

Are Trials Good For Victims?

*Victims' Experiences with Trials after Crimes
against Humanity in Argentina and Peru*

By

Anne Margrethe Sønneland

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Preface

The global efforts to hold those responsible for serious human rights abuses accountable for their crimes, represent a rather recent, but a significant step forward for humanity and in particular, for the international human rights. It is the principle of “universal jurisdiction” that makes it possible for countries to prosecute the most serious offences – no matter who are the perpetrators or where the crimes were committed, and regardless of the nationality of the suspects or their victims, and in this way, bring the responsible to justice.

During the years that have passed since this principle was accepted, there have been a number of important attempts to establish justice, to punish the responsible for atrocities and provide redress and compensation to the victims. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR) and finally the International Criminal Court and its Rome Statutes have created important jurisprudence and hope.

These important and innovative legal initiatives within international justice, have as primary aims to end impunity for serious human rights abuses, war crimes and crimes against humanity. The ambition, as defined by the Rome Statutes, is first of all to see that justice is done in the countries where the crimes have taken place, and that the alleged perpetrators are investigated by the national system of justice and tried in national courts. This is important for victims, survivors and witnesses who then have a chance to participate and follow what happens more closely than should this have taken place in international courts. But we also know that where the domestic courts are either unable or unwilling to take on this responsibility, serious human rights crimes can be tried in international courts. And thanks to the universal jurisdiction principle, there have been cases where national

courts have tried cases where non-nationals are facing justice for crimes committed, also against non-nationals. Examples of this when a former officer from Bosnia was tried in Norway for crimes committed during the Balkan war. Interesting and breaking new ways was also the attempt of extraditing former Chile dictator Augusto Pinochet from the United Kingdom to Spain, for crimes committed against Spanish citizens in Chile. For alleged health problems, the extradition was never carried out. Rather he returned to Chile and was never tried in any international or national court despite the immense crimes for which he was responsible.

The focus in these processes described has been on the legal frameworks, on the rules and provisions, and on securing that all legal principles are in place. Furthermore, there has been the clear requirement that the legal processes, despite the extreme brutality of the crimes committed, must be fair and in line with the international human rights principles, ensuring that the legal rights of the defendant are fully respected.

But then, what about the victims? What is their role in these legal procedures and how are they met and treated? And what does justice and participation in the courts mean for those whose cases are tried? They may be survivors themselves of the crimes, for instance torture, illegal detention and the like, they may be family of persons executed or forcibly disappeared, or they may have been witnesses to atrocities committed to others. Often victims have experienced more than one of these violations. Last, but not least, to what extent are the courts planned and organized with the needs and vulnerabilities of the victims in mind? What kind of support is provided to them and how are their pain, losses and suffering handled as these become thematized in court?

The ICC was early to flag that their ambition was to become a victim friendly court, and a lot of measures were taken in order for this to

happen, benefitting the victims present, who were either testifying or just present. But what about the national courts? How much have they aimed at victim-friendly proceedings? And what does actually the fact of being associated to a needed and longed-for process of justice mean to the victims and survivors in practice, in their daily lives? And what dilemmas and obstacles are to be found on the way to justice?

This is what this book is about – it is about the victims’ experiences with the court trials in national courts, in two different Latin American countries – both with histories of massive crimes against humanity. The two countries – and the two national courts chosen for this study are Argentina and Peru. And the work has throughout been guided by the research questions as to whether trials as part of transitional justice are good for victims, and how victims experience and engage with such trials.

The study is done in close contact with victims and survivors and their families. The study clearly concludes that trials are important events in the lives of the victims – but what is such an important contribution from this study is that the trials, as they are seen and experienced from the side of the victims, are described and elaborated. Trials are not processes taking time within a short and clear cut time frame – they may be ongoing and long-lasting and what happens there may give a sense of travels in a roller-coaster. Hope may be strong and vivid at some point, but equally absent at some other, giving way to despair and fear. The exposure, the vulnerability and the uncertainty related to a process that yes, is wanted and often also a product of a clear demand, but it is also a process that takes its toll on the victims. This is so well elaborated in this book, based on the PhD study carried out by the author. It is what happens along the way, the need for support and counselling, the psychological challenges involved, including also intra-family disagreements on whether being part of the trials is what they want to or can do – when having experienced trials in practice.

