

# Living with the Legacy of Impunity: Lessons for South Africa about truth, justice and crime in Brazil

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*It was never necessary in Brazil to institutionalize a legal Apartheid because, in addition to social and economic discrimination ... petty authorities and the 'Do you know to whom you are speaking?' syndrome always has a role in containing black and poor people in civil society (Paulo Sérgio Pinheiro, 1994).*

## **ABSTRACT**

This article focuses on how Brazil dealt with and failed to deal with its authoritarian past, and what lessons this experience may hold for South Africa. The central focus is on victim support groups in both countries and examines their primary concerns: their need for the truth; and their demands for justice. The experiences of Brazil in these areas are examined, with references to equivalent experiences in Argentina and Chile, and lessons for South Africa are extracted. Finally the link between past human rights violations, impunity and rising crime is discussed.

## **RESUMEN**

Este documento subraya la forma en que Brasil enfrentó su pasado autoritario y fracasó, y la enseñanza que ello entraña para Sudáfrica. El énfasis estriba en los grupos de apoyo a las víctimas en ambos países y sus preocupaciones fundamentales: sus demandas por el reconocimiento de las atrocidades cometidas en el pasado, ya sea de manera simbólica o pecuniaria; la necesidad de conocer la verdad y su sed de justicia. Se analiza la experiencia brasileña en estas esferas con referencia a experiencias equivalentes en Argentina y Chile; y, se señalan las lecciones que se pudieran derivar para Sudáfrica. Finalmente, se expone el vínculo entre las violaciones pasadas de los derechos humanos, la impunidad y el incremento de la tasa de criminalidad.

## **RESUMO**

O artigo examina o processo pelo qual o Brasil lidou com o seu passado autoritário de uma maneira não eficiente, e o que a África do Sul pode aprender dessa experiência. O enfoque principal relaciona-se com os grupos de apoio às vítimas em ambos os países, e sobre as suas preocupações fundamentais: a sua reivindicação para que haja um reconhecimento do passado pelas autoridades, seja este de forma simbólica ou pecuniária; a necessidade de saber a verdade e a sua sede de justiça. A experiência do Brasil nessas esferas é analisada com referenciais a experiências análogas na Argentina e no Chile; e indica as lições que podem ser de valor para a África do Sul. Finalmente, examina o vínculo existente entre infringimentos passados contra os direitos humanos, a impunidade e o incremento do índice de criminalidade.

## **INTRODUCTION**

The kitchen of a small house in downtown São Paulo is the meeting place of the Comissão de Familiares de Mortos e Desaparecidos Políticos (Commission for the Family Members of the Persons Killed or Disappeared for Political Reasons), an organization of family members whose loved ones were killed during the military dictatorship in Brazil. The kitchen is lined with filing cabinets that contain information collected by the families on some 400 cases of murder and 'disappearances'. Unlike South Africa, there was no official investigation in Brazil following the military regime. Without any governmental support, it has been these families and human rights activists who have had to try to find information on the 'missing' and the dead. Some 20 years since the 'disappearances' the relatives are still trying to establish the truth about what happened to their loved ones.

This article outlines some of the struggles of the families of the 'disappeared' and murdered activists in Brazil. However, more fundamentally, it focuses on how Brazil dealt with and failed to deal with its authoritarian past and its more recent attempts to consolidate democracy. The article begins by focusing on victim support groups in Brazil and South Africa. It argues that these groups' primary concerns are threefold. First, they demand acknowledgement, either symbolic or through monetary compensation. Second, the members of the groups have a need for the truth about past abuses and third, in many cases, the families and victims demand that justice be done to the perpetrators of human rights abuses. The article unpacks the issues of compensation, truth and justice in Brazil and extracts lessons for South Africa. Finally, the article makes a link between past violations and present levels of impunity in Brazil. Critical issues for South Africa, particularly rising crime rates, are highlighted with regard to dealing with the long-term effects of impunity in society.

## **DEALING WITH THE PAST THROUGH THE EYES OF VICTIMS**

During the period of military rule in Brazil (1964-1985) thousands of citizens were persecuted, forced into exile, murdered and tortured. The official lists compiled by human rights organizations report thousands of cases of torture, 262 people murdered and 144 missing.<sup>1</sup> Torture particularly was used extensively in Brazil. Much of the history describing this torture is documented in a book entitled *Brazil: Nunca Mais*<sup>2</sup> ('Brazil: Never more'). This book, compiled by the Catholic Archdiocese, analyses over 700 formal cases of torture tried in the military courts. The report identifies some 1 843 prisoners who were tortured by the military regime. It is estimated that hundreds of other cases have never been reported and it is noted that at least 17 420 individuals were caught up in the military-justice system in one way or another during the military regime (Weschler 1990). The book also includes descriptions of 283 types of torture used by the military during the 1964-1979 period.

Relative to other countries in South America, these figures, particularly the number of people who disappeared, are negligible. However, comparisons with the unofficial '30 000' who disappeared in Argentina are of little comfort to the relatives who feel that the atrocities committed by the Brazilian government have received little attention since the passing of a general amnesty in 1979. The amnesty granting process in Brazil is a detailed and complex one (cf Roelofse-Campbell 1996), but the key point for this discussion is that the amnesty passed was, in the words of President Geisel,

`ample, general and unrestrictive'. In effect it was a `blanket amnesty' without full disclosure or compensation for victims.

This blanket amnesty, coupled with no investigation into the past by the old or new governments, has meant that an official truth was never uncovered in Brazil. As a result, the families of victims continue to seek the truth and draw attention to the numerous atrocities perpetrated by the past government despite the fact that a civilian government was instated in 1985. For example, recently the Comissão de Familiares de Mortos e Desaparecidos Políticos in São Paulo managed to get the government to finance an expedition of the internationally known Equipo Argentino de Antropología Forense (Argentine Forensic Anthropology Team or EAAF). This group excavated several suspected burial sites of slain guerrillas in Araguaia.<sup>3</sup> Three bodies were recovered but the bone marrow required for verification was missing in two of the bodies. Results are awaited on some of the remains which were found.

