

Episode 3 (December 2020) Spotlight on Chile

Welcome to Justice Visions, the podcast about everything that is new in the domain of Transitional Justice. Justice Visions is hosted at the Human Rights Centre of Ghent University. For more information visit Justicevisions.org.

Tine: Welcome to Justice Visions. For those listeners who are just tuning in, my name is Tine Destrooper and I am a professor of transitional justice at the Human Rights Centre of Ghent University. I'm also the project lead of Justice Visions and the regular host of this podcast. In the last two episodes we've been talking about recent developments in Cambodia and in Syria. And today we will move on to yet another continent where interesting developments are taking place in the domain of transitional justice. Because today we will talk about constitutional reform in Chile and how to understand that in light of the transitional justice process there. With me today as a co-host is Marit de Haan, who is a researcher on the Justice Vision research project, and who works on the Chilean case. Hi Marit!

Marit: Hi, Tine! It's great to be talking about Chile today where actually a lot has been happening over the past year. And the questions about transition are fully back on the agenda.

Tine: I know you're very enthusiastic about this episode, and I'm also really happy that we have a very interesting guest with us today. Loreto López, who is a Chilean social anthropologist and a researcher specializing in the social psychology of memory and Loreto is based in Chile and has written extensively on the topic of memorization and on the Chilean transition more generally.

Loreto: Thank you both for having me today.

Tine: Thank you for joining us and thank you for sharing your insights on the current situation in Chile and for those listeners who are not too familiar with the Chilean case. I'll just start by saying that the reason that we wanted to do this episode today is that on the 25th of October a referendum about the change of the constitution took place in Chile, and that referendum actually followed a year of heavy protests about social inequality. And so today we will talk about those protests. We'll talk about the reform of the constitution, and about what they mean in light of transitional justice in Chile.

Marit: But before we dive into that very specific topic, it might be relevant to shortly introduce our listeners to the case of Chile, as I can imagine that not everyone is familiar with this context. So in short, Chile was a military dictatorship from 1973 to 1990 under Pinochet. During this period of 17 years, human rights violations took place on a continuous base. And after the end of the regime, several transitional justice mechanism were applied to deal with what had happened. And Loreto, maybe can I ask you now to tell us a bit more about how the regime actually came to an end, and what the process of transition towards democracy looked like afterwards?

Loreto: Well, as you may know our transition started, of course, when the dictatorship was over, but dictatorship was over through our plebiscite, a referendum. It was quite

different from other countries in the region, in the Southern cone, especially Argentina. And, of course, the ending of the dictatorship was a kind of ending settled by their own dictatorship. Because in the constitution of 1980, it was decided, it was written, that eight years after that plebiscite that approved the constitution during dictatorship, there's going to happen a referendum in 1988. In the early 1980s, there were a lot and strong protests. Since 1982 different kinds of groups began to resist dictatorship, but in the end, dictatorship ended through their own means.

So, our transition began in a very institutional way and the forces that led the first four or three governments, were forces, political forces that opposed dictatorship of course, but it was difficult to fight against all the kind of closures and things that the dictatorship decided to tie up through the 1980 constitution. Even when a lot of people say that our transition is a kind of a model transition process, I think it was very difficult because the dictator remained as a commander in chief of the army for eight more years. So it was a very difficult transition. Of course we followed the path of the transitional process, you know, seeking truth, justice and reparations.

And I think reparations is one of the paths that maybe was more developed here. In terms of reparation policies, I think we have one of the most diverse kinds of reparations policies in the region, in the Southern cone, in terms of a victims have some kind of money compensations, not very high money compensation, but other kinds of actions.

Justice, not much. Maybe if you compare with other countries, we have a, I'm not going to say a lot of justice, but better than in other countries. In the Chilean case all the trials for human rights violations were left in the old justice system. The old justice system is a written one. So, you're never going to have the perpetrators facing the judge, as we saw in Argentina with the trials of the military junta, that it was broadcast to all the country in television. So, in Chile, we don't see the justice. In a very literal way, we don't have images of justice. The justice is very secret, and the sentences are very low.

In terms of the truth, of course we had two truth commissions, the very first one dedicated to the cases of disappeared detainees and people who were murdered by the dictatorship. And the second one in 2003 was the truth commission dedicated to cases of torture. So, I think that's very special and particular in the case of Chile. But I think the main problem is that we don't have a public memory policy because what can you do with those reports? The president, the first president of the transition already presented the report in 1991, but then what? What are we willing to do with the report? And in the end, the report only served to count victims and then to provide those victims with reparation policies. In our case, the government decided to seek the truth through the trials. So they put together truth and justice. But at the end, we didn't know where the disappeared detainees are. So I think we failed.

