SUR - International Journal On Human Rights is a biannual journal published in English, Portuguese and Spanish by Conectas Human Rights. It is available on the Internet at <http://www.surjournal.org>
**CONTENTS**

**LUCIA NADER, JUANA KWEITEL, & MARCOS FUCHS**

**17** Introduction

**“We Did not Create Sur Journal Because We Had Certainties, But Because We Were Full of Doubts”**

**PROFILE OF PEDRO PAULO POPPOVIC**

**MALAK EL-CHICHINI POPPOVIC**

**OSCAR VILHENA VIEIRA**

**17** Reflections On the International Human Rights Movement in the 21st Century: Only the Answers Change

**LANGUAGE**

**SARA BURKE**

**27** What an Era of Global Protests Says about the Effectiveness of Human Rights as a Language to Achieve Social Change

**VINODH JAICHAND**

**35** After Human Rights Standard Setting, What’s Next?

**DAVID PETRASEK**

**45** Global Trends and the Future of Human Rights Advocacy

**SAMUEL MOYN**

**57** The Future of Human Rights

**STEPHEN HOPGOOD**

**67** Challenges to the Global Human Rights Regime: Are Human Rights Still an Effective Language for Social Change?

**EMÍLIO ÁLVAREZ ICAZA**

**77** Human Rights as an Effective Way to Produce Social Change

**INTERVIEW WITH RAQUEL ROLNIK**

**81** UN Special Procedures System is “Designed to Be Ineffective”

**INTERVIEW WITH PAULO SÉRGIO PINHEIRO**

**91** “Besides Human Rights, I Don’t See a Solution for Serving the Victims”

**INTERVIEW WITH KUMI NAIDOO**

**97** “The Rule of Law Has Consolidated All the Injustices That Existed Before It”

**THEMES**

**JANET LOVE**

**105** Are we Depoliticising Economic Power?: Wilful Business Irresponsibility and Bureaucratic Response by Human Rights Defenders

**PHIL BLOOMER**

**115** Are Human Rights an Effective Tool for Social Change?: A Perspective on Human Rights and Business

**GONZALO BERRÓN**


**DIEGO LORENTE PÉREZ DE EULATE**

**133** Issues and Challenges Facing Networks and Organisations Working in Migration and Human Rights in Mesoamerica

**GLORIA CAREAGA PÉREZ**

**143** The Protection of LGBTI Rights: An Uncertain Outlook
<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>151</td>
<td>Brazil, India, South Africa: Transformative Constitutions and their Role in LGBT Struggles</td>
</tr>
<tr>
<td>167</td>
<td>Emerging powers: Can it be that sexuality and human rights is a ‘lateral issue’?</td>
</tr>
<tr>
<td>181</td>
<td>Transitional Justice and Social Change</td>
</tr>
</tbody>
</table>

**PERSPECTIVES**

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>193</td>
<td>Human Rights Litigation in Southern Africa: Not Easily Able to Discount Prevailing Public Opinion</td>
</tr>
<tr>
<td>201</td>
<td>Making Laws Work: Advocacy Forum’s Experiences in Prevention of Torture in Nepal</td>
</tr>
<tr>
<td>213</td>
<td>Human Rights and Social Change in Angola</td>
</tr>
<tr>
<td>219</td>
<td>The Struggle for the Recognition of Human Rights in Mozambique: Advances and Setbacks</td>
</tr>
<tr>
<td>227</td>
<td>The Human Rights Struggle in Indonesia: International Advances, Domestic Deadlocks</td>
</tr>
<tr>
<td>237</td>
<td>A vision of China’s Democratic Future</td>
</tr>
<tr>
<td>247</td>
<td>Challenges to the Sustainability of the Human Rights Agenda in Brazil</td>
</tr>
<tr>
<td>257</td>
<td>Are we Throwing Out the Baby with the Bathwater?: The North-South Dynamic from the Perspective of Human Rights Work in Northern Ireland</td>
</tr>
<tr>
<td>265</td>
<td>“The Particularities in Cuba Are Not Always Identified Nor Understood By Human Rights Activists From Other Countries”</td>
</tr>
</tbody>
</table>

**VOICES**

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>273</td>
<td>Why Should We have to “Represent” Anyone?</td>
</tr>
<tr>
<td>283</td>
<td>Voices from the Jungle on the Witness Stand of the Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>293</td>
<td>NGOs, Human Rights and Representation</td>
</tr>
<tr>
<td>305</td>
<td>Experimentation and Innovation in the Accountability of Human Rights Organizations in Latin America</td>
</tr>
<tr>
<td>323</td>
<td>Democratic Minorities in 21st Century Democracies</td>
</tr>
<tr>
<td>335</td>
<td>Human Rights Familiarity and Socio-Economic Status: A Four-Country Study</td>
</tr>
<tr>
<td>353</td>
<td>To Build a Global Movement to Make Human Rights and Social Justice a Reality For All</td>
</tr>
<tr>
<td>365</td>
<td>“Role of International Organizations Should Be to Support Local Defenders”</td>
</tr>
</tbody>
</table>
INTRODUCTION

... 

HUMAN RIGHTS IN MOTION: A MAP TO A MOVEMENT’S FUTURE

Lucia Nader (Executive Director, Conectas)
Juana Kweitel (Program Director, Conectas)
Marcos Fuchs (Associate Director, Conectas)

Sur Journal was created ten years ago as a vehicle to deepen and strengthen bonds between academics and activists from the Global South concerned with human rights, in order to magnify their voices and their participation before international organizations and academia. Our main motivation was the fact that, particularly in the Southern hemisphere, academics were working alone and there was very little exchange between researchers from different countries. The journal’s aim has been to provide individuals and organizations working to defend human rights with research, analyses and case studies that combine academic rigor and practical interest. In many ways, these lofty ambitions have been met with success: in the past decade, we have published articles from dozens of countries on issues as diverse as health and access to treatment, transitional justice, regional mechanisms and information and human rights, to name a few. Published in three languages and available online and in print for free, our project also remains unique in terms of geographical reach, critical perspective and its Southern ‘accent’. In honour of the founding editor of this journal, Pedro Paulo Poppovic, the 20th issue opens with a biography (by João Paulo Charleaux) of this sociologist who has been one of the main contributors to this publication’s success.