Groups like Comissão de Familiares de Mortos e Desaparecidos Políticos in Brazil are not uncommon around the world and such organizations have emerged in at least 16 countries. Groups exist in almost all Latin American countries and have also been established in African countries such as Chad, Ethiopia and Morocco. Similar groups also operate in Sri Lanka, the Philippines, Turkey, Croatia and China. Most of these organizations have developed spontaneously. Their roots often lie with relatives who have met as a result of their common experiences. Stories of meeting one another at government offices and police stations while seeking information about their loved ones are common.

In South Africa the most extensive group of this nature is the Khulumani (isiZulu for `Speak-out') Support Group<sup>4</sup> that developed in early 1995, almost a year before the start of the South African Truth and Reconciliation Commission (TRC). This large network of support groups works from an office in Johannesburg and is involved in organizing education workshops for victims in communities and in setting up a social support network for fellow survivors of past abuses. Members also assist one another in testifying before the TRC. In addition, the group performs a lobbying function in which they place victims' needs on the TRC and national reconstruction agenda. In essence, as the group's name implies, the group encourages victims to speak out about past abuses and provides a collective voice for victims. Groups like this are critical to dealing with the past on psychological, political and community levels. As Sylvia Dlomo-Jele, co-founder of Khulumani, whose son was killed in the 1980s, has recently stated: `Most of the time we are the people who introduce the Truth Commission to victims. By itself I doubt it could cope. It cannot go down to the victims. We are the ones who know how to go to them because the victims are among us.'<sup>5</sup>

The Khulumani Group, like most victim support groups around the world, is diverse in membership and objectives. A brief analysis of similar groups around the world reveals that generally these types of groups share three common aims. These are:

- a need for social acknowledgement of the past and the suffering of victims. This can occur through making the voices of victims heard through the media and protest. On an official level it can include demands for symbolic (e.g.

memorials,) or monetary forms of compensation or reparation from the government

- a demand for information or the truth about what happened to their loved ones
- and in most cases, a wish for justice to be meted out to those responsible

## **THE NEED FOR ACKNOWLEDGEMENT AND REPARATION**

*For each beloved hour, sharp pittances of years. Bitter contested farthings and coffers heaped with tears (from the poem Compensation by Emily Dickinson)*

In Latin America, victims generally place the need for truth, social and psychological rehabilitation and acknowledgement before the need for compensation. The group of women who are the relatives of family members who 'disappeared' during the period of military rule in Argentina, known as the Madres de la Plaza de Mayo,<sup>6</sup> supports this view. The group refuse to accept monetary reparation as they feel that the State is trying to buy their silence rather than offering adequate social and historical recognition (Danieli 1992). It is argued (Jelin 1994) that Argentinian society remains immersed in the phenomenon of social disappearances because the social process of acknowledgement and recognition has not adequately occurred. This is further supported by a recent article that emphasizes that despite some efforts to deal with the past in Argentina through the National Commission on Disappeared Persons in 1985, of the many monuments scattered about Buenos Aires there is still not one to the '30 000' who disappeared (Valentine 1995).

Similarly, for the Comissão de Familiares de Mortos e Desaparecidos Políticos in Brazil, truth and acknowledgement of the hardships they have experienced have always been placed before the need for compensation. The issue of compensation has only recently been thrust into main focus when the government agreed in 1995<sup>7</sup> to compensate the families of the murdered and 'disappeared', in some cases two decades after the 'disappearances'. The group sees this as the government's final attempt to buy their silence and close the book on the past, without revealing the true facts of what happened during the military dictatorship. When interviewed<sup>8</sup> about the recent compensation, Criméia Alice Schmidt de Almeida, a member of the Comissão de Familiares de Mortos e Desaparecidos Políticos, clearly asserted that truth was the first aim of the group, but despite this, they felt that they would 'use the new law and continue the struggle for the truth for another 20 years'. In general members feel that it is important to accept the law because it provided at least some form of recognition.

The Brazilian groups' continuous demands for the truth before compensation and their refusal to see the new law as 'the final stop', despite decades having passed since the dictatorship, has made them unpopular in some circles. The government and even some previously sympathetic members of the society now refer to the group as 'dinosaurs'. They are seen as harping on the past. Many Brazilians are tired of these mothers who will not be appeased or who cannot forget.

The process of compensation or reparation in South Africa is significantly different from that in Brazil. Importantly, the process has been entered into in a far more substantial way through the South African Truth and Reconciliation Commission. Through the Committee on Reparation and Rehabilitation of the TRC, the dependants of victims and survivors will be able to apply for reparation. The form reparation will

take will be defined only after the process of the TRC has been completed. The TRC is only responsible for making policy recommendations to the government about the reparation that is to be implemented and does not itself have to offer reparation during the two-year course of the Commission.<sup>9</sup> At this early stage, two possible scenarios seem likely. The first is that the TRC will not make monetary compensation but rather focus on rehabilitative strategies or measures like skills development and medical aid. Alternatively the TRC may make monetary awards, with which victims will be able to purchase options like an educational bursary or a tombstone. There will also be a focus on symbolic forms of reparations like monuments, memorials and museums.

