The Past and Transitional Justice: Argentina's CONADEP, *Nunca Más,* and Lessons for Transitional Justice

Tomoko Sugiyama

Abstract

Transitional justice is a challenging political process in the aftermath of civil conflict or the fall of repressive regimes. It uncovers the past wrongdoings and clarifies their responsibility. This paper focuses on post authoritarian Argentina's experience early in the 1980s. It focuses on how newly elected Alfonsíon administration dealt with the military's human rights abuses. It examines CONADEP's activities for truth-seeking, its publication of *Nunca Más,* and human rights trials against the military. In conclusion, after mentioning recent expanding activities on collective memories, it will point out some lessons for transitional justice in the global context.

Introduction

Democratization is major political transformation from authoritarian regime to democratic governance or from civil war to stability. It is the process that transitional justice is to be implemented in the society. Human rights trials, war tribunals, truth-seeking investigations, reparations, reconciliations, and institutional reforms are major components in the process of transitional justice. This paper explors the role of truth commissions for implementing transitional justice in a newly democratizing society. After briefly summarizing the roles of truth commission, it will examine Argentina's CONADEP activities and its report—*Nunca Más.* In conclusion, referring to Argentine case, this paper will point out some lessons that may implement transi-

tional justice in newly democratizing countries.

1. Transitional Justice and Truth Commissions

Transitional justice refers to a field of activities and inquiries for dealing with the past, especially for mass atrocity and human rights abuses in the past. It is generally a combination of complementary judicial and non-judicial process, including prosecuting perpetrators, establishing truth commission, forging efforts toward reconciliations in the society, developing reparations packages for victims and their families, remembering victims, and reforming state institutions in an attempt to prevent future violations.[1] Therefore, transitional justice is one of the important components in political transformation for newly democratic countries. It encourages to build a democratic, just and peace society in the future. Yet, how to deal with the past has been challenging in academic disciplines as well as the fields of politics, legal and human rights communities.

Human rights trials and/or criminal tribunals are often considered the most straightforward ways for transitional justice. They may claim who were responsible for the past atrocities. Besides such trials, a truth commission is an essential institutional body to uncover past crimes in the period of previous regimes and/or a civil war. It aims to investigate what happened, why and how they happened, collecting pieces of evidences. Although it is not a judicial apparatus, it will clarify who were responsible for the act of violence from different perspectives. While the judicial apparatus may be able to impose legal sanctions against past abusers, a truth commission focuses on victims. In addition, it will form collective memory in the society.[2]

According to Hayner, truth commission has four criteria in character; 1) it focuses on the past; 2) it does not concentrate on any specific event, but attempts to paint the overall picture of certain human rights abuses, or violations of international humanitarian law over a period of time; 3) it usually exists temporarily and for a pre-defined period of time, ceasing to exist with the submission of a report of its findings and 4) it gains some sort of authority from its sponsor that allows it greater access to information, greater security or greater protection to dig into sensitive issues, and a greater impact with its report.[3] Despite the standard criteria, any truth commission does not have unified forms to deal with political violence in the past. In fact, because every country has its own unique history on the past violence and political situation,

the scope and modes of operation of truth commissions may vary.[4)]

2. Argentina's Democratic Transition and CONADEP

Argentina is one of the most prominent examples that investigated past atrocity by human rights trials as well as truth commission. The National Commission on the Disappeared (Comisión Nacional por la Desaparición de Personas, CONADEP) was established in 1983 to investigate "the disappeared". In the "Proceso" period (1976—1983), under the name of national security, about 30,000 people were kidnapped, tortured in secret detention centers, and disappeared. From the military's perspective, Argentina was at war against subversion and the military's act of violence was to save the state from subversion. The military considered that subversion was not purely a military problem. It included political, economical, social, cultural, and psychological dimensions.[5)]

In 1976, soon after the coup, the military junta declared the Process of National Reorganization ("Proceso de Reorganización Nacional," PRN) as the national objective. The military felt that it was the duty of the military to reorganize Argentina politically, economically, and socially. It tried to maintain traditional value and culture of the Republic of Argentina. Therefore, as CONADEP later described in detail, the military targeted not only guerrilla combatants, but also some innocent citizens such as labor union leaders, student activists, intellectuals, teachers, journalists, psychologists, lawyers, and Jewish. The repression was carried out under orders from the highest military authorities with coordination among the services. The military's systematic human rights abuse and act of violence were unprecedented.