This past decade has also been, in many ways, a successful one for the human rights movement as a whole. The Universal Declaration of Human Rights has recently turned 60, new international treaties have been adopted and the old but good global and regional monitoring systems are in full operation, despite criticisms regarding their effectiveness and attempts by States to curb their authority. From a strategic perspective, we continue to use, with more or less success, advocacy, litigation and naming-and-shaming as our main tools for change. In addition, we continue to nurture partnerships between what we categorize as local, national and international organizations within our movement.

Nevertheless, the political and geographic coordinates under which the global human
rights movement has operated have undergone profound changes. Over the past decade, we have witnessed hundreds of thousands of people take to the streets to protest against social and political injustices. We have also seen emerging powers from the South play an increasingly influential role in the definition of the global human rights agenda. Additionally, the past ten years have seen the rapid growth of social networks as a tool of mobilization and as a privileged forum for sharing political information between users. In other words, the journal is publishing its 20th issue against a backdrop that is very different from that of ten years ago. The protests that recently filled the streets of many countries around the globe, for example, were not organized by traditional social movements nor by unions or human rights NGOs, and people's grievances, more often than not, were expressed in terms of social justice and not as rights. Does this mean that human rights are no longer seen as an effective language for producing social change? Or that human rights organizations have lost some of their ability to represent wronged citizens? Emerging powers themselves, despite their newly-acquired international influence, have hardly been able – or willing – to assume stances departing greatly from those of “traditional” powers. How and where can human rights organizations advocate for change? Are Southern-based NGOs in a privileged position to do this? Are NGOs from emerging powers also gaining influence in international forums?

It was precisely to reflect upon these and other pressing issues that, for this 20th issue, SUR’s editors decided to enlist the help of over 50 leading human rights activists and academics from 18 countries, from Ecuador to Nepal, from China to the US. We asked them to ponder on what we saw as some of the most urgent and relevant questions facing the global human rights movement today: 1. Who do we represent? 2. How do we combine urgent issues with long-term impacts? 3. Are human rights still an effective language for producing social change? 4. How have new information and communication technologies influenced activism? 5. What are the challenges of working internationally from the South?

The result, which you now hold in your hands, is a roadmap for the global human rights movement in the 21st century – it offers a vantage point from which it is possible to observe where the movement stands today and where it is heading. The first stop is a reflection on these issues by the founding directors of Conectas Human Rights, Oscar Vilhena Vieira and Malak El-Chichini Poppovic. The roadmap then goes on to include interviews and articles, both providing in-depth analyses of human rights issues, as well as notes from the field, more personalized accounts of experiences working with human rights, which we have organized into six categories, although most of them could arguably be allocated to more than one category:

Language. In this section, we have included articles that ponder the question of whether human rights – as a utopia, as norms and as institutions – are still effective for producing social change. Here, the contributions range from analyses on human rights as a language for change (Stephen Hopgood and Paulo Sérgio Pinheiro), empirical research on the use of the language of human rights for articulating grievances in recent mass protests (Sara Burke), to reflections on the standard-setting role and effectiveness of international human rights institutions (Raquel Rolnik, Vinodh Jaichand and Emilio
Álvarez Icaza). It also includes studies on the movement’s global trends (David Petrasek), challenges to the movement’s emphasis on protecting the rule of law (Kumi Naidoo), and strategic proposals to better ensure a compromise between utopianism and realism in relation to human rights (Samuel Moyn).

**Themes.** Here we have included contributions that address specific human rights topics from an original and critical standpoint. Four themes were analysed: economic power and corporate accountability for human rights violations (Phil Bloomer, Janet Love and Gonzalo Berrón); sexual politics and LGBTI rights (Sonia Corrêa, Gloria Careaga Pérez and Arvind Narrain); migration (Diego Lorente Pérez de Eulate); and, finally, transitional justice (Clara Sandoval).

**Perspectives.** This section encompasses country-specific accounts, mostly field notes from human rights activists on the ground. Those contributions come from places as diverse as Angola (Maria Lúcia da Silveira), Brazil (Ana Valéria Araújo), Cuba (María-Ileana Faguaga Iglesias), Indonesia (Haris Azhar), Mozambique (Salvador Nkamat) and Nepal (Mandira Sharma). But they all share a critical perspective on human rights, including for instance a sceptical perspective on the relation between litigation and public opinion in Southern Africa (Nicole Fritz), a provocative view of the democratic future of China and its relation to labour rights (Han Dongfang), and a thoughtful analysis of the North-South duality from Northern Ireland (Maggie Beirne).

**Voices.** Here the articles go to the core of the question of whom the global human rights movement represents. Adrian Gurza Lavalle and Juana Kweitel take note of the pluralisation of representation and innovative forms of accountability adopted by human rights NGOs. Others study the pressure for more representation or a louder voice in international human rights mechanisms (such as in the Inter-American system, as reported by Mario Melo) and in representative institutions such as national legislatures (as analysed by Pedro Abramovay and Heloisa Griggs). Finally, Chris Grove, as well as James Ron, David Crow and Shannon Golden emphasize, in their contributions, the need for a link between human rights NGOs and grassroots groups, including economically disadvantaged populations. As a counter-argument, Fateh Azzam questions the need of human rights activists to represent anyone, taking issue with the critique of NGOs as being overly dependent on donors. Finally, Mary Lawlor and Andrew Anderson provide an account of a Northern organization’s efforts to attend to the needs of local human rights defenders as they, and only they, define them.