Whether monetary compensation or symbolic reparations (or both) are undertaken in South Africa, these will undoubtedly contribute to acknowledging the suffering of victims and their families. On a psychological level the process can concretize the event and symbolically recognize the individual's suffering. This situation stands in contrast to Brazil where, due to strong resistance, even the Leftists ended up accepting amnesty without any right to compensation or investigation into violent acts (Roelofse-Campbell 1996). As a result, acknowledgement in Brazil for past abuses has been limited. One form of acknowledgement lobbied for by victim support groups that has been fairly successful in Brazil has been the naming of a number of streets after dead or 'missing' activists. This process has been very important emotionally and symbolically for many families. However, individual psychological processes are also highly personal and unpredictable. In Brazil the naming of streets has been significant and meaningful for some but not for others. Some families have been against it because they believe that naming the streets concretizes the death of their 'missing' relatives. These families appear to still live in hope (or denial) that their children will return and have therefore refused to attend the inauguration of the streets named after their loved ones. Some families even refuse to move house in case their 'missing' relatives finally come home.<sup>10</sup>

The issue of reparation is clearly a double-edged sword. Although symbolic acknowledgement and recognition can be useful, at the same time symbolic or material compensation can never bring back the dead or meet all the levels of psychological pain suffered by the families and victims. An extreme example is the Mothers of the Plaza de Mayo in Argentina, who have refused any form of reparation or compensation. They will not even participate in official investigations. They insist that 'you took them away alive; we want them back alive'. Perhaps part of their refusal may involve wanting others to experience the frustration they have felt and are determined to offer constant reminders that, in reality, there is nothing that can ever be done to replace their 'missing' loved ones.

The South African context raises several other questions. Of particular concern is the level of impoverishment of most victims and their families. This cannot be underestimated. For some, the idea of receiving any financial compensation, no matter how minimal, may be favoured over long-term reparative measures like developing a network of trauma centres or compensation such as free education for their children, the benefits of which would only materialize in a number of years.

The Brazilian group of families appear to be acutely aware of the complexity and double-binds created through trying to compensate for past ills. Criméia Alice Schmidt de Almeida of Comissão de Familiares de Mortos e Desaparecidos Políticos

in Brazil thinks the lesson for South Africa concerning the question of compensation is that: 'The problem is really unsolvable. Whatever it is, it has to be big and people have to feel the impact of it. If reparation is a small gesture it does seem to indicate that abuses would happen again.' She continues, however, that she is not fundamentally opposed to receiving financial compensation because 'after all, Brazilians understand money' but worries that 'if we just pay ... we are indirectly saying that we could pay again and that life is cheap'.

Clearly her words imply the need for both symbolic and financial reparation. In South Africa, actually compiling a satisfactory policy to meet the varied and often acute needs of thousands of survivors of past abuses on an individual level will be a very big task. However, more broadly, the South African Truth Commission holds much promise. The sheer enormity of the process must symbolically, for victims and the society, represent at the very least a collective willingness to deal with the past. This should serve some socially restorative function although it cannot be seen in isolation from the other needs of the survivors.

A final lesson of policies and practices in South American countries - although none have attempted to be as bold as the South African initiative - is that the problem of reparation and making amends for the past lives with the society for many years to come. In South Africa this will in part be ensured by the fact that the reparation policy only begins after the life of the TRC. However, it would also be naïve to presume that dealing with the past will be over once the final reparations policy is drafted. Lessons from other countries, like Brazil and Argentina, show that compensation and reparation for atrocities (even when a concrete policy is reached) will remain a contested social terrain. This contestation will occur not only among politicians, but among victims as well, like the Madres de la Plaza de Mayo who still refuse compensation, the Brazilian group that sees the recent compensation as the government's attempt to keep them quiet and the Madres de la Plaza de Mayo - Línea Fundadora<sup>11</sup> in Argentina who do accept government reparation.

## **THE NEED FOR TRUTH AND JUSTICE**

*The history of our struggle is long, compensation has never been our main goal. The question of justice is always at the forefront. We are like ants, we are patient and build in small amounts ... we are always there (Criméia Alice Schmidt de Almeida, Comissão de Familiares de Mortos e Desaparecidos Políticos)*

In many countries victim support groups have developed in the context of blanket amnesties or where there has been no process of uncovering of the truth about past human rights violations. Certainly in Brazil, Argentina and Chile, immunity against prosecution for crimes committed under military regimes is the issue that still sits hardest amongst the relatives of the murdered and disappeared. As a result, calls for truth and justice are common. This is certainly a mainstay of the work of the Comissão de Familiares de Mortos e Desaparecidos Políticos in Brazil. Although the group has probably long since given up hope concerning any form of formal justice through the state, as the 1979 amnesty remains binding, they still fight for justice on various levels. For example, some two decades after the atrocities, the Grupo Tortura Nunca Mais<sup>12</sup> (Group Torture Never More) in Rio de Janeiro and Comissão de Familiares de Mortos e Desaparecidos Políticos in São Paulo are working with the

medical council and legal representatives to strike doctors from the roll who were implicated in torture during the military dictatorship.

The South African TRC is a valiant effort to try to meet some of the needs for truth and justice within the context of a negotiated political transition. In South Africa, amnesty is justified as being necessary to ensure peace. Furthermore, it is argued that it was logistically impossible to prosecute all transgressions due to inefficiencies in the criminal justice system and a lack of access to information necessary to sustain successful prosecutions. However, the process was not left at that. Critically, unlike most 'blanket amnesties' seen in South America, the South African TRC trades full disclosure or 'truth recovery' for amnesty - thus potentially meeting victims' needs for truth and public acknowledgement. This is the polar opposite to Brazil where no full disclosure was necessary to qualify for amnesty.

In South Africa amnesty is not automatic. Amnesty is not granted if the act committed is not political in nature and if the facts for each offence are not fully disclosed. The National Unity and Reconciliation Act that established the TRC also states that the decision to grant amnesty should be considered in light of the motive of the person who committed the act, the context in which the act was committed, the legal and factual nature of the act (including the gravity of the offence), the object and objective of the act, and whether the act was carried out by order or approval of a political body, institution or individual. The relationship of the act to a political objective and the proportionality of the act also needs to be considered.