And at the same time – the voices saying that this must happen, the process must go on. For in the end, it may contribute to better understanding, more information and perhaps even closure for the victims. And for society at large the trials represent a clear message that impunity is unacceptable, that the unspeakable violations cannot continue under the radar and that it must never happen again. Lastly – but not least - trials may be part of memorials and commemorations, honouring those who were killed, those who resisted and never can forget what happened to them, and those, whose lives ended in ruins, due to losses, violence and a long time under exceptionally brutal conditions. The book describes what happened, how it was experienced and the many thoughts and wishes coming out of this – based on the stories of those who were there to tell.

Oslo, November 2025

Nora Sveaass

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Foreword

As I am finishing this book, relatives of persons disappeared and killed in Peru continue to gather every Thursday in front of the Palacio de Justicia in Lima, protesting against the amnesty law that grants impunity to those responsible for crimes against humanity committed between 1980 and 2000. At the same time, the current President of Argentina, Javier Milei, justifies the crimes against humanity perpetrated by the military dictatorship that governed between 1976 and 1983. The struggle for truth, justice and memory seems never-ending, and much of the weight of reaching justice lays on those who were targeted by state violence.

This book is about transitional justice, and about experiences of participating in trials after crimes against humanity. It is about how lives are changed by state violence, about the incredible strength many show in the aftermath of such violence, and about pain and sorrow. It is also about the importance of justice.

I am eternally grateful to all who have spent time trying to make me understand, who have shared stories, silences, meals, coffee and *mate*¹ with me, for conversations about difficult topics as well as about history, art, music and Norse mythology. I would like to thank you for inviting me to meetings, court hearings, events related to memory, and to your homes. Thank you for taking such good care of me, for having the patience to explain, and for making me feel welcome.

This book would have been very different without Nora Sveaass, and without CAPS (Centro de Atención Psicosocial) in Lima and EATIP (Equipo Argentino de Trabajo e Investigación Psicosocial) in Buenos Aires. They have been incredibly generous in sharing knowledge and

¹ Mate is a tealike beverage that is popular in Argentina.

experience, have carried out interviews, and over the years, they have published several exceptionally important books and articles on the impact of systematic state violence on individuals and societies.

Many things have changed in the time it has taken me to finish this book. Several persons whom I have met and who became important to me, are no longer here. I feel very fortunate to have known them. Some left this world after receiving sentences in trials related to the disappearance of their children or siblings. Some left this world far too early. The world is not the same without them.

This book cannot fully do justice to the persons I have met, talked with and interviewed and their stories. I hope the reality I describe is recognisable for those who have been kind enough to help me understand.

The photo on the cover page is from Lima, while awaiting the sentence in a trial.

Anne Margrethe Sønneland,

Oslo, November 2025.

Chapter 1

Introduction

Are trials good for victims? This book addresses victims' experiences with court trials after crimes against humanity in Argentina and Peru. It is guided by the research questions of whether trials as part of transitional justice are good for victims, and how victims experience and engage with such trials.

In the lives of victims, trials are important events. Trials form part of a process that starts with the first human rights violation that a person was subjected to: an illegal detention, a sexual assault, the forced disappearance of a close family member, or a massacre. Such events represent a clear break with what Giddens (1979) calls "ontological security", the knowledge that the world is a relatively safe place. These events are also the beginning of a search for truth and for justice: for a truth about *what happened*, particularly in cases of forced disappearances, and a truth about *why* it happened. They are the beginning of a search for justice through trials, punishment of those responsible, and non-repetition of the crimes.

In many aspects, the trials discussed in this book are ordinary trials. In Argentina, they take place in the federal legal system, in Peru there are special courts. Victims who participate in these trials encounter the same hardships as victims in ordinary criminal trials. At the same time, these trials are special: they constitute part of broader processes of transitional justice, and they form part of policies dealing with the past. The trials aim at creating a better future after periods in which the state has perpetrated serious and systematic violations of human rights against its citizens. The defendants are accused as individuals, but they also represent a system that was in charge of human rights

violations over a long period of time: "These trials are not easy, because they are against the state", as one of the interviewees in Peru said.