Despite its effort to carry out the PRN projects, by 1982, the military lost confidence in public mainly because of poor economic performance and the defeat of Folkland/Malvinus War. Eventually, it was forced to step down from the government.[6)] Although the military set self-amnesty law before leaving the office, the newly elected President Raúl Alfonsín led the military human rights violation trials immediately after taking the office in December 1983.

Alfonsín set forth three guiding principles for human right trials. These guiding principles are; 1) both the state and subversive terrorism should be punished; 2) there must be limits on those held responsible, for it would be impossible effectively to pursue all those who had committed crimes; and 3) the trials should be limited to a

finite period during which public enthusiasm remained high.[7] Besides the trial, Alfonsín established an inquiry committee, CONADEP, to clarify events related to the disappeared in the "Proceso" period.

CONADEP was given 180 days to fulfill its mission and was expected to summarize its findings. For this mission, it had jurisdiction to hear voices from victims and/or their family and pass them on the judiciary. It was its duty to receive voluntary testimony and documentation from these people, and to demand written testimony from any public officials or members of the armed services. It was also given immediate access to anyone incarcerated in special prisons, military garrisons, or police precincts. Initially, human rights groups such as the Mothers of Plaza de Mayo (Las Madres de la Plaza de Mayo) refused to cooperate with CONADEP because it did not seem to have real power to punish those were responsible for the disappeared. Yet, as the CONADEP started to work, many human rights groups worked together with CONADEP.[8]

CONADEP's activities were worldwide. At the national level, it established branches in some cities in the interior provinces. CONADEP traveled to local provinces, and collected depositions. At the international level, some CONADEP commissioners traveled to Europe and the United States and encouraged exiles to provide testimony. Many Argentines living abroad briefly returned to Argentina to testify. Testimony was also taken in consulates and embassies in Mexico City, Caracas, Los Angels, New York, Washington, Paris, Madrid, Barcelona, and Geneva. It received cooperation from the United Nations and the Organization of American State.[9] The staffs of CONADEP inspected about 340 secret detention centers. They visited morgues and cemeteries in order to identify corpses. With the cooperation of the Grandmothers of Plaza de Mayo (Las Abuelas de la Plaza de Mayo), CONADEP established a gene data bank that would identify children born in the detention and return to their relatives.[10]

3. *Nunca Más*

CONADEP's report was presented to Alfonsíon on September 20, 1984. Responded to the President's request to publish this report, *Nunca Más* was published and soon became a national best-seller. It described general process that the military conducted against innocent citizens. Such as abuductim, detention, for ture and murder, According to *Nunca Más,* the group of five or six people forced their way into houses with

weapons and threatened victims and their families. In front of the family, the group abducted victims.[11] These victims detained at the military related facilities which functioned as secret detention centers. Thousands of men and women illegally deprived of their freedom passed through them, often being kept in the detention for years.[12]

In many cases the abducted were not guerrilla combatants, but had some background in political activities. At the detention centers, torture was systematically used. Using torture, the military aimed to reveal their social networks and cause physical, mental, and social pain. It also sought the destruction of ego, self and personhood.[13] Those who never returned were considered murdered. But in order to avoid the bodies being identified, the military executed in cruel ways such as burning or throwing bodies into the ocean.[14] It concluded that approximately 8960 people were disappeared. The violence touched not only alleged terrorists but also people who were not connected to any terrorist activities. CONADEP called the acts of repression "systematic atrocities".

CONADEP was the first attempt to uncover state terror. CONADEP was able to collect a large amount of documents and records thanks to human rights activists, survivors, and victims' families. But there were no public hearings. In addition, the military was unwilling to cooperate when CONADEP requested the military to submit official documents.

In fact, some aspects of *Nunca Más* were controversial. Some human rights groups claimed that CONADEP understated the scale of the atrocity. *Nunca Más* says that 8960 people were disappeared. But other sources often maintained that about 20,000–30,000 people were disappeared.[15] Human rights groups also maintained that that the scope of repression was higher than what *Nunca Más* describes. In contrast, the military and the right wing considered that CONADEP report was quite biased and some pieces of evidence were not reliable.