In substituting truth recovery for retributive justice, it is intended that the information made available will assist in leaving an undisputed account of history and document how violations occurred. This opens up the possibility to learn from the past and in so doing ensures that future transgressions of human rights do not occur. However, the success of this process depends crucially on the TRC's ability to elicit this information from perpetrators in exchange for amnesty.<sup>13</sup> This further demands a political will (as well as a semi-judicial ruling based on debatable criteria on the act which established the TRC) to refuse amnesty if full disclosure does not occur or if the act does not meet some of the considerations outlined above (for example gravity, proportionality and so on). It remains to be seen if the South African TRC will be able to overcome the political pressures that generally occur in times of transition to grant such amnesties, due to the significant power still maintained by remnants of the old order.

More fundamentally, though, the process rests on an assumption that the truth will satisfy victims' demands for justice. Ironically, if truth is uncovered, this may stimulate rather than eliminate families' demands for justice. Perhaps the fact that justice will not be done is the bitter pill many people who have suffered will have to swallow in order to ensure democracy in South Africa. However, on a purely psychological level, to ask any person to do this is highly problematic as it may run counter to the individual's personal process of coming to terms with the traumatic event. Although most victims would probably agree that the TRC may be a necessary first step to uncovering the truth, the onus is not on victims to accept any amnesty agreements. Rather, the TRC has the responsibility to explain amnesties and has to be prepared for angry responses. It is critical that victims are not expected, either implicitly or explicitly, to forgive the perpetrators. The anger of family members, or other emotional responses, to the granting of amnesty to perpetrators has to be

legitimized and space provided for people to express their feelings. The lessons from other countries are that amnesties are always unpopular and will remain unpopular. As much as the South African amnesty is different from those in South America, those who committed gross violations of human rights can potentially walk free. The legacy of this breach of justice, no matter how necessary or justifiable, will live on in various forms in South Africa and in the minds of the victims and their families.

A further assumption that requires investigation is whether knowing the truth actually translates into the prevention of future violence and more specifically into substantial institutional change. Perhaps if Brazil had a Truth Commission and the facts were revealed through the process, demands for justice would not still reverberate through the society. The issue of knowing the truth in Brazil - without any formal truth recovery process -- is an interesting one. It could be argued that at least a large part of the truth is in fact known in Brazil through the publication of the book *Brazil: Nunca Mais* (Weschler 1990). This unofficial documentation of history and brutality in Brazil was the national bestseller and retained that position for twenty-five weeks, 200 000 copies of the book are in circulation and it has become the single best-selling non-fiction book in Brazilian literary history (Weschler 1990). The book, although not official, has received 'semi-official status' through its extensive sales (Bronkhorst 1995). This begs the questions: Do Brazilians not know the truth? And, if they do, what has the impact of knowing this truth had on their society?

The answer to this question is a complex one. One argument is that the truth has not had sufficient impact on changing institutions in Brazil or the society because the political trajectory taken by the country was already entrenched before the election of a civilian government in 1985 or the publication of the book. This point is supported by Elio Gaspari from *Veja*<sup>14</sup> who commented that *Brazil: Nunca Mais* 'was bought and read - avidly read. No, that's not my point. Rather, it's a question of who has been reading it. People in this country over the age of forty bought few copies. Either they already knew all about the torture or didn't want to know. Furthermore - and this is fundamental - the book came out after the compromise of the élites had been sealed. The transition from military rule in 1985 was consummated only because the civilian élites in this country - personified by politicians - had in effect already signalled to the generals that they would not delve into the past and would honor the amnesty' (cited in Weschler 1990:76).

In addition, in Brazil the truth was not coupled with anyone taking responsibility for the past or any transformation of the institutions responsible for past abuses. There has been no public acknowledgement of wrongdoing and where there has, this has certainly been limited. Even when the names of 444 torturers were released to the press in 1985, for the most part the positions of those in government and elsewhere were maintained and only a few people were fired from their positions (Weschler 1990). On the whole perpetrators had to deal with little more than some public contempt.

Clearly knowing the truth, albeit unofficial, has been insufficient as those individuals and the institutions responsible for past abuses still infringe human rights in Brazil today. Those responsible for past atrocities seem to operate freely. For example, despite being named in *Brasil Tortura: Nunca Mais*, the Military Attaché in London was only recently removed from his post as he was discovered to have been a torturer.

He then, under protest from the British Parliament, returned to Brazil to take up another post in the armed forces without loss of commission. Similarly, institutions responsible for the abuses of the past have not been through any processes of transformation. It is only recently, for example, that the São Paulo military police<sup>15</sup> have started to recognize the need for civilian oversight structures in the service. The result is that a context of impunity remains in Brazil and permeates the operations of the military police and other state apparatus throughout the country which leads to large scale human rights violations. This is more extensively discussed in the next section.

The TRC in South Africa will certainly uncover a more extensive and public transcript of the truth than was uncovered in Brazil. However, the lessons from Brazil seem to be that the political direction chosen by the country after transition has significant impact on how the truth can or cannot be used. In other words, publication of the final report of the South African TRC will be insufficient in itself. It will not be sufficient to reveal the truth and make future recommendations alone. The publication of the TRC's final report will have to be integrated into processes of real institutional transformation. The chapter of South Africa's past history will not close with the last word of the final report. In fact, it will only begin. The TRC will have a responsibility to ensure that some structures are in place to translate the 'truth' into transformation.

This is further complicated by the fact that the prevention of future political violence cannot be seen as separate from the structural circumstances of those testifying. In the majority of cases that appear before the TRC, the people were victimized not only because of their political affiliation and activities, but because of their structural circumstances including their gender, poverty, race and general social marginalization. Structurally these marginalized groups run the risk of being re-victimized due to their sustained social position. The threat of political violence may have decreased substantially but they remain subject to structural and other forms of violence (cf Hamber 1997).