Victims engage in these trials both for themselves, for those who did not survive, and for society at large. Some trials are related to individual victims. Others involve many crimes, many victims and several defendants. Frequently, individual victims have cases tried before several different courts, both nationally and internationally. They have engaged in demonstrations and in other forms of protest. In both countries, the first trials were followed by periods of amnesties and impunity, trials abroad or before the Inter-American Court of Human Rights, and the re-opening of trials before domestic courts. While victims follow trials, they also continue living their lives. They work, they study, they have children and grandchildren.

This book is based on interviews with 120 survivors and relatives in Argentina and Peru about their experiences with trials, and on my presence in trials in both countries between 2009 and 2014. The trials in Argentina address the systematic use of arbitrary arrests, enforced disappearances and torture against the civilian population during the last civil-military dictatorship, which held power between 1976 and 1983. During that time, between 9000 and 30,000 persons were forcefully disappeared, many were detained and held incognito for shorter or longer periods of time, and others were killed. The trials in Peru address the use of enforced disappearances and massacres during the internal armed conflict in the 1980s and the authoritarian regime of Alberto Fujimori in the 1990s. The Peruvian Truth and Reconciliation Commission has estimated that 69,000 persons were killed or disappeared between 1980 and 2000. In Peru, some of the interviewees reported massacres, forced disappearances and sexual violence to the police and testified in trials in the 1980s. In Argentina, relatives of disappeared presented writs of *habeas corpus* in the 1970s and 1980s. Some of the persons interviewed testified in the trial against the military Junta in 1985.

Victims play a crucial role in trials that form part of transitional justice processes. They were often the ones to report the crimes soon after they were committed, to the police and other national institutions, to international humanitarian or human rights groups such as Amnesty International and the Red Cross, and to the Inter-American human rights system. They have followed up the legal complaints and testified in court, both nationally, in European courts and internationally, foremost the Inter-American system. Thus, victims play important roles in transitional justice trials. Therefore, knowledge about their experiences is crucial, also in order to provide the best possible support to them during trials. This book is a contribution towards such knowledge.

Why trials?

Trials can end impunity. Trials differ from other mechanisms of transitional justice in that they can place individual blame, and they can lead to the punishment of those responsible. Trials establish a 'legal truth', identifying the crime, the perpetrator and the victim, as well as when and where the crime was committed (Lira 2010). This makes it possible to identify perpetrators, and sometimes to find out what has happened to individuals who remain enforcedly disappeared. Trials place the responsibility for wrongdoings with the individuals and institutions that committed the crimes – thereby removing the blame placed on the victims through such sayings as 'there must have been a reason' in Argentina or 'they must be *terrucos*'¹ in Peru. Trials can make it clear that the crimes were not the fault of the victims (Mala-

¹ *Terruco* is a pejorative term used to refer to real or supposed members of armed groups, and also to discredit persons with leftist political views, human rights groups – and persons from indigenous backgrounds. It has been used to stigmatise various sectors of Peruvian society, including family members of detained persons and other victims of violations of human rights and human rights defenders (Aguirre 2011:119).

mud-Goti 2010), and that the victims are to be recognised as persons whose lives matter.

Trials have become the preferred way of dealing with atrocities committed in the recent past (Drumbl 2011). In Latin America, courts have been the forum through which states can be forced to revisit transitional justice compromises. Thus, the courts have become an alternative place to 'do politics' (Collins 2008) in questions related to dealing with the past.

Massive human rights violations are what Kant called "radical evil". They are persistent, extended and organised offenses against human dignity (Nino 2006:33). Courts both in Argentina and in Peru have qualified the crimes committed as "crimes against humanity". Crimes against humanity are 'inhumane acts of a nature committed as part of widespread or systematic attacks against civilians'. Each of these crimes constitutes crimes in most criminal law systems. What justifies to characterize them as crimes against humanity is that they form part of systematic and widespread attack against civilians (de Guzmán 2010:3). Healing from trauma that originates in a fundamental injustice, and where the crimes have been rationalised, tolerated or made invisible, requires repair through justice from the larger community (Herman 2023). Trials are one expression of recognition and justice from larger society. Trials can contribute to overcoming impunity, which is important also because impunity after crimes against humanity have a devastating effect on those who have been targeted (Edelman and Kordon 2005).

