women as plenipotentiary negotiators.¹⁸

Moreover, the movement has been thoroughly engaged in the implementation of the peace agreement between the Colombian government and the FARC, including in relation to its transitional justice component. As the mechanisms which compose the Comprehensive System of Truth, Justice, Reparation and Non-Repetition were being established,¹⁹ the small number of women in the staff of these mechanisms was again noticeable. As a response, Ruta Pacífica provided support to women who were interested in running for those positions, encouraging them and providing

(18) Interview with Sandra Liliana Luna (La Ruta Pacífica de las Mujeres), August 2019.

(19) "The System is comprised of the Truth, Coexistence and Non-Repetition Commission; the Special Jurisdiction for Peace (JEP); and the Unit for the Search for Persons Presumed Disappeared in the context and by reason of the armed conflict (UBPD); as well as of comprehensive reparation measures for peacebuilding and guarantees of non-repetition." See https://www.jep.gov.co/Infografias/SIVJRNR_EN.pdf

technical assistance. With their support, women were selected to integrate the staffs of the Truth, Coexistence and Non-Repetition Commission, the Special Jurisdiction for Peace and the Unit for the Search for Persons Presumed Disappeared. Moreover, due to their experience in taking testimonies acquired in the context of their own truth commission, they are now responsible for interviewing over 2000 women victims for the Truth, Coexistence and Non-Repetition Commission; and the final report published by Ruta Pacífica in 2013 will be used as an input for the research of the current national Commission.²⁰ It is also interesting to note that both transitional justice experts who have contributed to the design of the methodology of Ruta Pacífica's commission, Carlos Beristain and Alejandro Valencia Villa, are now commissioners at the Truth, Coexistence and Non-Repetition Commission. Their participation brought along their expertise and lessons learned from their many previous engagements in this field, also including their work at the GIEI on the Ayotzinapa case discussed in the previous section.²¹

Therefore, this case illustrates the possibilities entailed by the circulation of transitional justice methodologies into other realms. Firstly because, as noted by Carlos Beristain, the women from Ruta Pacífica created their truth commission “in a context in which such things could not be done. One could not speak about an armed conflict, we were still amidst a war, and there were no political conditions for it [...] But the women were certain that it was necessary to give voice to women in this process. [...] That is, at a time in which it could not be done, we started to do it”.²² In this sense, the creation of a truth mechanism while the armed conflict had no end in sight was perceived as an important step, and it helped ensuring that the voices of women victims would be heard in a subsequent peace process. Secondly, the very fact that this truth commission was designed from within civil society was already innovative in relation to other traditional mechanisms, and it enabled the insertion of Ruta Pacífica's women into the circuit of the transitional justice expertise in the country, as their experience would go on to impact the work of institutional mechanisms.

7. Final considerations

In this policy brief, we have looked at some of the ways in which present patterns of organized violence in Latin America challenge traditional distinctions between war/peace and dictatorship/democracy, as well as the categories through which their transformation has been imagined. Facing complex manifestations of present violence, many actors in the region have looked at mechanisms developed for “dealing with the past” as a source of inspiration for the transformation of structural patterns of victimization. In this sense, going beyond a formalist debate on whether one can speak of a “transition” in the absence of a peace agreement, practices aimed at the promotion of victims' rights to truth, justice, reparation and non-repetition have been variously appropriated and reshaped by those who demand a transformation of present violence.

The three cases discussed in this policy brief illustrate the circulation of certain concepts and models which, while often conceived as part of a set of transitional justice practices, have reached

(20) Interview with Sandra Liliana Luna (La Ruta Pacífica de las Mujeres), August 2019.

(21) Interviews with Carlos Martín Beristain and Alejandro Valencia Villa, August 2019.

(22) Interview with Carlos Martín Beristain, August 2019.

beyond the realm of traditionally conceived transitions. In this work, these other settings have been referred to as non-transitional contexts, that is, as present contexts affected by significant patterns of organized violence, in the absence of any readily identifiable transition from war to peace or from dictatorship to democracy. These contexts can include post-transitional settings still struggling with legacies of past violence, as seen in the case of CICIG in Guatemala; contexts marked by generalized and systematic violence in spite their representation as peaceful and democratic, as discussed in relation to the Ayotzinapa case in Mexico; and situations where it is expected that truth and justice mechanisms might give rise to a broader process of political transition, as seen with the Colombian Women’s Truth and Memory Commission.