In Brazil the majority of political victims of abuses were not from the working class but from the middle classes. Violence against the middle-class human rights activists and leftist academics has decreased since the instatement of civilian rule in 1985, but the poor and marginalized remain victimized. These so-called 'new victims' are harder to define than the small group that was victimized under the dictatorship for political reasons. The 'new victims' who do not constitute a homogeneous group, are far greater in number, and live on the margins of society (Pinheiro 1996). In South Africa, the victims of political violence have always been doubly victimized through their poverty.

Nonetheless, it is important not to overload the TRC with the mandate of addressing the structural inequalities in South African society. Any Truth Commission is doomed to failure if it is set up to be the exclusive vehicle of reconciliation, or if it is expected to address fundamental imbalances in power and wealth. In this sense, the TRC needs to be viewed as one of several mechanisms for reconciliation and as only one among many mechanisms for addressing the conflicts of the past. However, it can be predicted that in years to come the TRC will amount to little unless it is complemented by broad processes of human and economic development; the legal and constitutional protection of human rights and the building of a human rights

culture; as well as by other reconciliation mechanisms and violence prevention strategies which seek to address the differing and changing forms of violence which a large percentage of South Africans continue to endure.

## **LIVING WITH THE LEGACY OF THE PAST**

*We no longer talk about it, let us blot this page from history as if nothing has happened; once amnesty has been granted we can re-establish a state of constitutional normalcy (Brazilian Armed Forces on the 1979 Amnesty)*

Undoubtedly the TRC process will help the nation to deal with the past to a significant degree. However, if one analyses transition in other countries it is often apparent that new forms of violence follow the move to democracy.<sup>16</sup> This is certainly true in South Africa where since the transition criminal violence has been increasingly documented and political violence (except, until recently, for Kwazulu-Natal) has largely declined. While criminal violence has increased,<sup>17</sup> the development of criminal violence after transition is seen in many countries after democratization (cf Glanz 1995; NCPS 1996; Shaw 1995) and it would be false to see the shift from political to criminal concerns as unrelated. When dealing with past political violence we need to be aware that whenever there is some process of amnesty granting, and by the very nature of transition remnants of old order and their actions will remain, this can impact on the nature and extent of future violence, particularly violent crime.

Violence committed in the past by individuals and through institutions like the police needs to be seen as linked to human rights violations committed in the present even if the motives are said or seem to be significantly different. This is clearly seen in Brazil where there are still high numbers of deaths in police custody and human rights violations by the police. For example, the military police who fall under the state government killed 1 470 people in 1992 in São Paulo alone compared to 27 similar deaths in New York City (Pinheiro 1996). On average 18 suspected criminals are killed in São Paulo each month and 24 in Rio de Janeiro (Pinheiro 1996). Some reform is under way in São Paulo. An independent ombudsman who investigates complaints against the police has been set up and police are suspended from duty and given psychological assistance if they are involved in violent acts. The result is that in 1996 the number of police killings dropped to 106 in metropolitan São Paulo (The Economist, 12 April 1997). In Rio de Janeiro the situation remains unchanged. The tough crime fighting approach, steered by controversial police chief General Cerqueira, is blamed for the rise in deaths by police. Policemen are given pay rises of up to 150 per cent for 'bravery' and it is argued that this has resulted in an increase in the 'execution' of suspected criminals and arbitrary killings by the police (The Economist, 12 April 1997).

Torture is still practised in the majority of police enquiries and accusations by the public or others are rarely investigated (The Economist, 18 May 1996; Coimbra 1996; Pinheiro 1994; 1996; Poppovic & Pinheiro 1995). Furthermore, the practice of summary executions of suspected criminals, particularly young criminals, by the police remains common (Pinheiro 1994; Pinheiro 1996). The Americas Watch report released in February 1994 documents 5 644 deaths of children and youths (between 5 and 17 years) between the years 1988 and 1991. The number of lynchings (that is public executions or assault due to being a suspected criminal) and cases where

people take the law into their own hands has also dramatically increased in Brazil over the years. Between 1970 and 1994 there have been 366 deaths as a result of public violence against suspected criminals (de Souza Martin cited in Pinheiro 1996).

Similarly in Chile, despite the efforts of the Chilean National Commission on Truth and Reconciliation to hear testimonies of victims, the fact that a blanket amnesty had already been agreed to (and that former Junta leader general Pinochet remained Commander in Chief of the Army) has resulted in a lack of acceptance of responsibility by the armed forces. It also appears that institutions like the police have not been fundamentally changed despite a truth recovery process in Chile and that the Commission's report included many recommendations on how to change the police service. The result is that recently the Chilean police have been criticized for their policy of 'shoot first and ask questions later' (National Committee on Human Rights cited in Pinheiro 1996). The decayed and abusive moral fibre of institutions such as the police and military therefore appears to remain largely unchanged.

Several academics, activists and authors in Brazil see the ability of the state to carry out this type of anti-human rights actions as linked to the past levels of impunity and what has been termed 'socially rooted authoritarianism'<sup>18</sup> (cf Adorno 1995; Cardia 1996; Pinheiro 1994). It is argued by Adorno (1995) that the reconstruction of a democratic society in Brazil since the dictatorship has not been rigorous enough to contain the arbitrariness of violence of the agencies of public order. Similarly, it is argued by Pinheiro (1996) that the return to democratic constitutionalism has done little to eradicate authoritarian practices embedded in the state and society. The result is that, despite a very real rise in crime rates and a diverse pattern of violence, the public penal policies seem to differ little from those adopted during the authoritarian regime (Adorno 1995).

