

Transitional Justice in Latin America – The Uneven Road from Impunity towards Accountability, edited by Elin Skaar, Jemima García-Godos and Cath Collins. New York, Routledge, 2016. Hardback: \$150. Paperback \$49.95.

*Transitional Justice in Latin America – The Uneven Road from Impunity towards Accountability* studies the tension between impunity and accountability, and the trajectory from one towards the other, in nine transitional justice country cases: Argentina, Uruguay, Brazil, Chile, Paraguay, El Salvador, Guatemala, Peru and Colombia. It analyses four specific transitional justice mechanisms (TJMs) for each case: amnesty, trials, truth finding and reparations.

The book's first two chapters explain the importance of the topic, the region selected and the contributions that the case analysis expects to produce, as well as the methodology applied. In doing so, it separates the cases between those related to post-authoritarian regimes (Argentina, Chile, Uruguay, Brazil, Paraguay), those coming out of armed conflict (El Salvador, Guatemala, Peru) and a special case located at a pre-transitional stage, i.e., Colombia. Each chapter covers the four TJMs in some detail, examining how the country used each one of them and how controversial they were. At the end of each chapter, the authors present accountability graphs for each mechanism and overall accountability. The book hypothesises that timing and sequencing, and combination and quality of TJMs are relevant when moving towards better accountability in transitional countries.

This review will look into the general aspects that arise from the nine case studies, and also will highlight significant elements for some of them, either because they present interesting or innovative analysis or incomplete or inaccurate information. Finally, the review will reflect upon the conclusions the book's contribution to transitional justice literature.

Each country case begins with a succinct description of the background leading to the particular transitional situation, to facilitate understanding of how TJMs are evolving in each case. There is, however, a lack of important information in some chapters – more context would have improved readers' understanding. In all authoritarian cases, the transitional background is described in two lines: that a democratic-elected leftist government was overthrown by a military regime under Cold War era logic. However, elements of social unrest leading to the rise of the left in the region are not referred to. In Colombia's case, no mention is made regarding the violence from drug trafficking intertwined with the armed

conflict, nor the institutional response of the 1991 Constitution.<sup>1</sup> These issues are crucial to understanding of today's transitional justice challenges for that country.

There are common factors that underlie transitional justice throughout Latin America. An example is the role of the Inter-American System of Human Rights (IAS) in pushing transitional justice in the region. This regional human rights system is both unique and consistently salient, despite the many difficulties it faces. As the authors point out, many of the advances achieved by Latin American countries in transition have a lot to do with IAS reports or rulings that have produced changes (willingly or not) in countries' responses to justice demands in post-violence scenarios. Particularly important are the contributions of the IAS relative to reparations, in rulings such as the *Cruz Sisters* case<sup>2</sup> in El Salvador, for example. Also, decisions in which an amnesty law was found to contravene the American Convention on Human Rights and international standards, as happened in Uruguay and Peru, for instance, helped to limit a TJM that was inadequately understood and may have caused further violence – favouring impunity beyond the benefits of pacification. Moreover, cases that were put aside by the States' judicial systems were brought by victims to the IAS, leading to new achievements in accountability: examples include Peruvian cases like *La Cantuta* and *Barrios Altos* upon which the later Fujimori trials were based. The IAS's contribution to the victims' rights to truth is also important as Truth Commissions (TCs) reports have been used by the IAS as sources for assessing human rights compliance in countries like Peru, Chile, El Salvador, and Guatemala. These accomplishments are balanced by certain drawbacks. For example, compliance has been so slow and incomplete that nowadays, the IAS still needs to remind States of their duty to fulfil many pending TCs' recommendations, as recently happened with El Salvador.<sup>3</sup>

The book highlights civil society's roles in promoting accountability. The authors insist that civil society's action in promoting human rights violations accountability is essential. A successful case is Argentina, in which accountability is nearly fully accomplished. Argentina owes many of its remarkable achievements to the efforts that NGOs and victims' organisations made, even before the transition began. As a contrast, lack of good results in

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<sup>1</sup> The 1991 Constitution was the result of a student movement and a guerrilla group demobilisation that created a liberal, rights-oriented approach for state action in the middle of the worst violence the country has ever faced.

<sup>2</sup> I/A Court HR, *Case of the Serrano-Cruz Sister s v El Salvador*, Judgement of 1 March 2005.

<sup>3</sup> Inter-American Commission of Human Rights, Press Release No. 074/18, *IACHR Urges El Salvador to Comply with the Recommendations from the Truth Commission's Final Report, 25 Years after its Publication*, [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/074.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/074.asp), Washington, DC, April 2, 2018.

cases, such as Brazil and Paraguay, are correlated with an environment of passive civil society and limited activism. Despite the fact that the IAS has contributed to civil society's role by ordering States to protect members of human rights organisations, some countries still do not have strong civil society presence which impacts accountability negatively.