Tine: I would like to come back to this notion in a moment if I can Loreto, because I think you're touching upon something very important, that perception that the justice process failed. But before we go there, maybe Marit, I want to also briefly turn to you because I think what Loreto is describing of it being a model transitional justice process, because it has these pillars of truth and reparations and justice and institutional reform, I think that's also in a way what sparked your interest in the Chilean case, right? Is that it was one of the first cases in which transitional justice, as we know now has actually been applied.

Marit: Yeah, exactly. And I think that's really interesting that it's, especially internationally, so often applauded for this model of transitional justice, where all these mechanisms were applied, but then actually when you look on the ground, it's much more complex for victims and they're not always satisfied. There are around 40,000 official victims of the regime, of which 3000 were executed or disappeared during the period of dictatorship from 1973 to 1990. But for example, regarding justice we can only see now, more recently, that more trials are going on to hold perpetrators accountable, but that's been a very complex process because of pacts of silence among former military personnel.

Tine: These pacts of silence are very interesting. I think Loreto was also just referring to them. And I think more generally the trials that you're both referring to, the recent trials, especially they're quite relevant from the point of view of victim participation, which, Marit, is also what you work on.

Marit: That is mostly because these trials are taking place on the initiative of victims rather than on the efforts of the State. So we see now that 30 years have passed actually since the end of the regime, but there still seems to be a lot of dissatisfaction with what has actually been done to repair the harm. And I thought that it was actually really striking that, while I was living in Chile, I saw various protests of groups of victims that gather every week around the presidential palace in Santiago, around La Moneda, to demand truth and justice. And I thought that was just very fascinating to see that this still goes on every week, although we've had 30 years after the formal transition was initiated.

Tine: And this is actually quite interesting because Marit, you actually brought some sound recordings from those protests that I think Loreto will also be talking about later on.

Marit: I did, these are actually recordings from a few years ago when I attended a few of these protests while I was living in Santiago.

Audio fragment

[¡No hay justicia! ¡No hay verdad! ¡Solamente impunidad!]

[¡Ninguna democracia se puede levantar, sin terminar primero con tanta impunidad!]

Marit: What they basically say is that there is no justice, there is no truth, there is only impunity going on. And in what follows they say that no democracy can ever be built without ending impunity first.

Loreto: I think it's interesting that these groups of mainly relatives resist this, the last 30 years, doing these kinds of demonstrations. And I think that the sense of frustration in the relatives and in the victims is because our transition process decided to treat human rights issues like something from the past and only related with the human rights violations during dictatorship and only related with the victims.

So the rest of the society remain like witness of something that didn't happen to us. That's why I think for the relatives and the victims, the frustration is bigger because they thought that this struggle for justice and truth was going to lead to build a different society, to promote some values. And I think that's the problem of our transitional justice experience.

Tine: That's very interesting Loreto. And I think that's also in a much broader sense, very visible in the protest movements of 2019 when those erupted, and that those were really not so much, or at least not only, about justice or transitional justice, but about social inequality more generally, which had never been addressed, right?

Loreto: This is a problem, not only in the TJ experience here, but how the memory was built by the transitional justice process here. Because even when the human rights violations experience and testimonies and memories were very useful in the first 10 years of the transitional process, we have to understand that the dictatorship committed human rights violations, not only because they wanted to destroy the political parties and the militants or the project of the popular unity, you know. They wanted to develop a new economic, political, and social model for the Chilean society. So, in order to do so, they needed to apply state terror. So in some way it was a mistake only to think that dictatorship was related with human rights violations and not with the whole neoliberal model that was imposed to us because we were living in a dictatorship: because we were living in a dictatorship, it was easy to transform the society, the institutions, and even the government. That kind of memory that began to elaborate that past of this deep transformation began maybe in 2011, with the student movement. That's why in 2019, a new kind of memory began to erupt that tried to connect the state terror with this deep transformation that affected all the people, not only the victims. I think that's very interesting because at the end, we need a new memory to face this challenge that we have today, that is not only to face human rights violations of the past, but all different kinds of violations to other kinds of rights.

Tine: That's very enlightening actually, because I wanted to ask you, also for our listeners who are not so familiar with the case, how these various stages of the process are linked, right? Because on the one hand we have a dictatorship and then we have a transitional justice process, and then we've got protests erupting massively in 2019 but going on much longer, and now we have this constitutional reform process, but they seem to be so vastly different. And I really appreciate how your invocation of memory kind of ties them together and shows how the past is bearing upon the present. And actually making that a little bit more specific, I wanted to also pick your brain about that last stage that Chile is in now, embarking upon a process of reforming that constitution, which people still sometimes refer to as the Pinochet constitution. What do you guess that process will look like?