Trials against former heads of state in cases of violations of human rights and that end with a conviction restores the fundamental rights and confirms that no-one is above the law. The sentences give a framework for countering narratives that negate the atrocities tried in court (Benitez Jiménez 2019). Emblematic trials – trials against former heads of state and other persons who have held power – give judi-

cial resources for the search for justice through trials (Benítez Jiménez 2019). At their best, war crime trials can create an impression of fairness; they can establish a public record and can produce a sense of accountability by acknowledging the losses that victims have suffered at the hands of the perpetrators (Stover 2005:129). Prosecuting violations of human rights can improve the chances for establishing the rule of law, signalling that no-one is beyond the reach of legal accountability (Landsman, in Minow 1998: 57).

Jaime Malamud Goti (1998; 2005) argues that trials can welcome victims back to society. The victims of violence were subjected to intentional abuses, to someone else's agency. In Argentina, victims of repression were looked upon as the object of blame: the focus of anguish was moved from the perpetrators to the victims. Thus, there is a need for victims to become included in society, and trials is one way of achieving this. Trials can place blame, both retributive and restorative: retributive blame places the responsibility for wrongdoings on individuals or institutions; retributive blame is intended to provide a more complete understanding of the past, stressing that 'the extent to which victims suffered was not their fault, that they count for us and that transitional policies are aimed at showing that they deserve the respectful treatment perpetrators denied them'. Restorative blame seeks to make it clear to the community at large and to victims that the victims were the object of wrongdoings committed by someone else. Official blame can contribute to evening out the unequal social standing of victims and perpetrators, and may aid the acceptance of victims by their communities.

The symbolic efficiency of trials depends on the extent to which the sentences change ideas and conducts in society (García Villegas 2012). The symbolic aspects of condemnatory sentences contribute to recognition in three aspects: The recognition of the victim as a subject whose

rights have been violated; the recognition of the victim as a citizen with rights, and recognition that the crimes did take place in the past.

Prosecution of human rights violations committed by previous regimes define the kind of violence that was committed, allocate responsibilities and can give legitimacy to the voice of victims. Thereby, trials can play a role in redressing victims and overcoming some of the damage caused by state violence, Figari Layús (2018) holds.

Verdicts and sentences are an expression of what societies accept. Condemnatory sentences in emblematic trials involve the recognition of victims as citizens with rights; and that the crimes took place in the past (Benitez Jiménez 2019). Trials can also represent a breach with impunity, and can serve to demonstrate a clear breach with the past (Gloppen 2005). They signal the acknowledgement of some crimes, such as rape, as condemnable and punishable, and ensure that perpetrators are held accountable for their misdeeds (Henry 2009). To sentence an offender in a criminal court can be an expression of solidarity with the victim, a gesture of 'excluding the offender and welcoming the victim back to the community' (Reemtsma, 1996, in Van Dijk 2009:23). Convictions can contribute to reducing survivors' shame and guilt (Malamud-Goti, 1998:428–429). Sentences can give legitimacy to demands, such as finding the disappeared (Benitez Jiménez 2019). However, for this to be true, trials have to lead to convictions, which is not always the case, as I will discuss when addressing the trials in Peru.

One question regarding trials as part of transitional justice is whom to prosecute, and how many persons? Are those whom Hannah Arendt (2003) referred to as desk murderers, who did not participate directly in the violence, more, or less, guilty than those who actually perpetrated the violence? There are legal and political reasons both for limiting the number of trials and for trying to prosecute all those responsible. Martti Koskeniemi (2002) suggests that it is sufficient to

hold a few well-publicised trials where the truth of the past is demonstrated, the voices of the victims are heard and the moral principles of the community are affirmed. Such trials have a symbolic, community-creating effect that does not require criminal law to be applied to all perpetrators, he holds. Borneman (2002:297–298) presents a similar argument when he writes that select and symbolically significant cases should be tried in democracies after systematic violations of human rights. These would be what he calls a ‘ritual purification of the centre’ and would create a sense of end to the injustices. Borneman’s argument is that there is a need for such trials in democracies, as they depend on a formally independent legal system which can invoke principles of accountability. The question remains of how the choice of who is put on trial matter to those affected by violations of human rights. If Koskeniemi and Borneman are right, there should be no need to prosecute each and every perpetrator –yet that is what many victims’ organisations demand.