In Brazil most incidents of death and torture are publicly attributed to the prisoner's resistance or efforts to escape, 'just as the occasional deaths of political prisoners under military rule had been' (Weschler 1990:75). Cecilia Coimbra of Grupo Tortura Nunca Mais (Rio de Janeiro) also states that 'extermination and genocide walk hand in hand with impunity. No one has ever been punished. Just as the torturers who killed and hid bodies in the 1960s and 1970s were never punished, today's murderers also go unpunished' (Coimbra 1996:90). In a recent interview,<sup>19</sup> Cecilia Coimbra again reiterated that Brazilian society fails to see the link between past and present human rights violations. She argues that the discourses and actions of the military police today are influenced by the military regime of the past. For example, the doctrine of *Auto de Resistencia*, which was instituted in 1962, allows policemen to sign a document that a person was killed while resisting arrest, thus freeing them from blame. This largely unchecked process was used in the dictatorship and is still used in Rio de Janeiro today. For the majority of the society, where a level of socially rooted authoritarianism exists, people are not concerned by arbitrary violence against the poor - particularly if the person is a suspected criminal - just as the majority of Brazilians were not concerned about the violence against suspected political dissidents.

More broadly, O'Donnell (cited in Pinheiro 1996) argues that although the 'first transition' has taken place in Brazil - that is, from authoritarian rule to democratic civilian rule - the 'second transition', which embodies institutionalizing democratic

practice at all levels of the State, has not occurred. In Brazil, and many Latin American countries, this second phase of transition remains hampered by the innumerable legacies of the authoritarian past (Pinheiro 1996). Similarly, in Argentina, Chile and Peru, the past lingers on and the citizens are still grappling with the demon of human rights violations perpetrated by the military - long after the formal transition to democracy (Lawrence 1991).

The rise in police killings, and vigilantism aimed at suspected criminals in Brazil, is 'justified' as reasonable to curb rising crime in the society. As in South Africa, this points to a real crisis in the justice system and attests to the fact that the general populations, both rich and poor, lack faith in the police and judicial system. However, the government's response to rising crime is essentially a reactionary rather than a proactive approach. Police officers see it as their role to 'purify' society and as a result use illegal investigation techniques, torture and even summary executions (America Watch 1987, cited in Adorno 1993). It could be argued that this reaction is based on the authoritarian culture of the past that has not been dealt with by the society or adequately linked to present human rights infringements.

The result is a particularly heavy-handed approach to crime fighting and broad range of human rights violations committed by the police and even the public. Coimbra (1996) argues that exterminations, lynchings, public justice are being encouraged (albeit covertly) and judges and perpetrators are being used to consummate the necessary social clearance. In Brazil, essentially built on a bedrock of structural violence and social inequality, a war against the poor prevails so as to maintain social order and economic elitism (cf Pinheiro 1996). All actions are justified as allegedly fighting rampant crime. However the methods violate human rights in the same way as in the past, although the 'cause' is significantly different.

In some extreme cases the perpetrators of present-day human rights infringements are even the same as those from the military dictatorship. Any link between these perpetrators and their past human rights violations seem to be ignored by the society at large. Some political assassins who worked in hit-squads in the 1980s were subsequently hired to murder suspected criminals and to 'clean' up the streets in Brazil (Pedro & Sinhoretto 1996). Within most of the largest cities in Brazil justiceiros or gunmen, as well as a range of other groupings known as grupos de extermínio (extermination groups), are charged with enforcing private justice and are hired or used to maintain so-called law and order (Pedro & Sinhoretto 1996; Pinheiro 1994; 1996). Shopkeepers, merchants, local communities and at times local neighbourhood associations often support these private 'enforcers' of public order (Pinheiro 1994; 1996). This scenario obviously points to the inability of the state to contain violence and crime through its institutions. The result is a perpetuation of the cycle of violence where often the victims themselves become perpetrators of illegal violent acts.

Similar stories of impunity are also documented in Argentina and Chile. Ironically, in Argentina many of the former torturers and murderers are at the forefront of the fight against crime. It is argued by Maria Caeti from a human rights research group that the unstable climate and rise in crime in Argentina has given the previous perpetrators of abuses a perfect market to privatize their skills (Wright 1997). The result is that many of the key perpetrators who were never prosecuted or forced to take responsibility for

their actions<sup>20</sup> are now running some of the most successful security firms in Argentina (Wright 1997). Some of those now operating in the private security firms were said to be key figures in the navy's former intelligence unit who were responsible for throwing hundreds of prisoners from aircraft into the sea whilst they were still alive (Wright 1997).

Although most of the perpetrators distance themselves from their past activities, the impunity of the past lives on and there are even those perpetrators who still seem to glorify their actions. A man known as Julian 'the Turk' Simon, who was considered to be one of the cruellest interrogators, linked to 58 tortures (and suspected to be involved in hundreds more), now carries out money transfers for a security company. He recently commented: 'I don't regret torturing and killing. If I was given a cause I believed in, I would torture again. It's my profession. That's where my experience lies' (Wright 1997:11). Presumably this may mean that in his eyes any 'justifiable' cause legitimizes violent action and could, for example, include torturing and murdering suspected criminals or others. His own words seem to convey this: 'I'm not a dangerous man to normal people. I don't kill without a contract ... but there are still too many leftist influences, too many intellectuals and too many scum in the country. If someone told me to take them out, I'd do it' (Wright 1997:11). Residents in upmarket suburbs are not perturbed by the fact that the brutal killers of the past regime now police their streets, as they seem to have an attitude that as long as crime is reduced they do not care (Wright 1997).

The importance of this scenario is that this situation may well develop (if it has not already started) in South Africa as the police are urged to get 'tougher on crime'. This approach totally ignores the root causes of crime and fails to address the weaknesses of the criminal justice system. Above all it does not recognize that the authoritarian approach to crime fighting is rooted in a deep history of authoritarianism. The result is a long-term undermining of any sustainable human rights culture and a failure to consolidate democracy. What may well intensify the situation in South Africa

more than in Brazil is that the wounds of the past are still present and exist on a much larger scale. This scenario, which without adequate victim support structures and an efficient criminal justice system often results in victims taking the law into their own hands, can only serve to exacerbate the situation. It is likely that in South Africa a similar situation could develop, so that, like in Brazil today, killings by the police enjoy the support of large sections of the entire population including the poor, who due to constant victimization by criminals often support police violence. A vicious circle is thus perpetuated in which the poor are not only the primary victims of crime but also remain those most at risk of arbitrary police violence.