Loreto: I think the main challenge is to write a constitution that ensures different kinds of human rights. The current constitution recognizes some human rights: Right to health, right to education. But the role of the state is so weak because the idea that the market is going to solve or is going to provide those rights is the idea that we have in the constitution. That all these rights are going to be not rights, but commodities you can buy. If you have money, you can buy health and you can buy education. Of course the main part of the population, in fact, use public services, but they use public services that are very weak, because the dictatorship reduced the state to a minimum level.

Chile has one of the more incredible levels of inequality. So we have a lot of people who receive a very low salary, like 60% of the population. And then you have these groups of the society that receive like the 10% of the income, you know, of the country. So even when the idea of the subsidiary state is not written in the constitution. We see it in different articles, you know? So we have to be very wise to identify how to eradicate this idea of the subsidiary state when we face this constitutional process right now.

I think what people is asking for through their protest is a stronger state that ensures human rights of different kinds, not only right to life. Something that bothers me, and I think my generation, is to talk or to discuss with the previous generation, who fought against the dictatorship. Because they always told you, okay, but we fought against the dictatorship and we have democracy because we fought against the dictatorship and you have to feel happy. And you say, okay, but the country changed, and society is changing. So the right to life is not enough, you know. Right to personal integrity is not enough. And even those kinds of rights are not ensured because right now, since October 2019, we are facing the most horrendous human rights violations again. So, what are we talking about?

Tine: Marit, I think here I can't but just turn to you, for this question about intergenerational dynamics, right? Because Loreto, what you're discussing is also how different generations are talking to each other. And I know that Marit this is a topic that you've been doing a lot of work on yourself as well, this topic of the ongoingness in a way of transitions. And the question also of when is a transition over, how does the transition continue into the present? So Marit maybe you can tell us a bit more about that?

Marit: I think the Chilean case illustrates actually really well this ongoingness of transitions, as it can be very long-term processes that do not necessarily have clear end points even, and that it might take even several generations to move on after such a violent history and that victim's perceptions and needs might change over time as well. And what I think is very interesting here is a project by the Museum of Memory and Human Rights in Santiago, where actually the grandchildren of people who were disappeared or executed during the dictatorship wrote letters to their passed away grandparents. And I thought it was really interesting to see there that many of them actually played a very active role in the protest today, of 2019. So I thought that was really beautiful to see how these links still continue on. And in a way it's very difficult, of course, that it's such a long history, but I thought it was also beautiful how this still connects these different generations. And actually, the Chilean case has often been referred to as an unfinished struggle for truth and justice rather than a closed case of transition. So I think there's still a lot to do in this case. And Loreto maybe you can tell us a bit more about this as well, what do you think is now needed at this stage in Chile?

Loreto: I want to be very critical with the approach of this kind of research that we were doing this last 30 years, because for example, you mentioned this approach with the grandchildren of the disappeared detainees. And I think I read a lot of this kind of research, on past memory and on intergenerational trauma, but at the end, do you really think that this is a problem of the victims? I think that approach is over. We have to put that way of viewing the problem aside because I think it's not useful. You know, a lot of people come and they interview the grandchildren, and the second and the third generation, and why? Why? Because all of us have to carry on with the human rights violations. This is the concept of a political responsibility, you know?

So I think the mistakes of the transitional process was to think that this was the problem of the victims. And we started with doing some research on the victims memories, on the victim experience. To achieve or make a real step forward is to understand that the problem is the whole Chilean society. You know, I think that transition could be over or maybe has to be over when the governments who decided to lead the transitional process were willing to develop a new cultural hegemony, *hegemonía*, based on human rights.

Marit: Maybe to add up on that. Do you think that the constitutional reform process could bring such a change? Because I thought it was very interesting that there was a really overwhelming majority of 78% of Chileans who voted for the change of the constitution. Do you think there's enough room within the reform process to bring such a cultural change, to make it more a culture of human rights and to really make these things more relevant for the broader Chilean society?

Loreto: It's going to be a start. The beginning. But this is a deeper problem than the constitutional level. It's very deep. Maybe almost 80% of the voters vote for a new constitution. But I think that doesn't reflect the cultural issue that we are talking here. Part of those people are very homophobic. They reject immigrants. So, we have to understand that the constitutional process is the institutional level, but we have these grassroots groups that are trying to promote violence against feminists, for example, against immigrants, against homosexuals. So, the problem I think is deeper than the constitution, but I think the constitution is the start.