**Tools.** In this section, the editors included contributions that focus on the instruments used by the global human rights movement to do its work. This includes a debate on the role of technology in promoting change (Mallika Dutt and Nadia Rasul, as well as Sopheap Chak and Miguel Pulido Jiménez) and perspectives on the challenges of human rights campaigning, analysed provocatively by Martin Kirk and Fernand Alphen in their respective contributions. Other articles point to the need of organizations to be more grounded in local contexts, as noted by Ana Paula Hernández in relation to Mexico, by Louis Bickford in what he sees as a convergence towards the global middle, and finally by Rochelle Jones, Sarah Rosenhek and Anna Turley in their movement-support model. In addition, it is noted by Mary Kaldor that NGOs are not the same as civil society,
properly understood. Furthermore, litigation and international work are cast in a critical light by Sandra Carvalho and Eduardo Baker in relation to the dilemma between long and short term strategies in the Inter-American system. Finally, Gastón Chillier and Pétalla Brandão Timo analyse South-South cooperation from the viewpoint of a national human rights NGO in Argentina.

**Multipolarity.** Here, the articles challenge our ways of thinking about power in the multipolar world we currently live in, with contributions from the heads of some of the world’s largest international human rights organizations based in the North (Kenneth Roth and Salil Shetty) and in the South (Lucía Nader, César Rodríguez-Garavito, Dhananjayan Sriskandarajah and Mandeep Tiwana). This section also debates what multipolarity means in relation to States (Emilie M. Hafner-Burton), international organizations and civil society (Louise Arbour) and businesses (Mark Malloch-Brown).

Conectas hopes this issue will foster debate on the future of the global human rights movement in the 21st century, enabling it to reinvent itself as necessary to offer better protection of human rights on the ground.

Finally, we would like to emphasize that this issue of Sur Journal was made possible by the support of the Ford Foundation, Open Society Foundations, the Oak Foundation, the Sigrid Rausing Trust, the International Development Research Centre (IDRC) and the Swedish International Development Cooperation Agency (SIDA). Additionally, Conectas Human Rights is especially grateful for the collaboration of the authors and the hard work of the Journal’s editorial team. We are also extremely thankful for the work of Maria Brant and Manoela Miklos for conceiving this Issue and for conducting most of the interviews, and for Thiago Amparo for joining the editorial team and making this Issue possible. We are also tremendously thankful for Luz González’s tireless work with editing the contributions received, and for Ana Cernov for coordinating the overall editorial process.
Human Rights in Motion

Themes

JANET LOVE
Are We Depoliticising Economic Power?: Wilful Business Irresponsibility and Bureaucratic Response by Human Rights Defenders

PHIL BLOOMER
Are Human Rights an Effective Tool for Social Change?: A Perspective on Human Rights and Business

GONZALO BERRÓN

DIEGO LORENTE PÉREZ DE EULATE
Issues and Challenges Facing Networks and Organisations Working in Migration and Human Rights in Mesoamerica

GLORIA CAREAGA PÉREZ
The Protection of LGBTI Rights: An Uncertain Outlook

ARVIND NARRAIN
Brazil, India, South Africa: Transformative Constitutions and their Role in LGBT Struggles

SONIA CORRÉA
Emerging Powers: Can it be that Sexuality and Human Rights is a Lateral Issue?

CLARA SANDOVAL
Transitional Justice and Social Change
CLARA SANDOVAL

Clara Sandoval is a qualified lawyer and a Senior Lecturer in the School of Law at Essex University, as well as Director of the Essex Transitional Justice Network. She is the former Director of the LLM in International Human Rights Law, member of the Human Rights Centre, and Member of the Advisory Board of the Human Rights Clinic. She teaches and researches on areas related to the Inter-American System of Human Rights, Legal Theory, Business and Human Rights and Transitional Justice.

Email: csando@essex.ac.uk

ABSTRACT

This article questions whether transitional justice can deliver social change. The author discusses the importance of re-assessing expectations so that transitional justice processes and the legal framework that drives them, including international human rights law, are used to achieve what they are able to deliver. By classifying social change in three categories, namely: ordinary changes, structural changes and fundamental changes, the author argues that a fundamental social change happens when social struggle is able to put forward a new dominant ideology inspired by radically different values to those that allowed the repression or the conflict to take place. While it is not realistic to expect transitional justice to deliver development, democracy, rule of law or peace, the author argues, transitional justice, when properly conducted, can indeed contribute to deliver fundamental change but it cannot deliver it on its own.

Original in English.

Received in June 2014.

KEYWORDS


This paper is published under the creative commons license. This paper is available in digital format at <www.surjournal.org>.
1 Introduction

International human rights law has become one of the languages of social change of our time. It has gained such a prominent role in States’ political agendas that over almost six decades, several international human rights and related treaties have been adopted and work continues on new ones. Domestic systems have also been active in this area, engaging in the dynamic incorporation of such treaties and other international obligations into their domestic law. New constitutions and legislation have been enacted and institutions (judicial and non-judicial) have been created in order to apply this new language of change. Even in the majority of relevant political discussions today, international human rights law appears to set the limits or possibilities for change.

Transitional justice has also become a language of social change. While it is not a branch of international law, as international human rights law is, it is a field deeply influenced by the power of this law and of other branches of international law. Indeed, they constitute its normative framework, dictating the types of changes that are needed in society to reckon with the legacy of mass atrocities. Indeed, stake-holders are turning to it in the hope that through its various processes and mechanisms (justice, truth, reparation and guarantees of non-recurrence), all of which are intimately related to the existence of international obligations, it might deliver lasting peace, reconciliation, democracy, human rights protection and even, for some, development and poverty eradication.¹

However, a few decades have passed since transitional justice began in the Americas region (Chile, Argentina, Guatemala, El Salvador and others) and in other parts of the world (South Africa), and legal and social operators are still waiting to enhance human rights protection and achieve these social goals. South Africa, for example, despite its very well-known truth and reconciliation commission’s work, and despite various other measures taken to deal with the legacy of apartheid, remains
a highly unequal State, poverty continues to be rampant (TERREBLANCHE, 2002, p. 5) and key human rights like the right to reparation of justice appear to be more theory than a social reality. So, what happened? Did transitional justice processes and mechanisms fail? What did South Africa do wrong?

If we look at other States that have engaged with transitional justice, the story is not that different. Consider, for example, Guatemala, Sierra Leone or East Timor. Therefore it is prudent to consider whether transitional justice can deliver social change and to re-assess expectations so that we use transitional justice processes and the legal framework that drives them, including international human rights law, to achieve what they are able to deliver.