One reasons for court trials against those responsible for crimes against humanity and serious violations of human rights is the desire to punish or get retribution. Punishment can be variously justified: the need to protect society against crime, improving the criminal, the deterrent force of the warning example for potential criminals, and retributive justice. Hannah Arendt (2003) argues that none of these are valid grounds for the punishment of ‘war criminals’. The defendants are not ordinary criminals, and few of them can be expected to commit further crimes, so society does not need to be protected from them. It is not likely that prison will improve them, even less likely than in the case of ordinary criminals. The possibility that trials will deter such crimes in the future is extremely low, taking into consideration the extraordinary circumstances under which such crimes were committed or might be committed in the future. Even the idea of retribution is hardly applicable, given the magnitude of the crime. For such extreme cases like that of the Holocaust, there is no possible

way of devising punishment corresponding to the crime committed. However, Arendt goes on to argue that our sense of justice would find it intolerable to forego punishment and let those who murdered thousands, even millions, go scot-free.

So there we are, demanding and meting out punishment in accordance with our sense of justice, while, on the other hand, the same sense of justice informs us that all our previous notions about punishment and its justifications have failed us. (Arendt 2003:26)

Prosecuting or punishing the individual perpetrator is not commensurate with the crimes committed (Arendt 2003; Bauman 1989; Christie 2001; Koskenniemi 2002). Thus, it has been suggested that such trials are more about establishing the truth of the events than of judging the person (Koskenniemi 2002). Arendt (1998; 2003) pays considerable attention to the truths established in the trial against Eichmann in Jerusalem and the trials related to Auschwitz. These trials have contributed to establishing a truth not only regarding the acts of the defendants, but also about the functioning of the system surrounding those crimes, similar to what takes place also in the trials in Argentina and Peru.

Victims in trials

Trials begin and end with the accused, as Hannah Arendt (1998) reminds us. Trials give victims the possibility to speak and to be heard (Jelin 2010). However, victims have traditionally had a limited ability to participate in trial processes, as they are seen as conceptual outsiders to the conflict between the state and the offender (Doak 2008:135). Formally, victims can have two roles in trials: They can be witnesses, and in Argentina they can be *querellantes* or private prosecutors. Both in Argentina and in Peru victims have the right to participation

through civil action within criminal proceedings. The right to participate as a civilian actor allows victims to receive compensation from the offender in the course of the criminal process (Michel & Sikkink 2013).

Witness testimonies are a primary source of evidence in transitional justice processes (Walling 2018:384). To be listened to within a court system represents a recognition of the voice of the victims (Jelin 2010). In Argentina, witnesses can now testify both about their own political activism, and about such crimes as sexual violence that they have endured. Trials can contribute to lessening fear, since they are a state-sponsored mechanism, and this contributes to empowering those who were targeted by state violence (Figari Layús 2018). Legal interventions can provide victims with public acknowledgement of their suffering, and restitution for the harm done. A validation and intervention by the legal system can restore victims' trust in the community, which is not possible as long as there is impunity for the perpetrators (Herman 2003:160, 161).

However, while encounters with the legal system can offer potential benefits for victims of violence, trials can also expose them to significant risks, psychologist Judith Herman (2003) explains: To be involved in legal proceedings 'constitutes an emotional stress even for the most robust citizen' (Herman 2003: 159). She discusses trials in cases of violence within the USA, but many of her observations are relevant for the trials studied in this book. Herman argues that the legal requirements in court cases often are diametrically opposed to the mental health needs of victims, and that the mental health and safety of victims may be a marginal concern: In court, victims have to endure public challenge to their credibility, while what they need is social acknowledgement and support. Courts submit victims to a complex set of rules and procedures, which they may or may not understand and which they have no control over, while victims need to establish a sense of control and power in their lives. When victims testify, they