In table 1 below, operational definitions are provided for the main concepts and models whose circulation has been traced in the cases. Since this policy brief focuses on their circulation through contexts that are not clearly understood as “transitional”, I emphasized understandings that have been developed with such contexts in mind – such as the report “Estudio para elaborar una propuesta de política pública en materia de Justicia Transicional en México”, requested by the Mexican National Human Rights Commission and developed by researchers of Centro de Investigación y Docencia Económicas (CIDE) (Ayllón, 2018).

Table 1. Main concepts and models traced in the selected cases

Concepts	
Transitional justice	“A specific field of activities, mechanisms and processes, through which one seeks to attend to the causes, consequences and legacy of a high-impact and large-scale violence phenomenon. The application of transitional justice aims to clarify the deeds and contexts in which violence takes place, to combat impunity, to compensate victims for the damage suffered and to prevent the repetition of the events which led to it, seeking to consolidate a constitutional democracy. The transitional justice canon is constituted by four pillars: truth, justice, reparation and non-repetition” (Ayllón, 2018, p. 3, free translation).
Truth	According to the IACHR, the right to truth has two dimensions. The first one is “the right of the victims and their family members to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in the violations.” Secondly, “the Commission has maintained that greater society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent recurrence of such acts in the future.” (IACHR, 2014, p. 10).
Justice	Commonly interpreted in relation to the state’s obligation to investigate, judge and sanction the massive or systematic human rights violations, while eliminating all legal or material obstacles to victims’ access to justice and actively combatting impunity (Ayllón, 2018, pp. 33-34). In certain transitional contexts, the right to justice has been understood as implying a combination of, on the one hand, criminal prosecution at least for the perpetrators of the most serious human rights violations; and on the other hand, restorative justice mechanisms, understood as “an alternative model for facing crime, which is based on the social importance of reconciliation between victim and perpetrator”, thereby turning the attention from the criminal act and the perpetrator towards the victim and the harm she suffered (Uprimny & Saffon, 2007, pp. 5-6), as exemplified by victim-offender mediation activities and communitarian work.

<p>Reparations</p>	<p>These administrative or judicial programs consist in the provision of material or symbolic reparations to victims of systematic human rights violations. They can consist in various modalities: restitution (measures aiming to reestablish the previous situation of the victim, for instance, by returning her to freedom), compensation (which can be material or symbolic and should be proportional to the harm inflicted); rehabilitation (which can include medical and psychological assistance); satisfaction (which aims to re-dignify the victim and re-signify the damage, including through the investigation of the violations and the search for missing persons); and the guarantees of non-repetition (Ayllón, 2018, p. 51).</p>
<p>Non-repetition</p>	<p>The guarantees of non-repetition, often referred to as the fourth pillar of transitional justice, are linked to the transformation of structures or institutions which participated, promoted, enabled or facilitated the perpetration of international violations or crimes (Ayllón, 2018, p. 51).</p>
<p style="text-align: center;">Models</p>	
<p>International Commission / Mechanism Against Impunity</p>	<p>An internationalized body established through the cooperation between a national government and an international organization, such as the United Nations – and independent in relation to both actors – with the aim of supporting the investigation of massive, systematic or generalized human rights violations, while contributing to strengthen national capacities for combatting impunity.</p>
<p>Interdisciplinary Group of Independent Experts</p>	<p>A mechanism that consists in the deployment of human rights experts for the provision of technical international assistance, from a human rights perspective. In Mexico, the GIEI sought to monitor and support the investigation of the forced disappearance of 43 students in Ayotzinapa, also providing recommendations for non-repetition. In Nicaragua, a GIEI was established in order to examine complaints regarding serious human rights abuses committed during social protests against Daniel Ortega’s government. In both cases, the GIEIs were established by the Inter-American Commission on Human Rights with the aims of ensuring victims’ rights to truth, justice, reparation and non-repetition in contexts of serious violations.</p>
<p>Truth Commissions</p>	<p>“An independent investigative body with assigned experts, according to clear rules and mandates, with temporal and thematic delimitation, with international participation”, which aims to “reveal and examine patterns of human rights abuse and their reach” (Ayllón, 2018, p. 5, free translation). Although these commissions have traditionally been non-judicial bodies, the name is also used at times as a reference to inquiry commissions devoted to specific cases, as seen in the case of the Presidential Commission for Truth and Access to Justice in the Ayotzinapa case (commonly referred simply as Truth Commission for Ayotzinapa).</p>

Many important challenges and possibilities arise from the processes discussed in this policy brief. One of them concerns the need to attend to particular cases of human rights violations while also pursuing structural change. This tension has been especially clear in the Mexican context, where the current president went from a commitment to create a national truth commission and an internationalized mechanism against impunity, as affirmed during his campaign, to the creation of an investigative commission focused on the Ayotzinapa case. In similar contexts, civil society organizations will seek to demonstrate that the prevention of future atrocities requires tackling the structures that make individual cases emblematic in the first place – that is, attending to the macrocriminality networks that perpetuate such violence patterns, and which often cross any clear-cut distinctions between state and non-state actors.