This article shares some thoughts on this pressing question. Given space constraints, some issues cannot be explored in great detail but it provides the reader with some provocative thoughts so that all those interested and working in the field of transitional justice can take stock of what we have done and learned during these decades of work and project that into the future, with vision and realism about what is possible. It is there that the real potential of transitional justice for social change is to be found.

2 The normative framework of transitional justice

Transitional justice is a relatively new field. It is only a few decades old and it has emerged out of practice. Some of this practice is the result of strong campaigning carried out by human rights lawyers around the world to resist gross human rights violations and/or serious violations of humanitarian law (ARTHUR, 2009). That is how it began in countries like Argentina or Chile. At the time there was (and there still is) a strong need to fight impunity, and human rights law constituted a suitable tool to this end. Human rights lawyers began to advocate, quite strongly, that under international human rights law and other branches of public international law, there was an obligation to investigate, prosecute and, if applicable, punish perpetrators of human rights violations and serious breaches of humanitarian law (MENDEZ, 1997; ORENTLICHER, 1991, 2007) that there was a right to know the truth of what happened (HAYNER, 2001; UNITED NATIONS, 2006) and a right to reparations for harm suffered (SHELTON, 2005; UNITED NATIONS, 1997, 2005). It was also said that States had an obligation to adopt and implement guarantees of non-recurrence and institutional reform measures to ensure that what happened would not happen again (SHELTON, 2005; UNITED NATIONS, 1997, 2005). Therefore, as can be seen, transitional justice processes (justice, truth, reparation and guarantees of non-recurrence) respond to and are driven by an international legal framework that includes international human rights law, international refugee law, international humanitarian law and international criminal law (UNITED NATIONS, 2004). Customary law and treaty law support the existence of these obligations under public international law. Therefore, any consideration of the potential of transitional justice to bring about social change is also a consideration of the potential of this legal framework to help towards that end.
3 The meaning and the possibility of social change and transitional justice

It is often taken for granted that States have the quality to free themselves from anything that oppresses them or keeps them from developing. This idea is based on the assumption that changes and progress are possible. This is a key belief of modernity. This idea is also present in international human rights law and the transitional justice field. It is believed that a process by which the attainment of a certain objectives, be they reckoning with the legacy of mass atrocities, establishing the rule of law, achieving peace, human rights, democracy and others, enabling perpetrators, victims and society as a whole to move forward, is achievable. This means that it is possible to transform the social, economic and political conditions and behaviour that made the atrocities possible. This possibility of social change, however, is very often taken for granted, while the capacity of social conditions to remain unchanged is usually overlooked. Yet this is not to suggest that change in the field of transitional justice does not occur. As with other social elements, change and fixity are present in the field of transitional justice and they can set limitations or possibilities on the former. These elements should be carefully scrutinised. This point is of extreme importance when approaching transitional justice, as we have to deal with different types of changes occurring in different tempos, which suggests that there are certain transformations which are natural to the system and others which conflict with the nature of the system transitional justice ought to transform. However, for the purposes of this article, it can be said that because the social conditions, broadly speaking, are susceptible to change, progress is possible, without all change implying progress. Indeed, change can take place in the middle of contradictions and complex transformations, which does not imply progress as a consequence, much less that the objectives of transitional justice have been achieved.

Three types of social changes are present in social struggles in the field of transitional justice and more broadly: ordinary changes, structural changes and fundamental changes. The key to distinguish each one of these forms of change is their relationship between what changes and the ideology that allowed atrocities to happen. If the change taking place in the field of transitional justice does not transform the ideology that supported the conflict or the repressive regime, we have ordinary or structural changes. For example, the enactment of an amnesty law or statutes of limitation constitutes a form of ordinary change that often happens during a transition. These laws are enacted and, most of the time, drafted in order to maintain the ideology that made the atrocities possible. They might be the result of a strong political struggle and might face a lot of resistance but at the end of the day, they do not threaten or transform the existing regime. They perpetuate it.

A structural change is a bit more complex and can give the illusion that fundamental change is at stake. For example, the enactment of a new Political Constitution, as happened in South Africa with the Interim Constitution of 1993 or the Political Constitution of 1996 (post-apartheid) or with the Colombian Constitution of 1991, is often considered to be a fundamental change, given that the foundational piece of the legal system has been transformed. However, this is
far from being the case. These *structural* transformations might be necessary but are not sufficient for the production of this type of change. The enactment of a new Constitution, an important guarantee of non-repetition, will not constitute a fundamental change unless it is able to transform the ideology that supported the old system and this does not simply happen with the enactment of a new foundational law. The case of South Africa is again illustrative in this respect. An important interim and a new constitution were enacted that established civil, political, economic, social and cultural rights, along with various remedies for individuals and important social institutions to transform the status quo established by the apartheid regime. Still, despite the significant work carried out by institutions like the South African Constitutional Court to protect rights, the majority of South Africans do not have their rights protected and it remains a deeply unequal society, which was entrenched already during apartheid. Therefore, important elements of the apartheid ideology remain present in South Africa’s society today.

The establishment of transitional justice mechanisms such as truth commissions, commissions of enquiry, civil and criminal tribunals as well as reparation programmes could also be seen as structural changes. While often they have such a nature, this is not the case in all situations, given that some of these mechanisms are established not to achieve the aims they seek—truth, justice and reparation or prevention—but to give the illusion that things are changing, when in reality, the objective of those in power is to maintain the *status quo*.

A fundamental social change happens when social struggle is able to put forward a new dominant ideology inspired by radically different values to those present during the repression or the conflict. It is hard to think of an example to-date where a change has been so fundamental in a society undergoing a transition that the old ideology has been defeated. Transitional justice, in my view, is due to provide us with such example. This also means that the majority of changes happening in the transitional justice field are ordinary, with some structural ones also taking place. Once again, look at South Africa. While apartheid and racial discrimination were defeated—key tenets of the dominant ideology until then—inequality is still present at various levels and particularly, but not only, affects the black population.