will often have to respond to questions that do not leave the possibility to construct a meaningful and coherent narrative and do not make it possible for victims to tell their stories in their own way. Courts require victims to relive traumatic experiences by directly confronting the perpetrator, whereas victims need to control or limit their exposure to specific reminders of the trauma. Victims may also fear for their safety because of the risk of retaliation from the perpetrator (Herman 2003). The court sets the timetable for justice, which disrupts the lives of victims repeatedly, often over months or years, while victims need time for recovery (Herman 2023:64). While the rights of the accused are protected, as the legal systems are designed to protect criminal defendants from the state, there are not corresponding protection for the rights of victims. Indeed, Herman (2005:574) holds that if we were to design a system that attempted at provoke symptoms of traumatic stress, it could look very much like a court of law.

Being in court: A description of trials

What does a courtroom look like? All the trials I have been in, have been similar: the judges are seated in a central space of the room, the defendants are present, there is seating for the public, and there are formal rules as to how a court hearing is to be conducted. In Peru, the accused will be in front of the judge, while the lawyer of the civilian part – that is, the victims – will be on the right and the lawyers of the accused on the left (Código Procesal Penal 2016).

The court hearings I have followed are held in various types of venues. In Peru, the trials I attended took place in courthouses in Lima, some connected to high-security prisons. In Argentina, court hearings are held in courthouses, or in various venues such as theatres or universities in order to have more space for persons who want to be present. In some courthouses, there is a glass wall between the public and the area designated for the defendants, the testifying witness, the judges,

and other court employees. In Argentina, at least one psychologist is always present to support the witnesses; the psychologist is mandated to decide if a witness needs a break during the hearing.

The defendants or accused will normally be present in the courtroom during the court hearings, also when survivors and relatives present their testimonies. In some court rooms, the defendants are seated behind the witness so that the witness cannot see them during the testimony. In other courts, the defendants may be seated elsewhere; in some courts, witnesses can see the defendants while they give their testimony.

In both countries, the majority of those who attend court hearings are survivors, relatives or other persons affected by violations of human rights, or relatives or supporters of the defendants. During the court hearings, the public must remain silent; anyone who makes noise, shouts or displays emotions will usually be evicted from the courtroom.

Several courts in Argentina allow persons present to carry photos of persons who remain detained-disappeared or to wear t-shirts with symbols of the human rights movement. Some courts were initially more strict on this point. Some judges permit applause from the public after testimonies. In Peru, members of the public are not allowed to carry photos, or to applaud after testimonies. In Argentina, victims and their organisations are usually allowed to place banners and other symbols outside the court building. Sometimes these simply state 'trials against the genociders are taking place here', to show that trials related to past violations of human rights are in progress. In Peru, gatherings and demonstrations are sometimes held outside the courtroom during the first part of a trial, and on the day when the sentence is pronounced.

When I began working on this project, I naïvely thought that each victim would be involved in only one trial, but that proved to be far from the case. Most of the persons interviewed have participated in a series of trials, as witnesses, as *querellantes*, or by following the trial as part of the public. There are many reasons for this: Many victims have been affected in several ways: in some families, several persons have been detained, disappeared or killed. Many of the detained-disappeared in Argentina were held in various clandestine detention centres, and were subjected to abuse and harsh treatment from several perpetrators. In some cases, there are several trials related to crimes that were committed in one detention centre. In addition, many choose to follow trials that are not directly related to their own cases.

Trials are open to the public. There are always security measures surrounding trials, but they vary in strictness; likewise concerning how much information must be presented in order to gain entry. In some trials, it is enough to show an ID card or passport; in others, anyone wishing to attend the trial must register with full address. In some Argentinian courts, people must register in advance, and receive an admission pass. How many security guards one has to pass before entering the courtroom varies, as does what one is allowed to bring to the court hearing – such as paper and pen, handkerchiefs or handbags. In some courts, handbags will be scanned. In other courts, they will be stored until you leave the court hearing.