In addition, *Nunca Más* mainly focused on political violence and repression during the *Proceso* period. Without doubt, political violence was unprecedented in that period. However, so called state terrorism had been partially conducted already under the Isabel Perón administration. For instance, in the Province of Tucumán, following Presidential order, the army launched Operativo "Independencia" to fight against Ejército Revolucionario del Pueblo, ERP, in 1975. In this operation, the army carried out civic operations, psychological action campaign as well as military operation. In

order to eliminate revolutionary guerrillas, the army tried to uproot its support system in the towns and villages. Consequently hundreds of workers, student activists, left-wing politicians, journalists, and teachers were taken by the army. A secret detention center was established. Torture became a standard operating techniques.[16] Operation Condor was another state terror under the Isabel Perőn administration. It was intelligence operation against subversion coordinated among the Southern Cone countries. In the operation, Argentina's army intelligence services, the federal police, and Secretaria de Informacones de Estado, SIDE, involved in not only intelligence exchange, data collection but also kidnapping and assassination with counterpart agencies in the Southern Cone countries. Indeed, as the record by army intelligence shows, more than 900 people were disappeared already in the year of 1975.[17]

4. After *Nunca Más*

Despite its controversial nature, CONADEP's activities and its report have been of great value. It was the first step to explore some ways in which atrocities were remembered. Indeed, after 30 years have passed, beyond *Nunca Más,* Argentina has worked building collective memory at various ways. At the individual level, survivors or families of the disappeared publish their versions of *Nunca Más.* In contrast, admitting the military's overreaction, some emphasized the scale of guerrilla activities around 1976 and defended the military's intervention. Others described their personal stories in order to deal with their past. At the provincial level, some provinces such as Tucumán and Buenos Aires established provincial truth commission and further investigated past human rights violation in details.

At the national level, March 24th is the Day of Memory for Truth and Justice today. It was the day, March 24th, 1976, when the military took power. This date is now a public holiday, commemorating the victims of the "Proceso" period. The Navy Mechanics School, (Escuela de Mecánica de la Armada, ESMA), is now turned into museum of memory—memorial space with function of archives and documentation center. ESMA worked as the Navy's detention center in the "Proceso" period. Although President Carlos Menem signed a decree for the buildings to be demolished and for a large park to be created on the site in 1998, human rights groups opposed the demolition. They made efforts to block implementation of such a decree. For them, demolishing the buildings means oblivion of the past. Indeed, later, President Nector

Kirshner supported the human rights groups that aimed to transform ESMA to the memorial museum.[18] Argentine government also recommended Argentina's human rights archives for inclusion in the Memory of the World led by the UNESCO.[19] The human rights documentary heritage, archives for truth, justice and memory in the struggle against state terrorism, represents historic and social memory of human rights violation, and the state's responsibility for the past atrocity.

5. Lessons from Argentine experience

Argentine case shows that transitional justice is a long and challenging process. In this process, Argentina's CONADEP activities have some positive impacts on Argentina's democraticzation and society. Later, Argentina's CONADEP activities imply some lessons for newly democratizing states around the world. One is that it shows that it has a Significant impact on human rights issues. CONADEP's documents, records and memos from witness were essential in the human rights trials. As far as human rights trials are concerned, Alfonsín administration first set up the Military Supreme Council that composed of retired officers. The administration thought it better that the armed forces have them handle their own responsibilities. Yet, the Military Supreme Council was only dragging the trials and there was no verdict against members of the military junta. It seemed that the judges had never intended to prosecute their fellow officers. Responding to this situation, the Federal Court of Appeals assumed jurisdiction over the proceedings in October 1984. It said that the junta commanders did not themselves engage in or directly supervise the atrocities. However, with pieces of evidence that CONADEP collected, it concluded that they controlled the apparatus of state terror, issued the general instructions calling for extraordinary measures to be used against all subversive elements. Therefore, they were indirect, punishable persons of the crimes committed.[20]

The other is that, as a recent study on transitional justice points out, norms and practice of transitional justice have diffused across the Americas and through the world. Following Argentina's CONADEP activities in 1983, four countries--the Philippines, Uganda, Uruguay, Zimbabwe--established truth commissions in their democratic transitional period in the 1980s. In the 1990s, thirteen new truth commissions were established. The number continues to grow in the 2000s around the world. Furthermore, as Argentina experienced, truth-seeking activities are often linked with

human rights trials and tribunals in these countries. It implies that truth-seeking and human rights trials have been recognized essential components in the global scale.[21)]

Notes: A part of this paper was presented at Consejo de Estudios Latinoamericanos de Asia y de Oceania Segundo Congreso, Seoul, Korea, June 21-23, 2007 and Federacion Internacíonal de Estudios sobre America Latina y el Caribe XIII Congreso, Macau, September 25-28, 2007.

