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# Transitional Justice and Impunity:What experiments? What lessons?

- Député européen (Verts, France) - Mes initiatives - Amnistie... Amnésie... Impunité... Justice transitionnelle -



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**Since the second half of the 1980s, many countries formally under the yoke of often bloody dictatorships or authoritarian governments have been liberated and are pursuing a path towards democracy. Others, without having an open dictatorship, have suffered from serious human rights violations for decades. In both cases, direct victims of the violations and their families want to know the truth; they hope that the authors of these crimes will be punished and hope for moral and financial amends.**

Some sectors of these societies reject the necessary requirements for 'turning over a new leaf'. 'Turning over a new leaf' indeed implies an "interest" to cease the struggle. To avoid a return to dictatorship or a civil war, the pursuit justice undoubtedly must be less onerous than the repressive situation which preceded it. This 'transitional justice' nevertheless has its own rules, although these are increasingly recognised in international law.

Unfortunately, proponents of an 'amnesty amnesia' have imposed their point of view in a number of cases. One example from Argentina is the Law of the Final Point. However, as the cases of Chile or Argentina clearly demonstrate, even after decades of silence, torturers and assassins are eventually brought to justice. The Argentinean supreme court cancelled the two amnesty laws and the Chilean courts have delivered interpretations conforming with the international law on forced disappearances in order to circumvent some of the obstacles set by the Chilean amnesty law. Even Spain is beginning to consider the crimes committed from 1936-1938.

In Peru, as well as in Guatemala and South Africa, excellent reports have been established, showing the scale of the committed crimes. In the case of Peru, a report has established the serious scale of crimes and violations of human rights, committed by the governmental forces, as well as by the armed groups from the opposition. The report has proposed procedures against the perpetrators of these violations, and to make amends for their crimes. In the case of South Africa, as well as in Czechoslovakia, the installation of a truth and justice tribunal has helped progress the countries on the path towards democracy.

In Colombia, the Justice and Peace Law, approved in 2005, proposes a very different approach: it considers the process of demobilisation of irregular combatants, avoiding considering the questions of truth, continuation of the crimes and reparation. While the constitutional court has cancelled important aspects of this law, unfortunately the government has circumvented the recommendations of the court by using decrees. In Algeria, the amnesty for terrorist acts of Islamist origin keeps the majority of the victims without any access to truth, justice or reparation. In Sierra Leone, the United Nations interpreted the amnesty law as being designed to exclude serious international crimes, and a Commission of Truth and a special court have since been installed.

This overview shows that a series of fundamental questions which remain unsolved, notably:

1. How to manage a true reconciliation in a country where victims as well as torturers are coexisting? What are the challenges and limits? What role justice can play?
2. How must or can these processes reinforce the state of law? What conditions are necessary for this? What are the challenges? What are the risks?
3. What are the legal frameworks for such processes in international law? What are the duties of individual states?

4.What is the relationship between reconciliation, justice and truth? How is possible to overcome 'amnesty amnesia'?

The conference starts from the conviction that any society needs to know the truth; that criminals should be brought to justice; and that victims of crimes deserve to be compensated. It proposes - based on the examples of Argentina, Chile, Peru, Guatemala, Sierra Leone, Maghreb and South Africa, as well as European cases (Czechoslovakia, Spain) - to confront the experiments in order to formulate specific proposals for any society confronted with a similar situation.