Likewise, a public's perception of TJMs explains the substantive impact they have in a country. The conservative sector of Chile's polarised society still finds it difficult to condemn Pinochet's actions; similarly, Paraguay lives under a 'nostalgia' for its authoritative past. Both situations challenge the actual achievements of TJMs in accountability from a social perspective. Twice Uruguay, in 1989 and in 2009, was unable to overturn by popular vote an amnesty law that inhibits accountability. That apparent popular support for the previous regime puts the legitimacy of the transitional process in question. One important omission in the book is the fact that Peru's accomplishments in transitional justice are internally overshadowed by the great difficulties that memorialisation poses for Peruvians.<sup>4</sup> All these examples show how these societies remain fractured and are not necessarily ready to enhance accountability for past violence and, least of all, to move towards reconciliation.

Another aspect that inhibits successful transitional justice in the region is the inequality that characterises these countries, and that today continues to be a factor for potential violence. Although this topic is not the main issue of the book's analysis, most articles refer to it when analysing the impact of a transitional agenda. This is particularly true when the victims are underrepresented and discriminated against, as in Guatemala and Peru, where victims were mainly indigenous. As a result, one might say that, as long as inequality is not thoroughly addressed, the pacification of Latin American countries will never be fully accomplished. Transition in unequal societies has proven difficult as countries find themselves unable to close the cycle of violence.

The Colombian chapter requires specific attention. There have been so many changes since the book was written that the analysis is already out-dated. The topic of using alternative methods of punishment by applying restorative justice is an innovative Colombian contribution that helped in the demobilisation of FARC rebels without jeopardising accountability. However, this has been very controversial for the general public. Indeed, the

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<sup>4</sup> For years Peruvian society has been divided around its way to honour victims of the armed conflict and Fujimori's regime violence. For example, a memorial created as a result of an Inter-American Court of Human Rights' ruling, namely *El Ojo que Lloró Memorial*, has been subjected to vandalism, political confrontation and has led to questions –once again – about the IAS's role in the country.

peace accords were publicly rejected in October 2016 indicating that Colombian society was, as yet, unwilling to move forward. Despite the results, the Government called upon all the political forces to contribute to improve the agreement. On December 2016, the final and amended Peace Agreement was signed and the implementation phase began. This situation is in line with the authors' conclusion that time is needed before a society is actually ready for transitional justice. The implementation of TJMs in Colombia has just started and, although TJMs appear promising on paper – as the negotiations were informed by lessons learned from previous transitional experiences – the reality of putting them into practice has been highly challenging. Despite the fact that the peace accords with FARC are now being implemented, there are other guerrilla groups to negotiate with. Therefore, Colombia is not yet in a post-violence stage. A good follow-up of Colombia's case, using many of the tools that the book provides, will probably help to show how much the region has progressed (or not) in obtaining accountability through TJMs.

There are some difficulties with the diagrammatic depictions of accountability in the book (referred to above). The subjectivity and flexibility of the graphs provided provoke serious doubts over how accurate the author-constructed diagrams are, and particularly, how they actually represent a comparative picture. As the concluding chapter mentions, the sources used to analyse the information for each case were different, which seems adequate for the descriptive and substantive work that the book does very well, but not for producing definitive technical results. The guiding questions answered in each chapter used different sources, the score for each item was subjective and the graphic results are, therefore, equally both arbitrary and subjective. Particularly interesting is the Uruguayan case that ranks quite high in accountability as a whole, but that – as mentioned before – blocked the removal of an amnesty law in both a referendum and a plebiscite.

Undeniably, the book provides useful information and contributes to the transitional justice literature. Looking into issues such as how those in power in Brazil manipulated the concept of *amnesty* to appear to favour victims of human rights violations-by terminating judicial processes or releasing prisoners that opposed the authoritative regime, avoiding accountability for them in return-, or the *de facto* (not legal) amnesty in Paraguay, and the many institutional reforms undertaken by all countries, certainly enriches the study of accountability in transitional situations. After reading all the cases, arguments do confirm the initial hypotheses and form a pattern: TJMs aimed at accountability in Latin America need time and appropriate sequencing. Too early demands for trials and punishment, for example, may prevent rebels from sitting at a negotiating table or may be seen as the

revenge of a polarised society – this cannot lead to proper healing. A slow and progressive implementation of various and better TJMs seems to be the best way to favour accountability, as societies process the transformation and adapt to changes. The immediate but determinant goal of ending violence usually needs to provide tools – like amnesties – that may favour impunity but that help societies to move forward from violence to pacification. And then, as the benefits of ending the violence become evident, governments and society can begin to come to terms with that past—improving the quality of TJMs, enhancing accountability, and coming together to heal and truly reconcile.

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