This does not mean that change in the transitional justice field is not important or that it is not possible. Indeed, transitional justice is only possible in States where the old ideology has been weakened, is under threat and has lost legitimacy, as happened with the apartheid regime or with the dictatorships in the Southern Cone. This constitutes a unique moment, a unique window of opportunity, even if small, to contribute to the transformation of that old ideology that permitted or consented to the atrocities that took place. Therefore, transitional justice offers important opportunities that are not often present in other political struggles.

### 3.1 What kind of change is achievable in the field of transitional justice?

While change (ordinary, structural and/or fundamental) in the field of transitional justice is possible, as has been suggested, it is important to remember that most often the expectations about what it can deliver are without grounds. To expect transitional
justice to deliver development, democracy, rule of law or peace is beyond what it can achieve, even if it might contribute to some of these goals. It is better to see the field of transitional justice in realistic terms without over dimensioning its potential. In such terms, transitional justice is about reckoning with the legacy of mass atrocities, and in that context, it is about achieving justice, truth, reparation and setting the grounds for such atrocities not to happen again. This is meant to contribute to a fundamental transformation of the ideology that allowed such atrocities. These are goals that transitional justice can work to deliver, using the various forms of change already indicated. This is not to set the bar too low. Indeed, transitional justice has struggled for decades to deliver this realistic view.

Transitional justice also delivers change at the individual level. For example, certain victims or perpetrators may feel that things have changed for them and that those changes are more than significant, as happens when a State recognises international responsibility for what it has done, apologises to the victims or finds the whereabouts of a disappeared family member. Others can feel and believe that changes have not happened at all, despite evidence that some things have changed. While the views and feelings of those who have been part of the repression or conflict, or suffered their consequences, are relevant to considering issues of social change, in this article I am concerned with changes of a universal nature, changes that affect society as a whole and not only few of its members. For example, from a justice perspective, structural change would mean that the majority of perpetrators (intellectual and material) have been investigated, prosecuted and punished, even if some of them were not, because their crimes were not proven beyond reasonable doubt.

3.2 How to maximise the potential of transitional justice processes to deliver social change?

Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence reminds us that transitional justice is not a package of processes from which States can pick and choose (UNITED NATIONS, 2012, paras. 22-27). All processes of transitional justice should be used as they complement each other and are interdependent (UNITED NATIONS, 2012, paras. 22-24). Also, the success of these mechanisms in achieving their aims depends strongly on their capacity to co-exist and reinforce each other. However, States have been very selective about the processes they are ready to engage with and even if they implement some of them, they do so with various limitations (financial, legal and human). For example, truth is usually prioritised in order to avoid justice and or reparation as was the case of El Salvador. Reparation is often neglected, as has happened in East Timor, despite the recommendations made by CAVR (The Commission for Reception, Truth and Reconciliation) and very few examples exist where States have taken seriously the need to redress victims. Guarantees of non-recurrence are the missing part of the puzzle in almost every State undergoing a process of transitional justice.

Persuading States of the need to consider the aggregate value of all transitional justice processes and mechanisms is a challenge. Various questions remain outstanding about how to link the various mechanisms in a way that enhances their potential to
achieve their aims. There are also questions about whether sequencing is necessary. However, as the field of transitional justice evolves and new experiences take place, we continue to learn about the value added using all of these measures together. Even more, the will of States to reckon with the past can be tested by their capacity to engage in a holistic way with transitional justice mechanisms. The less mechanisms of transitional justice they are willing to engage with, the more that their will to deal with the legacy of mass atrocities can be questioned.

Equally, transitional justice processes cannot be used in isolation from other important public policies that are adopted in a State moving away from conflict or repression, something De Greiff has also noted. Transitional justice should find ways to complement and enhance development projects, to work closely with DDR (disarmament, demobilisation and reintegration) and with other similar policies or programmes that take place in parallel to transitional justice, always aiming to maximise its lasting impact (UNITED NATIONS, 2012, para. 50). Transforming in a fundamental way the ideology that made the atrocities possible requires sustained social, economic, cultural and political efforts that use transitional justice processes but that go beyond them.

Aiming to reckon with the legacy of mass atrocities is a big challenge. Removing ideologies that have been present and that have allowed and have consented to such atrocities is not a task for a few years or days. It takes generations to change ways of thinking about humanity, what is right and wrong, and what goals should be pursued in society. Unfortunately, transitional justice mechanisms and processes continue to be thought of as extraordinary mechanisms that are only needed for a few years, after which, the work is done. This approach is a tremendous error. While it might be the case that they do not need to be permanent mechanisms, for social change to take place, of the kind that transitional justice can deliver, it is essential to invest in it in a holistic way for various years. But the reality is that States moving away from repression or conflict, with or without international cooperation, only back up such processes for a short period of time and then abandon the projects, as if the goals had been achieved. Sustained investment (human and financial) is essential in countries reckoning with their past. It is not only that structural and particularly fundamental change takes time to materialise, but also that States engaging with transitional justice have to constantly adjust their policy interventions in this area.

Chile is a good example of the decades involved in moving forward and transforming ideologies. In the case of Chile, more than 24 years have passed since Pinochet left power and Patricio Aylwin assumed as president of the country. Nevertheless, the Chilean Constitution is the same constitution of Pinochet from 1980 (although it has been amended on various occasions), and the amnesty law (Decree 2191/1978) remains part of the legal system. This is not to suggest that ordinary and structural changes have not taken place. Without a doubt, Chile has had an important experience with transitional justice processes that includes reparations, memorialisation, truth and, lately, justice measures. However, it did not deliver on these fronts right from the beginning. Indeed, while its first truth and reconciliation commission was established in 1990 to clarify the truth about the disappearances and killings and related violations to such atrocities like torture (CHILE, 1990), it
was not until September 2003, thirteen years later, that the Valech Commission was established to identify the victims of detention and torture for political reasons (CHILE, 2003). This means that even in States like Chile, where transitional justice has been an on-going project, the achievement of transitional justice goals remains an objective to be pursued.