Besides, as certain social movements place the combat on impunity at the center of their demands, as demonstrated by the Guatemalan and Mexican cases, it is also important to make sure that these demands are carried out without deepening the penal populism trends found in many Latin American countries. This requires an attention to the need to reform criminal justice systems that are often an integral part of how inequalities are perpetuated in terms of race, class and gender. Besides, it might be useful to attend to forms of justice which go beyond the paradigm of individual criminal responsibility. Experiences such as that of the International Tribunal for the Application of Restorative Justice in El Salvador, created in 2009 to handle past human rights violations committed in the context of a civil war in the country, might shed light on how demands for justice can be coupled with solutions that transcend universalized transitional justice models, while contributing towards reflections on the limits of our prevailing imagination of justice for present contexts of violence as well. In other words, critically reflecting on the impulse to equate justice and penal systems might help us conceive of other ways of incorporating needs for reparations and for the attribution of responsibility, while remaining mindful of the limitations of the existing criminal justice systems in Latin American countries (Duque, 2018).

In addition, it is important to consider the transformative potential of the notion of reparations as part of a restorative conception of justice. Debates in this regard have been rising in the field of drug policy reform, as calls for legalization are coupled with demands for reparations of all forms of victimization that have historically been perpetrated by state agents in the name of “wars on drugs”.²³ In other words, as decriminalization reforms take place in an increasing number of cities and countries, there have also been calls for states to account for the historical harms, linked to the criminalization of territories and to the racialized violence perpetrated by security forces and criminal justice systems. According to Dudu Ribeiro from the Brazilian organization *Iniciativa Negra por uma Nova Política sobre Drogas*, these reparations could include truth commissions on drug wars which attribute responsibilities, the recognition by the state of the role it has played in these violations, non-repetition mechanisms, and the provision of support and reparation for those who have been affected, including psychological help (Rossi, 2019).

Finally, it is also crucial to note the variety of actors involved in these efforts, not only in terms of organizations – states, the IACHR, the UN, civil society organizations – but also in terms of the particular people who played a prominent role in a variety of these mechanisms and initiatives. As illustrated throughout the cases discussed here, the many “transitional justice experts” who have traveled among these Latin American settings have carried around commonly shared ideas and methodologies that have shaped the field, but these practices have also been continuously transformed in their interactions with grassroots organizations and victims’ movements. Moreover, it has also been interesting to note how representatives of these local movements, as seen with the women of *Ruta Pacífica* in Colombia, would at times come to be seen as “experts” themselves, whose experience in the development of a feminist approach to the methodology of truth commissions was conceptualized as a crucial source of inputs for future institutionalized efforts. In other words, beyond the reading of “transitional justice” as an enclosed and universalizing field, the contexts discussed here illustrate some of the ways in which these practices have been, and still are, continuously rearticulated and reimagined, in response to the continuities and ruptures identified in victimization patterns found in so many Latin American settings.

(23) On this subject, see the sessions of the event “White Faces, Black Lives: Race and Reparative Justice in the Era of a ‘Gentler War on Drugs’”, organized by the Drug Policy Alliance, which is available at: <https://www.youtube.com/playlist?list=PLf6y9tNpg8wPyfykudkYtPYa8bpZ9rTfl>

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About the Author

Victória Santos is a PhD candidate in the International Relations Institute at the Pontifical Catholic University of Rio de Janeiro (PUC-Rio). She is also an assistant researcher at the Global South Unit for Mediation (GSUM). Her research interests include the connections between criminal and political violence in Latin America, as well as the militarization of public security in the region and the circulation and transformation of transitional justice practices. Recent co-authored articles have been published at *Contemporary Security Policy and Conflict*, *Security & Development*.



BRICS Policy Center Centro de Estudos e Pesquisas - BRICS

Rua Dona Mariana, 63 - Botafogo - Rio de Janeiro / RJ - Brazil

Phone: (+55 21) 2535-0447 / ZIP CODE: 22280-020

www.bricspolicycenter.org / bpc@bricspolicycenter.org