Despite many of the poor themselves supporting the police in Brazil, families who have been the direct victims of police and criminal violence are taking alternative steps. One result is that victim support groups, very similar in structure to victim support groups that deal with political violations of the past, have sprung up in some of the favela or squatter settlements in the southern zones of São Paulo. These groups are made up of families of children who have died in ongoing criminal violence or police killings - for example as suspected criminals or caught in the cross-fire. These groups are different from the victim groups that focus on past political atrocities as their focus is on upgrading their neighbourhoods and getting education for their

children so they are not drawn into crime or onto the streets. However, a common element between the two groups is that both see the police as primarily responsible for the deaths of their children and that they believe that more than anything else the institutions of public security require fundamental transformation.

### **CONCLUSION: THE SLIDE INTO A STATE OF IMPUNITY**

Dealing with the past is an undoubtedly intricate and long-term process. Lessons from Brazil - although the formal mechanisms for dealing with the past are far from as extensive as in South Africa - are that legacies of the past live on in many different forms. In Brazil this is primarily seen in the authoritarian approaches of the state on a number of issues but particularly in its so-called fight against crime. However, experience of Brazilians working in the field suggests that military strategies to fight crime so prevalent in new democracies do not work, as crime prevention requires more complex and subtle forms of intervention (Pinheiro 1996). In Brazil, like in South Africa, public opinion urges the 'militarizing' of public security through a massive police presence on the streets, the suspension of legal guarantees, greater freedom of action for the police and harsher treatment of criminals in prison and through the death penalty (Adorno 1995). However, this has not and will not work to reduce crime as the problem is not being attacked at its roots (Adorno 1995).

In South Africa, the link between past and present calls for more draconian police action is not sufficiently explored. The impact of the granting of amnesty for political crimes, even with the truth recovery process, is also something that will only be seen in years to come. However, if the lessons of other countries are taken seriously, the threat of large-scale impunity and authoritarianism does loom. South Africa cannot recognize the roots of violence and criminality as residing in the historical dehumanization of the apartheid system and simultaneously ignore the impact of politically motivated amnesties on the credibility of the criminal justice system (Simpson 1997).

Thus, on the collective level, even if we accept that amnesty had to be granted to ensure peace in South Africa, truth alone should not be considered sufficient to ensure a society free from future gross human rights violations. There is little evidence at this stage to show that past perpetrators when granted amnesty will not partake in other violations albeit under the guise of another social 'cause' like crime fighting. Ironically the society at large can even sanction the anti-human rights actions of these past abusers of human rights.

As much as the TRC process does not grant automatic amnesty, we need to be aware that the legacy of the past can live on in many destructive forms. Truth without institutional transformation and a failure to monitor the historical traces of the past and the perpetrators of political atrocities (even if their actions at present are not considered political) will only result in South Africa repeating the mistakes of other countries which have not managed to consolidate a sustainable human rights culture partly due to these very reasons. On the individual level, even with the efforts of the TRC, the varied nature of the cases and the impossible search for the truth means that the issues of the past can be expected to remain on the agenda for many years. The impact of the trauma of past political violence can in part be addressed by the TRC, but the need for ongoing mental health and community support structures will

continue long after the official process has been completed (cf Hamber 1995a; 1995b; 1996a; 1996b). In Chile, for example, despite the Chilean Commission of 1991 being reported as the most successful Truth Commission to date, people still seek to report past cases and many are unaware that the Commission even took place. These issues are pointed out not to argue that a Truth Commission process should not have occurred in South Africa - as undoubtedly what truth is gained will be beneficial - but to highlight that truth, and the process of searching for it, and the issue of compensation also bring along with them a range of other issues and dynamics.

We need to guard against the attitude that once the TRC is over, the chapter on the past is closed. For the victims of past abuses, on an individual psychological level, the chapter only closes when they are personally ready. The real question for South Africa is at what point does a society become tired of hearing the voices of the past? If Brazil is anything to go by then, despite even the most valiant efforts by the TRC, we can expect to hear the voices of victims long into the future. The challenge to all South Africans will be to learn to cope with, and accept as legitimate, the ongoing anger and even impossible demands of victims, who will continue their struggle for an ever-elusive truth.

If South Africa is to reconcile itself with its past demons, reconciliation will need to address several needs. First, public acknowledgement and the documentation of abuses is critical. It is hoped that the TRC will address this to a substantial degree. Second, the truth recovery process needs to be underpinned by structural and developmental progress spearheaded by the government. Third, the damage done to social and individual relationships requires attention either through individual rehabilitative or collective strategies like mediation, counselling or other community interventions. Finally, civil society, in partnership with government, needs to seriously tackle transforming the institutions responsible for violence in the past. Changing institutions is only in part the responsibility of the TRC. However, the TRC has a responsibility to ensure that a sophisticated notion of reconciliation is left in place after its demise. This notion must move beyond the naïve belief that 'truth' alone will equate with reconciliation and ultimately institutional transformation. It is the responsibility of civil society, human rights groups, the TRC for its limited life and the government to continually monitor the impact of amnesty granting on our public institutions. The past context of impunity was so pervasive that we cannot afford to allow any form of human rights violation to go unnoticed or the effects thereof unchallenged. As South Africa attempts to consolidate democracy it cannot permit a slide into a state of impunity that may well look fundamentally different from that operating under the apartheid regime, but in effect will have equally devastating consequences for the marginalized in our society.

## NOTES

[1] See Comitê Brasileiro Pela Anistia, Seção do Rio Grande do Sul, *Dossiê dos Mortos e Desaparecidos* (Rio Grande do Sul: Assembléia Legislativa, 1984) which has information on the victims and circumstances around their deaths.