Finally, transitional justice processes should always aim to empower victims and those most vulnerable from the conflict or period of repression. Only by getting them to understand that they matter for society and that they are agents of social change will they help transform old ideologies. Otherwise, they will always be marginalised and victimised. Therefore, all transitional justice mechanisms should see victims not as objects to achieve aims, as often happens with criminal investigations, but as rights holders. In this regard it is particularly relevant to empower women, children, minorities, the elderly and the disabled, among others (UNITED NATIONS, 2012, paras. 29-35).6

4 Conclusions

Without a doubt the field of transitional justice has articulated the language of social change. However, it is important to re-dimension its real potential to bring about any kind of change in society. In the transitional justice field, we find examples of ordinary and structural changes, and it is even possible to consider that it can contribute towards fundamental social change.

To be able to understand what changes take place in transitional justice and to be able to measure its ability to achieve them, it is necessary to clarify the kind of goals that could be pursued through transitional justice processes and mechanisms. In this regard, it has been suggested that a realistic approach is more likely to deliver changes. It is reasonable to expect transitional justice processes to deliver justice, reparation, truth and non-recurrence and to contribute in important ways to fundamental social change by helping to transform the ideology that permitted atrocities to happen. It is there that their potential for social change should be sought, and it is in the summation of the various tools it offers (truth, justice, reparation and non-repetition) that its real ability to deliver social change has to be pursued.

REFERENCES

Bibliography and Other Sources


Jurisprudence


NOTES

2. Updated Set of principles for the protection and promotion of human rights through action to combat impunity.
3. Nisbet, in his book Social Change and History, develops a powerful argument to show the priority of fixity over change in the social reality. He claims that, “Change is, however, not ‘natural’, not normal, much less ubiquitous and constant. Fixity is” and then continues, “In the realm of observation and common sense, nothing is more obvious than the conservative bent of human behavior, the manifest desire to preserve, hold, fix and keep stable. Common sense tells us that, given the immense sway of habit in individual behavior and of custom, tradition, and the sacred in collective behavior, change could hardly be a constant, could hardly be ubiquitous” (NISBET, 1969, p. 271).
4. Just think, for example, how difficult it is to enact a new constitution, especially inside rigid legal systems, or to enact a new treaty in the international arena. Most of the changes in the law are gradual changes that have to follow certain patterns not to violate the essence of the system where they are taking place.
6. In this report de Greiff reminds us of the importance of recognition and trust for victims. They are goals that transitional justice should aim to achieve.
Sergio Branco
Brazilian copyright law and how it restricts the efficiency of the human right to education

Thomas W. Pogge
Eradicating systemic poverty: brief for a Global Resources Dividend

Lucia Nader
The role of NGOs in the UN Human Rights Council

Cécilia MacDowell Santos
Transnational legal activism and the State: reflections on cases against Brazil in the Inter-American Commission on Human Rights

Transitional Justice

Tara Urs
Imagining locally-motivated accountability for mass atrocities: voices from Cambodia

Cecily Rose and Francis M. Ssekandi
The pursuit of transitional justice and African traditional values: a clash of civilizations – The case of Uganda

Ramona Vijeyarasa
Facing Australia’s history: truth and reconciliation for the stolen generations

Elizabeth Salomón 6.
The long road in the fight against poverty and its promising encounter with human rights

Interview with Juan Méndez
By Glenda Mezarobba

Martín Abregú
Human rights for all: from the struggle against authoritarianism to the construction of an all-inclusive democracy - A view from the Southern Cone and Andean region

Amita Dhanda
Constructing a new human rights lexicon: Convention on the Rights of Persons with Disabilities

Laura Davis Mattar
Legal recognition of sexual rights – a comparative analysis with reproductive rights

James L. Cavallaro and Stephanie Erin Brewer
The virtue of following: the role of Inter-American litigation in campaigns for social justice

Right to Health and Access to Medicaments

Paul Hunt and Rajat Khosla
The human right to medicines

Thomas Pogge
Medicines for the world: boosting innovation without obstructing free access

Jorge Contesse and Domingo Lovera Parmo
Access to medical treatment for people living with HIV/AIDS: success without victory in Chile

Gabriela Costa Chaves, Marcela Fogaça Vieira and Renata Reis
Access to medicines and intellectual property in Brazil: reflections and strategies of civil society

Sixty Years of the Universal Declaration of Human Rights

Paulo Sérgio Pinheiro
Sixty years after the Universal Declaration: navigating the contradictions

Fernanda Doz Costa
Poverty and human rights from rhetoric to legal obligations: a critical account of conceptual frameworks

Eitan Felsner
A new frontier in economic and social rights advocacy? Turning quantitative data into a tool for human rights accountability

Katherine Short
From Commission to Council: has the United Nations succeeded in creating a credible human rights body?

Anthony Romero
Interview with Anthony Romero, Executive Director of the American Civil Liberties Union (ACLU)

Economic, Social and Cultural Rights

Anuj Bhuwania

Daniela de Vito, Aisha Gill and Damien Sh-Ort
Rape characterised as genocide

Christian Courtis
Notes on the implementation by Latin American courts of the ILO Convention 169 on indigenous peoples

Benyam D. Mezmu
Intercountry adoption as a measure of last resort in Africa: Advancing the rights of a child rather than a right to a child

Human Rights of People on the Move: Migrants and Refugees

Katharine Derderian and Liesbeth Schockaert
Responding to “mixed” migration flows: A humanitarian perspective

Juan Carlos Murillo
The legitimate security interests of the State and international refugee protection

Manuela Trindade Viana
International cooperation and internal displacement in Colombia: Facing the challenges of the largest humanitarian crisis in South America

Joseph Amón and Katherine Todrys
Access to antiretroviral treatment for migrant populations in the Global South

Pablo Ceriani Cerndas
European migration control in the African territory: The omission of the extraterritorial character of human rights obligations

Victor Abramovich
From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System

Viviana Bohórquez Monsalve and Javier Aguirre Román
Tensions of Human Dignity: Conceptualization and Application to International Human Rights Law

Debora Diniz, Lívia Barbosa and Wederson Rufino dos Santos
Disability, Human Rights and Justice