1) *The Encyclopedia of Genocide and Crimes Against Humanity* (Macmillan Reference USA, 2004), vol.3., pp.1045-1047.
2) Siri Gloppen, "Roads to Reconciliation: A Conceptual Framework" in Elin Skaar, Siri Gloppen, and Astri Suhrke, *Roads to Reconciliation* (Lexington: Lexington Books, 2005), p.27
3) Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions,* (New York: Routledge, 2002), p.14.
4) *Ibid.,* p.28.
5) Antonius C.G.M Robben, *Political Violence and Trauma in Argentina* (Philadelphia: University of Pennsylvania Press, 2005), p.183.
6) It is often pointed out that Argentine military regime collapsed after the defeat of Fokland/Malvinus War. However, as McGuire claims, the military regime was transferred to democratic regime through Presidential election. Indeed, the military tried to avoid any prosecution with self-amnesty law. It was rumored that there was a secret pact with Italo Luder, a Peronist candidate that the military would not be punished. Alfonsín, who appealed to public, promising human rights trials against the military, won the election and therefore, with public support, he was in charge of human rights trials immediately after he took the office. James W. McGuire, *Peronism without Perón: Unions, Parties, and Democracy in Argentina* (Stanford: Stanford University Press, 1997), pp.178-184.
7) Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), p.67.
8) Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford: Stanford University Press, 1994), pp.68-72.
9) Comisión Nacional por la Desaparición de Personas, CONADEP, *Nunca Más,* (Buenos Aires, EUDEBA, 2003),pp. 448-455.
10) Rita Arditi, *Searching for Life: The Grandmothers of the Plaza de Mayo and the Disappeared Children of Argentina* (Berkeley: University of California Press, 1999).
11) *Nunca Más,* p.17.
12) *Ibid.,* p.16.
13) Antonius C.G.M Robben, *Political Violence and Trauma in Argentina* (Philadelphia: University of Pennsylvania Press, 2005), p.217, p.253.

14) *Nunca Más* pp.221-233. Horacio Verbitsky's *El Vuelo* (Buenos Aires: Planeta, 1995) was a shocking report on naval officer's confession about death flight.

15) John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents,* (New York: The New Press, 2004), p.139.

16) In *Nunca Más,* there was no detailed report on Operativo "Independencia," but after CONADEP's *Nunca Más,* human rights and violence investigation committee in Tucumán Province investigated detailed situations on the military's human right abuses. Martin Edwin Andersen, *Dossier Secreto, Argentina's Desaparecidos and the Myth of the "Dirty War"* (Boulder: Westview Press, 1993), p.135.

17) John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents,* (New York: The New Press, 2004), p.112. In addition to official agencies, para-military groups and death squads participated in the Condor operation. In the case of Argentina, under López Rega's leadership, Triple A was engaged in political assassination.

18) For this project, see http://www.memoriaabierta.org.ar

19) For this project, see http://www.derhuman.jus.gov.ar/temp/patrimonio/intro/htm

20) David Pion-Berlin, *Through Corridors of Power: Institutions and Civil-Military Relations in Argentina,* (University Park: The Pennsylvania University Press, 1997), pp. 80-101. With CONADEP's support, on December 9, 1984, five military leaders were found guilty of life imprisonment for Videla and Massera, 17 years for Viola, 8 years for Lambruschini, and four and a half years for Agosti. In addition to military leaders, later, those who had operational responsibility in the actions were to be prosecuted.

21) Kathryn Sikkink and Carrie Booth Walling, "Argentina's contribution to global trends in transitional justice" in Naomi Roht-Arriaza and Javier Mariezucurrena eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice,* (Cambridge: Cambridge University Press, 2006), p.308.