Tine: What you're saying, Loreto, also reminds me of a conversation I've also been having with Marit. I find your perspective very refreshing that you're saying, you know, we should stop the talk about the children and the grandchildren of the direct victims of the dictatorship. And we should approach the process much more broadly. Because I think that also goes to that discussion about temporality and about timelines of transition, right? And I think what you see now is that there's very often this idea that, or there has long been that idea that transitions are ruptures, are sudden moments when everything changes. And I think it makes a lot of sense to focus on the victims and on the perpetrators in that moment, but then as we move further and further away from that moment, I think what you're also suggesting is that we need to let go that very individual focus on individual victims, individual perpetrators, and adopt a much more societal perspective. Looking also at structural violence, at structural inequality. And I don't know, Marit, if there's anything that you want to add to that idea of the long-term understanding of justice that we have been talking about so much in the office.

Marit: I think that's just something that is often not considered in the current transitional justice architecture, or the current transitional justice interventions that are often proposed or implemented because they often have very short timeframes. For example, truth commissions have limited times to come forward. And sometimes don't allow for this broader perspective, or more this long-term interpretation. So I think that's actually something that transitional justice could really benefit from, from seeing this more as a long-term process. And maybe we start to think about how we can approach this in a, in a way that we're better able to deal with this ongoingness. And maybe it's relevant to refer here to what we've discussed as well, Loreto, that you mentioned maybe we shouldn't be talking about transitional justice anymore, but just refer to transitions and really focus on this broader context and the long-term, and also the role of the whole society in that...

Loreto: That's why I think public memory policies are so important. In fact, I want to talk about the political use of memory to achieve human rights. How will we use memory to achieve human rights among the population, not only human rights for the victims? A lot of people began to say, okay, why human rights only for the victims of the dictatorship? That's a problem, it's a failure. If some people think that human rights are only for victims of the dictatorship, we are in a big problem here. So that's why I think a public memory policy could be very useful, you know, but with the goal to achieve human rights. To use

that memory, to achieve human rights for the whole population. Educational programs, for example. Two or three years ago, someone told me that the government decided to send the truth report to the schools of the public system. But, they didn't send the reports...

Marit: Yeah. I think that's also really striking that, for example, in the Chilean education system, is that there's almost no information on the period of dictatorship that people are just not educated about what has happened. And I noticed that while I was living there, that many people don't really... Well, I wouldn't say don't really care, but they don't really know what has happened, what the history of the country is. It's not talked about. It's a culture of not talking about these issues as well I feel.

Tine: I think Loreto, when pointing to memorization and public memory policies, I think in a way you've already answered what we normally ask as a last question to our interviewees as we are nearing the end of this episode. And that question is basically where you are looking for inspiration in your work. If you're thinking about the Chilean transition as an ongoing process, what you think is most needed at this stage and where you find inspiration for that. And I assume, you know, part of the answer to that question already lies in what you just mentioned, but maybe there's something you want to add to that.

Loreto: Well, I think what is very inspiring for me is to see, for example, in the last social uprising that we are living here from 2019, how people are in need of new figures, for example, of new historical figures. I think the youth and people who went to the street for protest since October 2019, we saw a lot of signs, images, that come from the past. I think that in that moment, I realize that we need another memory. People need a memory of resistance. Because I am an anthropologist, I observe, I listen. So for me, it was like an awakening, the protest. I realized that the people needed a different past to achieve the transformations that we want to.

So it was very inspiring for me in that moment to understand the power of memory. That's why I always say public memory policy could be a very powerful tool to face not the past, but to face the future. When I began to see, for example, victims of the police violence in Araucanía, those faces began to appear, but they began to appear not like victims. They began to appear like people who was fighting and that every kind of struggle needs their own memory. And for this struggle, people are in need of this kind of memories, memories of resistance, memories of struggles. So it was very inspiring for me in this last period.

Marit: Thank you so much for all your reflections. And I think it illustrates really well that we cannot assume the past to be over that easily and that there are so many things still going on in Chile that are relevant today, and that we need to think about what needs to happen next and think about the future as well in the Chilean context. Thank you very much for all your insights.

Tine: Thank you, Marit, also for co-hosting this episode, and I'm just going to add that in the next episode, we will continue to discover transitional justice contexts in another Latin American country because after the holidays, our colleague Gretel Mejía will introduce us to the ins and outs of some recent developments that are taking place in Guatemala. So we look forward to connecting with our audience again. And once again, thank you, Loreto and Marit.

Marit: Thank you.

Loreto: Thank you.

This was Justice Visions. To relisten to this episode, or to browse our archive, visit our website, justicevisions.org or subscribe now via Spotify or Apple music. Justice Visions is made possible through generous funding of the European Research Council. The podcast is produced by Wederik de Backer and you heard the voices of Tine Destrooper, the Justice Visions researchers, and our guests.