Julieta Lemaitre Ripoll
Love in the Time of Cholera: LGBT Rights in Colombia

Economic, Social and Cultural Rights

Malcolm Langford
Domestic Adjudication and Economic, Social and Cultural Rights: A Socio-Legal Review
ANN BLYBERG
The Case of the Mislaid Allocation: Economic and Social Rights and Budget Work

ALDO CALIARI
Trade, Investment, Finance and Human Rights: Assessment and Strategy Paper

PATRICIA FEENEY
Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda

INTERNATIONAL HUMAN RIGHTS COLLOQUIUM
Interview with Rindai Chipfunde-Vava, Director of the Zimbabwe Election Support Network (ZESN) Report on the IX International Human Rights Colloquium

SUR 12, v. 7, n. 12, Jun. 2010

SALIL SHETTY
Foreword

FERNANDO BASCH ET AL.
The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance With its Decisions

RICHARD BOURNE
The Commonwealth of Nations: Intergovernmental and Nongovernmental Strategies for the Protection of Human Rights in a Post-colonial Association

MILLENNIUM DEVELOPMENT GOALS

AMNESTY INTERNATIONAL
Combating Exclusion: Why Human Rights Are Essential for the MDGs

VICTORIA TAULLI-CORPUZ

ALICIA ELY YAMIN
Toward Transformative Accountability: Applying a Rights-based Approach to Fulfill Maternal Health Obligations

SARAH ZAIDI
Millennium Development Goal 6 and the Right to Health: Conflictual or Complementary?

MARCOS A. ORELLANA
Climate Change and the Millennium Development Goals: The Right to Development, International Cooperation and the Clean Development Mechanism

CORPORATE ACCOUNTABILITY

LINDIWE KNUTSON
Aliens, Apartheid and US Courts: Is the Right of Apartheid Victims to Claim Reparations from Multinational Corporations at last Recognized?

DAVID BILCHITZ
The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?

SUR 13, v. 7, n. 13, Dec. 2010

GLENDA MEZAROBBA
Between Reparations, Half Truths and Impunity: The Difficult Break with the Legacy of the Dictatorship in Brazil

GERARDO ARCE ARCE
Armed Forces, Truth Commission and Transitional Justice in Peru

REGIONAL HUMAN RIGHTS MECHANISMS

FELIPE GONZÁLEZ
Urgent Measures in the Inter-American Human Rights System

JUAN CARLOS GUTIÉRREZ AND SILVANO CANTÚ
The Restriction of Military Jurisdiction in International Human Rights Protection Systems

DEBRA LONG AND LUKAS MUNTINGH
The Special Rapporteur on Prisons and Conditions of Detention in Africa and the Committee for the Prevention of Torture in Africa: The Potential for Synergy or Inertia?

LUCYLINE NKATHA MURUNGI AND JACQUI GALLINETTI
The Role of Sub-Regional Courts in the African Human Rights System

SUR 15, v. 8, n. 15, Dec. 2011

DAVID BILCHITZ
The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?

J. PAUL MARTIN
Human Rights Education in Communities Recovering from Major Social Crisis: Lessons for Haiti

THE RIGHTS OF PERSONS WITH DISABILITIES

LÓIS FERNANDO ASTORGA
Analysis of Article 33 of the UN Convention: The Critical Importance of National Implementation and Monitoring

LEONDEL IPÉER VAN REENEN
The Role of Sub-Regional Courts in the African Human Rights System

MARTA SCHAAF
Negotiating Sexuality in the Convention on the Rights of Persons with Disabilities

TOBIAS PIETER VAN REENEN AND HELÈNE COMBRINCK
The UN Convention on the Rights of Persons with Disabilities: Progress after 5 Years

STELLA C. REICHER
Human Diversity and Asymmetries: A Reinterpretation of the Social Contract under the Capabilities Approach

PETER LUCAS
The Open Door: Five Foundational Films That Seeded the Representation of Human Rights for Persons with Disabilities

LUIS GALLEGOS CHIRIBOGA
Interview with Luis Gallegos Chiriboga, President (2002-2005) of the Ad Hoc Committee that Drew Up the Convention on the Rights of Persons with Disabilities

ZIBA MIR-HOSSEINI
Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts

LEANDRO MARTINS ZANITELLI
Corporations and Human Rights: The Debate Between Volunteerists and Obligationists and the Undermining Effect of Sanctions

INTERVIEW WITH DENISE DORA
Former Ford Foundation’s Human Rights Officer in Brazil (2000-2011)
IMPLEMENTATION AT THE NATIONAL LEVEL OF THE DECISIONS OF THE REGIONAL AND INTERNATIONAL HUMAN RIGHTS SYSTEMS

MARIA ISSAEVA, IRINA SERGEEVA AND MARIA SUCHKOVA
Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges

CÁSSIA MARIA ROSATO AND LUDMILA CERQUEIRA CORREIA
The Damín Díe Ximenes Lopes Case: Changes and Challenges Following the First Ruling Against Brazil in the Inter-American Court of Human Rights

DAMIÂN A. GONZÁLEZ-SALZBERG
The Implementation of Decisions from the Inter-American Court of Human Rights in Argentina: An Analysis of the Jurisprudential Swings of the Supreme Court

MARCIA NINA BERNARDES
Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implementation of International Decisions

SPECIAL ISSUE: CONECTAS HUMAN RIGHTS - 10 YEARS
The Making of an International Organization from/in the South


PATRICIO GALELLA AND CARLOS ESPOSITO
Extraordinary Renditions in the Fight Against Terrorism. Forced Disappearances?