Trials are recorded, and testimonies in court can later be made available in their written form although they may not be accessible for the general public. In Argentina, all court hearings and all testimonies are recorded. In both countries, verdicts and sentences are made available after the trial. Argentine verdicts can usually be found online.

Survivors, victims, affected? On the importance of words

In this book, I choose to refer to the people interviewed and whose lives have been affected by crimes against humanity as “victims”. Words and concepts are important for our thinking and for clarity in discussion (Kalleberg 2016), and I have chosen the term “victim” because the persons interviewed have been victims of crimes committed by others, and this is the reason why they have experiences with trials. However, this is not an uncomplicated choice.

Several legal definitions of ‘victim’ exist at the international level. The most widely accepted is the one in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Ochoa Sanchez 2013:25), which states that

Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization (United Nations 1985).

States have obligations towards victims: victims have the right to rehabilitation, to reparations (Sveaass 2013; 2017; Sveaass et al. 2018), they have the right to information about legal proceedings, and they have participatory rights in criminal proceedings (Ochoa Sanchez 2013:7).

However, in everyday life, when someone is labelled a ‘victim’, he or she becomes the simple object of someone else’s agency (Mala-

mud-Goti 2005:631). There are stigmatising and passive connotations to the term, and many who are placed within the category have reservations about being called victim (Van Dijk 2009). Thus, it can influence our way of thinking about persons when we refer to them as 'victims', rather than as citizens, farmers, students, friends, parents, political activists, all terms that could have been used if the emphasis had been on other aspects of the lives of the person than that of having been subjected to crimes against humanity.

Agency and strength are often seen as being in opposition to being a victim: when women are placed in roles as simple victims, it 'takes away all agency and capacity for making decisions', as Argentine political scientist Pilar Calveiro (2018:34) argues. Agency can be understood as the capacity to act upon situations (Sibeon 1999); it concerns events where the individual could have acted differently at any point (Giddens 1984:9). Through acting and making choices within the constraints facing them, individual agents create and re-create the social institutions in which they live. These choices are often routine and habitual. They are not always made freely and explicitly, nor are they fully formed by social or unconscious psychological forces. Competent actors reflect upon their own actions and those of others (Giddens 1984; Valentine 2011). Action exists when an agent has the capability to intervene or to decide not to intervene in a series of events in order to influence their course. That also means that power is essential in social interaction (Giddens 1979).

Referring to people as 'victims' does not make clear neither courage and resistance that they may have shown in violent situations and afterwards, and it does not accord much agency. An emphasis on psychological consequences can misdirect attention away from survivors' social and political concerns (Kagee 2004). Writing on gender-based violence, Kathleen Barry (1979:45) introduces the term 'victimism' to refer to how the role and status of the victim creates 'a framework for

others to know her not as a person but as a victim, someone to whom violence was done'. Barry holds that victimism denies that, while a woman was suffering violence, she was also a living human being who was changing and growing. The term can be helpful also in studies of transitional justice, for grasping constructed victim roles that reduce individuals to their experience of victimisation.

Many prefer the term 'survivor', a term that can refer to those who have suffered and survived damage that has been knowingly inflicted, but can also refer to disease. This term is associated with a sense of agency or even heroism (Stein 2014). Jennifer L. Dunn (2005) situates the categories of 'victim' and 'survivor' as opposites on an 'agency continuum': whereas a victim is understood as someone who is trapped, a survivor is presented as someone who makes choices. Yet, the term 'survivor' presents other challenges. It has the disadvantage that it can refer to victims, perpetrators and bystanders, as they all have survived a period of political violence or internal armed conflict. Thus, the specific character of the 'victim' category dissolves in the overall category of survivors (García-Godos 2008). The term preferred by many of those who have been subjected to state violence seems to be 'affected by political violence' in Peru. While 'affected' helps us avoid the complications associated with 'victim', it presents some of the same problems as 'survivor': in some areas of Peru, like Ayacucho, it could be argued that most of those who live there have been affected in one way or another by the armed conflict, although not all have been victims of human rights violations.