[2] The book *A Miracle, A Universe: Settling Accounts with Torture* by Weschler (1990) contains a fascinating description of how *Brazil: Nunca Mais* was compiled largely from official court proceedings of the military court cases. This entailed, whilst the military was still in power, photocopying over one million pages of information without the knowledge of the officials and collating it secretly.

[3] Araguaia is a remote forest area in Central Brazil near the Araguaia River, from which a few hundred leftist guerrillas operated trying to overthrow the government. The remoteness of the area made communication and supply routes difficult. This, coupled with the strength of government forces, resulted in the majority of the guerrillas being killed. Some of the bodies discovered even had their hands removed so as to make identification difficult (Roelofse-Campbell 1996).

[4] For more information on the group see website: <http://www.wits.ac.za/csvr>.

[5] See 'Go-betweens keep the truth body working', by E Koch. *Mail & Guardian*, January 17 to 23 1997.

[6] In Argentina two main groups exist. The Madres de la Plaza de Mayo reject all government attempts to investigate the truth and only want justice. This group split with the Madres de la Plaza de Mayo - Línea Fundadora in 1986. Madres de la Plaza de Mayo - Línea Fundadora, despite initially being against all investigations and truth recovery processes, now work with the government in investigating disappearances (e.g. exhumations) and accept the reparations offered.

[7] The Bill was approved by the Brazilian Congress in September 1995. Names of 136 disappeared persons were officially acknowledged by the government. The number of those considered dead or disappeared is still contested by some of the families of victims in Brazil. The onus, however, is on the families to prove the government was responsible.

[8] Interviews were conducted by the author with Criméia Alice Schmidt de Almeida and Janaína de Almeida Teles of the Comissão de Familiares de Mortos e Desaparecidos Políticos on 28 November and 4 December 1996. This paper is in part a product of some ten hours of discussion with them.

[9] The National Unity and Reconciliation Act does make provision for the granting of urgent interim reparations (UIR) to victims before the long-term reparations policy begins. Although some informal reparations have been granted (eg referrals to appropriate support services or assisting with ensuring that disability grants are paid) the UIR policy was only completed in March 1997. This was some 15 months into the 24-month process of the TRC.

[10] The information about the naming of streets and reactions of families was gained through an interview with Cecilia Coimbra from Grupo Tortura Nunca mais (Rio de Janeiro) carried out by the author in December 1996.

[11] See Footnote 6 for a brief overview on the different victim support groups in Argentina.

[12] This group includes family members, victims of torture and concerned human rights activists who have campaigned against torture, publicized the use of torture during the dictatorship through the book *Tortura: Nunca Mais* and other forums, and seeks to ensure psycho-social rehabilitation for survivors.

[13] The debates concerning how such information can be elicited from perpetrators

are beyond the scope of the present paper. Suffice it to say that the debates have colloquially been referred to as concerning 'carrots and sticks', that is, perpetrators will only seek the 'carrot' of amnesty if they fear the 'stick' of prosecution. However, the threat of prosecution remains a thorny issue, as it relies on the ability of the Investigation Unit of the TRC to threaten perpetrators with a possible prosecution after the TRC cut-off dates for amnesty applications have closed - if they do not apply for amnesty. This in turn has to be seen against the backdrop of whether the state can (and has the political will to) prosecute, given the present state of the judicial system and resources available for extensive political prosecutions if perpetrators do not apply for amnesty. The result may be that several perpetrators may take the calculated risk of potential prosecution after the TRC cut-off dates and not supply information to the TRC based on the grounds that sufficient information will not be uncovered by the TRC or that the state simply cannot afford to prosecute extensively or expeditiously.

[14] *Veja* is Brazil's leading newsweekly with a circulation of over one million copies. *Veja* also ran a spread on the development of Brazil: *Nunca Mais* at the time of its publication. This undoubtedly popularized the book.

[15] In Brazil there are two types of police: the Civil Police who carry out criminal investigations and the Military Police who are the uniformed police who police the streets and are trained within a military academy structure.

[16] The reasons for these shifts are beyond the scope of the present work (cf Hamber 1997; NCPS 1993; Simpson & Rauch 1991).

[17] When discussing the increase of criminal violence in South Africa we also need to be aware of the blurred boundaries between criminal and political violence in the past, the inaccuracies of South African crime statistics and the crime rate which has been steadily climbing from a decade before the political transition.

[18] The concept of socially rooted authoritarianism in Brazil is seen as having its source before the dictatorship and is embodied in a range of social, political and cultural practices. It is regarded as preceding and surviving the authoritarian regimes and is independent of political periodization. See Pinheiro (1994) for a discussion of the term and the complexity of authoritarianism in Brazilian society.

[19] Interview with Cecilia Coimbra from Grupo Tortura Nunca Mais (Rio de Janeiro) in December 1996 carried out by the author.

[20] Some of these perpetrators featured in the National Commission on Disappeared Persons (CONADEP). CONADEP listed 340 clandestine detention centres and over 1 080 cases were submitted to civilian courts (Bronkhorst 1995). No prosecutions ever followed.

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## **ACKNOWLEDGEMENTS**

Acknowledgment needs to be extended to Monica Lucia Rique Fernandes, Paulo Mesquita and all the staff and friends at the Núcleo De Estudos da Viôência (Centre for the Study of Violence) in São Paulo, Brazil, for their assistance and warmth during my stay in Brazil. Thanks also need to be given to all those who shared their time, experience and knowledge with me whilst in Brazil, particularly Criméia Alice Schmidt de Almeida and Janaína de Almeida Teles of the Comissão de Familiares de Mortos e Desaparecidos Políticos. There are many others who helped with reading and critical comments of drafts of this paper, particularly staff at the Centre for the Study of Violence and Reconciliation in South Africa and also Laura Alfred, Martin Terre Blanche and Priscilla Hayner.

This paper is a component of a research study, and exchange program, made possible by the Rockefeller Resident Fellowship Program.

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