BRIDGET CONLEY-ZILKIC
A Challenge to Those Working in the Field of Genocide Prevention and Response

MARTA RODRIGUEZ DE ASSIS MACHADO, JOSÉ RODRIGO RODRIGUEZ, FÁLAVIO MARQUES PRÔL, GABRIELA JUSTINO DA SILVA, MARINA ZANATA GANZAROLLI AND RENATA DO VALE ELIAS
Law Enforcement at Issue: Constitutionality of Maria da Penha Law in Brazilian Courts

SIMON M. WELDEHAIMANOT
The ACHPR in the Case of Southern Cameroons

ANDRÉ LUIZ SICILIANO
The Role of the Universalization of Human Rights and Migration in the Formation of a New Global Governance

CITIZEN SECURITY AND HUMAN RIGHTS

GINO COSTA
Citizen Security and Transnational Organized Crime in the Americas: Current Situation and Challenges in the Inter-American Arena

MANUEL TUFRÓ
Civic Participation, Democratic Security and Conflict Between Political Cultures. First Notes on an Experiment in the City of Buenos Aires

CELS
The Current Agenda of Security and Human Rights in Argentina. An Analysis by the Center for Legal and Social Studies (CELS)

PEDRO ABRAMOVAY
Drug policy and The March of Folly

Views on the Special Police Units for Neighborhood Pacification (UPPs) in Rio de Janeiro, Brazil

RAFAEL DIAS — Global Justice Researcher

José Marcelo Zacchi — Research Associate, Institute for Studies on Labor and Society — IETS

SUR 17, v. 9, n. 17, Dec. 2012

DEVELOPMENT AND HUMAN RIGHTS

CÉSAR RODRIGUEZ GARAVITO, JUANA KWEITEL AND LAURA TRAJBER WAISBICH
Development and Human Rights: Some Ideas on How to Restart the Debate

IRENE BIGLINO, CHRISTOPHE GOLAY AND IVONA TRUSCAN
The Contribution of the UN Special Procedures to the Human Rights and Development Dialogue

LUÍS CARLOS BUÔB CONCHA
The Right to Water: Understanding its Economic, Social and Cultural Components as Development Factors for Indigenous Communities

ANDREA SCHETTINI
Toward a New Paradigm of Human Rights Protection for Indigenous Peoples: A Critical Analysis of the Parameters Established by the Inter-American Court of Human Rights

JEZEREMI GILBERT
Land Rights as Human Rights: The Case for a Specific Right to Land

PÉTALLA BRANDÃO TIMO
Development at the Cost of Violations: The Impact of Mega-Projects on Human Rights

SERGEIS ALAIN DJOYOU KAMGA AND SIYAMBONGA HELEBA
Can Economic Growth Translate into Access to Rights? Challenges Faced by Institutions in South Africa in Ensuring that Growth Leads to Better Living Standards

INTERVIEW WITH SHERDON LEADER
Transnational Corporations and Human Rights

ALINE ALBUQUERQUE AND DABNEY EVANS
Killing to Protect? Land Guards, State Subordination and Human Rights in Ghana

CRISTINA RAĐOVIĆ
The Ineffective Response of International Organisations Concerning the Militarization of Women’s Lives

SUR 18, v. 10, n. 18, Jun. 2013

INFORMATION AND HUMAN RIGHTS

SÉRGIO AMADEU DA SILVEIRA
The United Nations Human Rights Council: Six Years On

JÉRÉMIE GILBERT
Land Rights as Human Rights: The Case for a Specific Right to Land

LAURA PAUTASSI
Monitoring Access to Information from the Perspective of Human Rights Indicators

JO-MARIE BURT AND CASEY CAGLEY
Access to Information, Access to Justice: The Challenges to Accountability in Peru

FERNANDA RIBEIRO ROSA
Internet Freedom is not Enough: Towards an Internet Based on Human Rights

MARISSA VIEGAS E SILVA
Monitoring Access to Information from the Perspective of Human Rights Indicators

CARLA DANTAS
The Ineffective Response of International Organisations Concerning the Militarization of Women’s Lives

SUR 19, v. 11, n. 19, Jun. 2014

INTERNATIONAL HUMAN RIGHTS SYSTEMS

THE DAMIÃO XIMENES LOPES CASE: A CRITICAL PERSPECTIVE

LUDMILA CERQUEIRA CORREIA
The First Ruling Against Brazil in the Inter-American Court of Human Rights

CELIA MORAES DE MOURA
The Damião Ximenes Lopes Case: A Challenge to Those Working in the Inter-American Court of Human Rights

SUR 20, v. 12, n. 20, Jun. 2015

INTERNATIONAL HUMAN RIGHTS AND MIGRATION

ALINE ALBUQUERQUE AND DABNEY EVANS
Right to Health in Brazil: A Study of the Treaty-Reporting System

LINDA DARKWA AND PHILIP ATTUQUAYEFIO
Killing to Protect? Land Guards, State Subordination and Human Rights in Ghana

PREVIOUS NUMBERS
Previous numbers are available at <www.surjournal.org>.
FOREIGN POLICY AND HUMAN RIGHTS

DAVID PETRAŠEK
New Powers, New Approaches?
Human Rights Diplomacy in the 21st Century

ADRIANA ERTHAL ABDENUR AND DANÍLO MARCONDES DE SOUZA NETO
Brazil’s Development Cooperation with Africa: What Role for Democracy and Human Rights

CARLOS CERDA DEUÑAS
Incorporating International Human Rights Standards in the Wake of the 2011 Reform of the Mexican Constitution: Progress and Limitations

ELISA MARA COIMBRA
The Evolving Legitimacy of Humanitarian Interventions

DEISY VENTURA
Public Health and Brazilian Foreign Policy

CAMILA LISSA ASANO
Foreign Policy and Human Rights in Emerging Countries: Insights Based on the Work of an Organization from the Global South

INTERVIEW WITH MAJA DARUWALA (CHRI) AND SUSAN WILDING (CIVICUS)
Emerging Democracies’ Foreign Policy: What Place for Human Rights? A Look at India and South Africa

DAVID KINLEY
Finding Freedom in China: Human Rights in the Political Economy

LAURA BETANCUR RESTREPO
The Promotion and Protection of Human Rights through Legal Clinics and their Relationships with Social Movements: Achievements and Challenges in the Case of Conscientious Objection to Compulsory Military Service in Colombia

ALEXANDRA LOPES DA COSTA
Modern-Day Inquisition: A Report on Criminal Persecution, Exposure of Intimacy and Violation of Rights in Brazil

ANA CRISTINA GONZÁLEZ VÉLEZ AND VIVIANA BOHÓRQUEZ MONSALVE
Case Study on Colombia: Judicial Standards on Abortion to Advance the Agenda of the Cairo Programme of Action