Victims have rights according both to international conventions and national laws, whereas survivors do not: victims have the right to reparations and rehabilitation, and they have rights in trials. This is also a reason to use the term 'victim', despite the complexities involved in the term. Surviving violations of human rights has implications for people's lives, and the term 'victim' makes it clear that the person

in question has at some point been subjected to a crime. 'Victim' is useful as a legal term: to be a victim entails legal rights. Therefore, I use the term victim throughout this book, and hold that agency, courage and strength should be understood as aspects of being the victim of crimes against humanity. The persons interviewed for this study talk about violence, pain and suffering, but also about courage, about how they have taken action in order to protect others or themselves, and in how they have coped with the violence endured. Elisabeth Wood (2006) describes how many of the accounts about experiences in war started with narratives of violence and injustices, but ended with stories of achievement. Van Dijk (2009) finds an emphasis on inner strength in interviews with victims. Similarly, my interviewees have described strength, courage and resistance, as well as the suffering endured. Such aspects are also part of being the victim of crimes against humanity.

A short note on methods

This book is based on my PhD thesis, which I wrote as part of a research project funded by the Norwegian Research Council. In order to learn more about how persons affected by crimes against humanity experience and engage in trials that form part of transitional justice processes, I followed court hearings in Argentina and in Peru, and together with professor emeritus in psychology Nora Sveaass and psychologists, psychiatrists, social workers and social anthropologists at EATIP (Equipo Argentino de Trabajo e Investigación Psicosocial) in Argentina and CAPS (Centro de Atención Psico-Social) in Peru interviewed a total of 120 persons who were either survivors, relatives of persons who were killed or remain forcefully disappeared, or both, as well as several lawyers, judges, psychologists, social workers and public servants who work in this field.

Both EATIP and CAPS are NGOs who have worked with psycho-social support for victims since the days of violence, and have contributed with research on the impact of serious and systematic human rights violations as well as on how to support victims (see, among other publications, Edelman & Kordon 2005; Edelman et al 2003; Kordon & Edelman 2007; Kordon 1991; Kordon et al 2010; Lagos & Kordon 2023; Wurst de Landázuri, Cuba Oliveros, & Antón Sarmiento 2012; Raffo, Stomaiuolo, & Kristal 2004; Lloret de Fernández & Wurst 2007; Wurst de Landázuri, Cuba Oliveros, & Antón Sarmiento 2012; Pérez Clara, Lloret de Fernández, & Diandera Solís 2014).

Trials, as well as state policies towards the past, impact on individual lives in a series of ways, over decades and over generations. In order to understand experiences with trials after crimes against humanity, we need knowledge about how the violence endured, the many legal processes and trials that people have been through and the periods of impunity have impacted on and mattered in victims' lives. We need knowledge about how victims themselves have fought for justice and engaged with the legal system, about what it is like to testify in these cases and to listen to detailed testimonies in courts. Thus, I begin this book by discussing the state violence that people have endured and the ways in which they have searched for truth and justice through legal and collective action, before I explore legal processes from the period in which the state violence took place and until 2015.

Chapter 2

Violence and Courage

'First, I have to tell you about my daughter', a Mother of disappeared in Argentina said when I asked her about her experiences with the trials. She told me about a daughter that she had been very close to, who she had disagreed with when it came to politics, and she eventually told me what she knew about what happened the day her daughter was abducted and later disappeared. I learned that I needed to know what had happened in order to understand what it was like to go through trials: I needed to have an understanding of how crimes against humanity impact on the lives of those targeted, as this is what the trials are meant to address and repair, both at an individual and at a societal level. I also needed to understand how relatives and survivors have fought, and continue fighting, for truth, justice and non-repetition. And I needed to hear the stories about those who did not survive and who they were, what they were interested in, and what they meant to others.

To tell stories of state violence, and to tell the stories of those who did not survive, is a way of countering "the attempts of the state to silence the past and serves to subvert the narratives that the state has put forth, narratives that assuage the military's culpability", as Margareth Burchianti (2004:137) writes. The people I have met and interviewed would not have experiences with trials were it not for the wrongs they endured. Therefore, I will give some attention to the crimes that are being tried in court, and to the efforts that relatives and survivors have done in order to find the truth about the crimes and eventually get justice through trials. Both the violence endured and the resistance and the actions that relatives carried out seeking truth and eventually